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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

RACHEL ANN NUNES,

Plaintiff,

v.

TIFFANIE RUSHTON,

Defendant.

COMPLAINT

Civil No.: 2:14-cv-00627-EJF
Magistrate Judge: Evelyn J. Furse

(Jury Trial Demanded)

Pursuant to Fed. R. Civ. P. 8, Plaintiff Rachel Ann Nunes hereby complains against Defendant Tiffanie Rushton and alleges as follows:

Nature of the Action

1. In this action, Plaintiff seeks injunctive and monetary relief against Defendant based on her infringement of Plaintiff's copyright in violation of the Copyright Act, 17 U.S.C. § 101 *et seq.*, and based on Defendant's defamation of Plaintiff, her casting Plaintiff in a false light, her business disparagement of Plaintiff, her tortious interference with Plaintiff's prospective business relations, her actions in violation of the Utah Truth in Advertising Act, Utah

Code Ann. § 13 11a-1, *et seq.*, and her false advertising in violation of section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

Parties

2. Plaintiff Rachel Ann Nunes (“Plaintiff” or “Ms. Nunes”) is an individual residing in [REDACTED]

3. Defendant Tiffanie Rushton (“Defendant” or “Ms. Rushton”) is, on information and belief, an individual residing at [REDACTED]

Jurisdiction and Venue

4. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States, 17 U.S.C. § 101 *et seq.*

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331 and §1338(a).

6. This Court has supplemental jurisdiction over Plaintiff’s claims arising under the laws of Utah pursuant to 28 U.S.C. § 1367(a) because these claims are so related to Plaintiff’s claims under Federal Law that they form part of the same case or controversy and derive from a common nucleus of operative fact.

7. Defendant is subject to the Court’s general and specific jurisdiction consistent with the principles of due process and/or the Utah Long Arm Statute. Specifically, and on information and belief, Defendant is a Utah resident, and the acts complained of were committed within this jurisdiction. On information and belief, the infringing copies were made in and distributed from Utah. On information and belief, the false and defamatory statements, harassment, and other misconduct complained of herein also originated or took place in Utah.

8. Venue in this District is proper, pursuant to 28 U.S.C. §§ 1391 and 1400(a). Defendant resides in this District. *Id.* § 1391(c). Further, a substantial part of the acts of infringement complained of herein occurs or has occurred in this District.

Background

9. The Plaintiff, Ms. Nunes, is the author of a book entitled *A Bid for Love*, formerly entitled *Love to the Highest Bidder*. (This work is referred to herein as “*A Bid for Love*”.) This work was registered with the United States Copyright Office under its former name, *Love to the Highest Bidder*, on September 8, 1998 and received Registration Number TX0004855722. See **Exhibit A** attached hereto.

10. On information and belief, Defendant willfully infringed Plaintiff’s copyright by using the text and details of the plot from *A Bid for Love* in Defendant’s novel entitled *The Auction Deal* without authorization from Ms. Nunes. In converting Ms. Nunes’s work into *The Auction Deal*, Defendant added several graphic sex scenes and other adult content to what was originally a Christian novel.

11. On information and belief, Defendant wrote *The Auction Deal* under the pen name, Sam Taylor Mullens (“Mullens”).

12. On information and belief, Defendant operates under this identity, among other false identities discussed below, and controls the email accounts, blogs, websites, and all other online profiles and accounts associated with Mullens.

13. On information and belief, Defendant has plagiarized at least one other work.

14. On information and belief, Defendant took steps to prepare *The Auction Deal* for commercial sale in the summer of 2014. She paid an editor to edit the text and paid to have

cover artwork designed. Additionally, Defendant distributed electronic copies of the novel—referred to as advanced reading copies, or ARCs—to numerous persons to solicit reviews to help market the novel.

15. On information and belief, Defendant represented herself as Mullens throughout this process. However, on information and belief, Ms. Rushton paid for editing and design work under her own name.

16. On information and belief, several persons read the ARCs for *The Auction Deal* and provided feedback on the website www.goodreads.com (“Goodreads”).

17. On information and belief, Defendant placed *The Auction Deal* for sale online and sold multiple copies of *The Auction Deal*.

18. During the summer of 2014, several of the individuals that were asked by Defendant to review the ARC noticed that the text was similar to Ms. Nunes’s novel, *A Bid for Love*, and notified Ms. Nunes that the text appeared to be plagiarized.

19. Ms. Nunes was shocked and troubled to learn that her work may have been stolen. She sent an email to Mullens’s account, samtaylornullens@gmail.com, to inquire about the matter. See emails, attached as **Exhibit B** hereto. In this email, Ms. Nunes stated that she had been informed of possible similarities between *The Auction Deal* and *A Bid for Love*, and asked for an ARC in order to determine whether *The Auction Deal* was plagiarized.

20. On information and belief, Defendant responded to Ms. Nunes through the Mullens email account, claiming that she was clueless as to why there would be similarities between the texts. Defendant later claimed that the text of *The Auction Deal* “was molded from

a writing group and a dozen beta readers.” Defendant refused to provide Ms. Nunes with an ARC, but she claimed that she would forego publishing *The Auction Deal*.

21. Ms. Nunes sent another email to the Mullens account, and again requested that Defendant provide her with an ARC so she could determine whether Defendant’s book had in fact plagiarized Ms. Nunes’s copyrighted work. Defendant again refused, and also requested that Ms. Nunes not seek an ARC from any other source, including the readers who had been given copies by Defendant.

22. Subsequently, Defendant sent Ms. Nunes an email from the email account, tiffrushton@yahoo.com. See Email attached as **Exhibit C** hereto. In this email, Defendant claimed to be contacting Ms. Nunes as a friend of Mullens. Defendant claimed that she was part of a writing group where *The Auction Deal* got started, and claimed that a man, whom she did not identify, had given Mullens the manuscript of *A Bid for Love*, which he allegedly claimed was out of print, to use as the basis for a new book. Defendant stated that Mullens had relied on this man’s word that the book was out of print, and used it to write *The Auction Deal*. Defendant stated that the unidentified man died in a car accident last May.

23. In the same email, Defendant stated that she, Tiffanie Rushton, “[w]ould take equal if not full responsibility for anything in this situation.” *Id.*

24. On information and belief, Defendant also sent messages to other parties, including persons who had read an ARC of *The Auction Deal*. In one of these messages, Defendant claimed that her novel was not plagiarized because she had been given permission by the author many years ago to use the copyrighted material. See Message attached as **Exhibit D** hereto. In this message, Defendant claimed to be Ms. Nunes’s niece, and stated that Ms. Nunes

had given her authorization to use the copyrighted text. Defendant claimed that permission was given directly to her, not to Mullens—which, she admits, is only her pen name. Defendant further claimed that she could not reveal her true identity and the authorization to use the text because she cannot reveal to her extended family members that she writes about sex. Additionally, Defendant claimed that her lawyer had reviewed everything and that no copyright had been infringed.

25. Ms. Nunes has never given authorization to a niece to use her copyrighted material to create *The Auction Deal*.

26. Upon information and belief, Defendant also instructed others, including readers of the ARCs, that they should spread the message that her lawyer had assured her that no plagiarism or copyright violation had taken place.

27. As Ms. Nunes continued to uncover Defendant's deceitful actions, Defendant began a vicious campaign to discredit Ms. Nunes and disparage her work. On information and belief, Defendant has used several false identities to attack Ms. Nunes through various means.

28. On information and belief, these false identities include Jennifer Greer, Jennifer Booklover, Abby Forbush, Macey Forbush, Aubrey Powell, Mercedes Drakos, Bethany Johnson, Emma Koster, Lucy Evans, and possibly others. These accounts were created and used on various social media and e-commerce websites, including Facebook, Goodreads, Avid Reader, Simple Book Reviews, and Amazon.

29. On information and belief, Defendant used these accounts to post false and defamatory statements about Ms. Nunes, including the following statements:

- a. “I have lost a lot of respect for Rachel Nunes as an author and a person. She harassing [sic] readers/reviewers online. In my eyes, she obviously does not have the character trait of being kind, caring, understanding or compassionate. I have lost a lot of respect for Rachel. Sad day.” (comment by Mercedes Drakos on Ms. Nunes’s public Facebook author page);
- b. “Ask your attorneys if in your quest to investigate and have people rally around you if you are guilty of harassment. I think the answer is yes.” (comment by Jennifer Booklover on Ms. Nunes’s public Facebook author page);
- c. “A best selling author [sic] doesn’t need to solicit funds from people. This is fraud!” (comment by Abby Forbush on a public GoFundMe webpage);
- d. “This is a scam! Ms. Nunes may have a far fetched case [sic] with plagiarism, but she is also facing a harassment suit. She needs money for representation since Covenant Publishers will not back her! You need to get your hard earned money back!” (comment by Jennifer Greer on public GoFundMe webpage);
- e. “This ‘fund me’ has got to be a hoax or a scam. A publisher would be backing this if it were a real claim.” (comment by Jennifer Booklover on public GoFundMe webpage);
- f. “This is a scam people!” (comment by Abby Forbush on public GoFundMe webpage);

- g. “I’ve been harassed by Nunes and her assistant for not supplying her with an ARC. This is between Rachel and Sam and no one else.” (comment by Abby Forbush on a public Facebook thread);
- h. “That is why Sam isn’t hanging out on Facebook. She is trying to handle the conflict peacefully, yet Nunes continues to send her minions after reviewers and bloggers.” (comment by Abby Forbush on public Facebook thread);
- i. “Rachel feels threatened because I told her I would be contacting my aunt, Sheri Dew, and letting her know how she is handling the situation – through reviewers and not through the author. Deseret Book and Seagull Book are appalled at the way she is handling the situation . . .” (comment by Mercedes Booklover Drakos on a public Facebook thread);
- j. Ms. Nunes’s copyright was not infringed because she gave permission to Defendant to write *The Auction Deal*; and
- k. Ms. Nunes’s copyright was not infringed because she collaborated with Defendant.

30. On information and belief, Defendant also used her various online identities to harass, intimidate, annoy, and abuse Ms. Nunes and others who defended her or discussed the issue online.

31. On information and belief, Defendant used her various online identities to post negative reviews, often containing ad hominem attacks, about many of Ms. Nunes’s books.

32. On information and belief, Defendant used her various online identities to post positive reviews about her products including the infringing work, *The Auction Deal*.

33. Defendant has refused to admit that she is responsible for infringing Ms. Nunes's copyrighted work.

34. On information and belief, Defendant is still in possession of *The Auction Deal*, and could attempt to publish or sell the infringing work at any time.

FIRST CLAIM FOR RELIEF
(Copyright Infringement)

35. Plaintiff incorporates into this Claim for Relief all of the allegations of the prior paragraphs of this Complaint as if they were fully restated herein.

36. The copyright for *A Bid for Love*, previously entitled, *Love to the Highest Bidder*, is registered with the United States Copyright Office under Registration Number TX0004855722.

37. *A Bid for Love* is an original work of authorship by Plaintiff.

38. Plaintiff is the sole and exclusive owner of the federal registration for copyright in *A Bid for Love*.

39. Defendant, directly and/or indirectly, has reproduced or permitted to be reproduced *A Bid for Love* or portions of *A Bid for Love*.

40. Defendant has thereby violated the exclusive rights provided by 17 U.S.C. § 106 and has thus infringed Plaintiff's copyrights as provided by 17 U.S.C. § 501.

41. On information and belief, Defendant's misconduct is knowing, willful, and malicious, with full knowledge of Plaintiff's rights.

42. Defendant's aforesaid infringement of one or more claims of the Copyright is continuing and may continue unless enjoined.

43. As a result of the foregoing misconduct, Plaintiff has been damaged and is entitled to recover statutory damages as a result of Defendant's infringement in an amount to be proven at trial.

44. As a result of the foregoing misconduct, Plaintiff is also entitled to recover actual damages, costs, and attorneys' fees.

45. Plaintiff is also entitled to an injunction preventing further infringement by Defendant of Plaintiff's rights.

SECOND CLAIM FOR RELIEF
(Defamation *Per Se*)

46. Plaintiff incorporates into this Claim for Relief all of the allegations of the prior paragraphs of this Complaint as if they were fully restated herein.

47. Defendant has published statements concerning Ms. Nunes that are materially false and defamatory.

48. Defendant has issued false statements via public comments on Facebook and GoFundMe, and through private messages to third parties.

49. Defendant published these statements intentionally, willfully, knowingly, maliciously, and with reckless disregard for the truth of the statements, for the purpose of causing damage to Ms. Nunes.

50. The false statements published by Defendant include statements that Ms. Nunes has engaged in crimes, including harassment and fraud.

51. The false statements published by Defendant include statements that Ms. Nunes has engaged in conduct that is incompatible with a lawful business.

52. These false and defamatory statements have adversely impacted Ms. Nunes by causing a loss of book sales and by harming Ms. Nunes's reputation in the community.

53. As a result, Ms. Nunes has been, and will continue to be, damaged by these false and defamatory statements.

54. As a direct and proximate result of Defendant publishing such defamatory statements herein alleged, Ms. Nunes is entitled to judgment against Defendant for the damages, including actual damages, she has sustained as a result of the defamatory statements, together with interest and costs.

55. The acts undertaken by Defendant described above were undertaken intentionally, maliciously, and/or recklessly, and entitle Ms. Nunes to an award of punitive or exemplary damages in an amount to be proven at trial, but in any event, not less than \$100,000.

56. Further, Ms. Nunes has suffered and will continue to suffer irreparable harm as a result of Defendant publishing the defamatory statements, entitling Ms. Nunes to temporary, preliminary, and permanent injunctive relief enjoining Defendant from making any further defamatory statements about Ms. Nunes and ordering Defendant to retract and correct the defamatory statements she has already made.

THIRD CLAIM FOR RELIEF
(Defamation)

57. Plaintiff incorporates into this Claim for Relief all of the allegations of the prior paragraphs of this Complaint as if they were fully restated herein.

58. Defendant has published statements concerning Ms. Nunes that are materially false and defamatory, including the following statements:

- a. “I have lost a lot of respect for Rachel Nunes as an author and a person. She harassing [sic] readers/reviewers online. In my eyes, she obviously does not have the character trait of being kind, caring, understanding or compassionate. I have lost a lot of respect for Rachel. Sad day.” (comment by Mercedes Drakos on Ms. Nunes’s public Facebook author page);
- b. “Ask your attorneys if in your quest to investigate and have people rally around you if you are guilty of harassment. I think the answer is yes.” (comment by Jennifer Booklover on Ms. Nunes’s public Facebook timeline);
- c. “A best selling author [sic] doesn’t need to solicit funds from people. This is fraud!” (comment by Abby Forbush on a public GoFundMe webpage);
- d. “This is a scam! Ms. Nunes may have a far fetched case [sic] with plagiarism, but she is also facing a harassment suit. She needs money for representation since Covenant Publishers will not back her! You need to get your hard earned money back!” (comment by Jennifer Greer on public GoFundMe webpage);
- e. “This ‘fund me’ has got to be a hoax or a scam. A publisher would be backing this if it were a real claim.” (comment by Jennifer Booklover on public GoFundMe webpage);

- f. “This is a scam people!” (comment by Abby Forbush on public GoFundMe webpage);
- g. “I’ve been harassed by Nunes and her assistant for not supplying her with an ARC. This is between Rachel and Sam and no one else.” (comment by Abby Forbush on a public Facebook thread);
- h. “That is why Sam isn’t hanging out on Facebook. She is trying to handle the conflict peacefully, yet Nunes continues to send her minions after reviewers and bloggers.” (comment by Abby Forbush on public Facebook thread);
- i. “Rachel feels threatened because I told her I would be contacting my aunt, Sheri Dew, and letting her know how she is handling the situation – through reviewers and not through the author. Deseret Book and Seagull Book are appalled at the way she is handling the situation . . .” (comment by Mercedes Booklover Drakos on a public Facebook thread);
- j. Ms. Nunes’s copyright was not infringed because she gave permission to Defendant to write *The Auction Deal*; and
- k. Ms. Nunes’s copyright was not infringed because she collaborated with Defendant.

59. Defendant has issued these false statements via the public webpages of Facebook and GoFundMe, as well as through direct messages to third parties.

60. Defendant has issued most or all of these false statements under false identities.

61. Defendant published these statements intentionally, willfully, knowingly, maliciously, and with reckless disregard for the truth of the statements, for the purpose of causing harm to Ms. Nunes.

62. Defendant's false and defamatory statements were not subject to any privilege.

63. These false and defamatory statements have adversely impacted Ms. Nunes by harming her reputation as a writer of Christian literature, and causing a loss of business and productivity.

64. Ms. Nunes has been, and will continue to be, damaged by these false and defamatory statements.

65. As a direct and proximate result of Defendant publishing such defamatory statements herein alleged, Ms. Nunes is entitled to judgment against Defendant for the damages, including actual damages, she has sustained as a result of the defamatory statements, together with interest and costs.

66. The acts undertaken by Defendant described above were undertaken intentionally, maliciously, and/or recklessly, and entitle Ms. Nunes to an award of punitive or exemplary damages in an amount to be proven at trial, but in any event, not less than \$100,000.

67. Further, Ms. Nunes has suffered and will continue to suffer irreparable harm as a result of Defendant publishing defamatory statements, entitling Ms. Nunes to temporary, preliminary, and permanent injunctive relief enjoining Defendant from making any further defamatory statements about Ms. Nunes and ordering her to retract and correct the defamatory statements she has already made.

FOURTH CLAIM FOR RELIEF
(False Light)

68. Plaintiff incorporates into this Claim for Relief all of the allegations of the prior paragraphs of this Complaint as if they were fully restated herein.

69. Defendant has published statements concerning Ms. Nunes that have placed her before the public in a false light, including the following statements:

- a. “I have lost a lot of respect for Rachel Nunes as an author and a person. She harassing [sic] readers/reviewers online. In my eyes, she obviously does not have the character trait of being kind, caring, understanding or compassionate. I have lost a lot of respect for Rachel. Sad day.” (comment by Mercedes Drakos on Ms. Nunes’s public Facebook author page);
- b. “Ask your attorneys if in your quest to investigate and have people rally around you if you are guilty of harassment. I think the answer is yes.” (comment by Jennifer Booklover on Ms. Nunes’s public Facebook timeline);
- c. “A best selling author [sic] doesn’t need to solicit funds from people. This is fraud!” (comment by Abby Forbush on a public GoFundMe webpage);
- d. “This is a scam! Ms. Nunes may have a far fetched case [sic] with plagiarism, but she is also facing a harassment suit. She needs money for representation since Covenant Publishers will not back her! You need to get your hard earned money back!” (comment by Jennifer Greer on public GoFundMe webpage);

- e. “This ‘fund me’ has got to be a hoax or a scam. A publisher would be backing this if it were a real claim.” (comment by Jennifer Booklover on public GoFundMe webpage);
- f. “This is a scam people!” (comment by Abby Forbush on public GoFundMe webpage);
- g. “I’ve been harassed by Nunes and her assistant for not supplying her with an ARC. This is between Rachel and Sam and no one else.” (comment by Abby Forbush on a public Facebook thread);
- h. “That is why Sam isn’t hanging out on Facebook. She is trying to handle the conflict peacefully, yet Nunes continues to send her minions after reviewers and bloggers.” (comment by Abby Forbush on public Facebook thread);
- i. “Rachel feels threatened because I told her I would be contacting my aunt, Sheri Dew, and letting her know how she is handling the situation – through reviewers and not through the author. Deseret Book and Seagull Book are appalled at the way she is handling the situation . . .” (comment by Mercedes Booklover Drakos on a public Facebook thread);
- j. Ms. Nunes’s copyright was not infringed because she gave permission to Defendant to write *The Auction Deal*; and
- k. Ms. Nunes’s copyright was not infringed because she collaborated with Defendant.

70. Defendant has issued these false statements via public webpages on Facebook and GoFundMe, as well as through direct messages to third parties.

71. Defendant's statements about Ms. Nunes would be highly offensive to a reasonable person, as they have accused her, among other accusations, of fraud, a scam, a hoax, and harassment.

72. Defendant published these statements intentionally, willfully, knowingly, maliciously, and with reckless disregard for the falsity of the statements, and the false light in which Plaintiff was placed.

73. These false statements have adversely impacted Ms. Nunes by harming her reputation and causing a loss of business and productivity.

74. As a result, Ms. Nunes has been, and will continue to be, damaged by these false and defamatory statements.

75. As a direct and proximate result of Defendant publishing such false statements herein alleged, Ms. Nunes is entitled to judgment against Defendant for the damages, including actual damages, she has sustained as a result of the false statements, together with interest and costs.

76. The acts undertaken by Defendant described above were undertaken intentionally, maliciously, and/or recklessly, and entitle Ms. Nunes to an award of punitive or exemplary damages in an amount to be proven at trial, but in any event, not less than \$100,000.

77. Further, Ms. Nunes has suffered and will continue to suffer irreparable harm as a result of Defendant publishing the statements described above, entitling Ms. Nunes to temporary, preliminary, and permanent injunctive relief enjoining Defendant from making any further false

and defamatory statements about Ms. Nunes and ordering her to retract and correct the defamatory statements they have already made.

FIFTH CLAIM FOR RELIEF
(Tortious Interference with Prospective Business Relations)

78. Plaintiff incorporates into this Claim for Relief all of the allegations of the prior paragraphs of this Complaint as if they were fully restated herein.

79. By publishing false and defamatory statements as described above and giving Ms. Nunes's books bad reviews under false identities, Defendant intentionally interfered with Ms. Nunes's existing or potential economic relations.

80. Defendant published the false and defamatory statements and bad reviews for the predominant purpose of retaliating against Ms. Nunes for publicly stating that *The Auction Deal* was plagiarized, and for the purpose of harming Ms. Nunes's reputation and reducing the sales of her books.

81. On information and belief, Defendant's predominant purpose was to harass Ms. Nunes and cause her to incur expense in investigating and litigating this matter. These objectives constitute a wrongful motive.

82. Defendant's publication of the false and defamatory statements and disingenuous book reviews online and through messages to individuals are improper means as they constitute defamation, and cast Ms. Nunes in a false light.

83. As a direct and proximate effect of Defendant's intentional actions, carried out through improper means or fueled by an improper motive, Ms. Nunes has suffered and will

continue to suffer irreparable harm including but not limited to loss of book sales and damage to her reputation and brand as a writer of Christian literature.

84. Ms. Nunes is entitled to a judgment against Defendant in an amount to be proven at trial, which shall not be less than the harm suffered by Ms. Nunes as a result of Defendant's tortious interference, including the loss of book sales and damage to Ms. Nunes's reputation and brand.

85. The acts undertaken by Defendant described above were undertaken intentionally, maliciously, and/or recklessly, and entitle Ms. Nunes to an award of punitive or exemplary damages in an amount to be proven at trial, but in any event, not less than \$100,000.

86. Further, Ms. Nunes has suffered and will continue to suffer irreparable harm as a result of Defendant publishing defamatory statements, entitling Ms. Nunes to temporary, preliminary, and permanent injunctive relief enjoining Defendant from further interfering with Ms. Nunes's economic relations and ordering Defendant to retract and correct the defamatory statements she has already made.

SIXTH CLAIM FOR RELIEF
(Electronic Communication Harassment)

87. Plaintiff incorporates into this Claim for Relief all of the allegations of the prior paragraphs of this Complaint as if they were fully restated herein.

88. Utah Code section 76-9-201(2), prohibits a person from making repeated contact by means of electronic communications with the intent to annoy, alarm, intimidate, offend, abuse, threaten, harass, frighten, or disrupt the electronic communications of another.

89. Defendant has repeatedly contacted and targeted Ms. Nunes through online postings, messages, and emails posted and sent using false online identities in order to discredit and abuse Ms. Nunes.

90. Defendant has used false identities to make negative book reviews containing personal attacks on Ms. Nunes, and to make comments on Facebook and GoFundMe webpages accusing Ms. Nunes of harassment, fraud, and a scam, among other allegations.

91. Defendant has done so with the intention to annoy, intimidate, offend, abuse, threaten, harass, and frighten Ms. Nunes.

92. Ms. Nunes has been personally harmed and frightened by Defendant's actions, and her reputation has been damaged as well.

93. Ms. Nunes is entitled to temporary, preliminary, and permanent injunctive relief enjoining Defendant from harassing or disparaging Ms. Nunes online or in any form.

SEVENTH CLAIM FOR RELIEF
(False Advertising by Defendants in Violation
of Section 43(a)(1)(B) of the Lanham Act)

94. Plaintiff incorporates into this Claim for Relief all of the allegations of the prior paragraphs of this Complaint as if they were fully restated herein.

95. Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B), prohibits Defendant from using a false or misleading description of fact or representation of fact in interstate commerce and in connection with goods or services, in commercial advertising or promotion, when the description or representation misrepresents the nature, qualities, or geographic origin of goods, services or commercial activities or the goods, services or

commercial activities of another person, and the other person has been or is likely to be damaged by those acts.

96. Defendant has also used false identities to make positive book reviews and post other laudatory comments about herself.

97. Defendant's conduct, as alleged herein, constitutes false or misleading descriptions of fact or representations of fact regarding the nature, characteristics, or qualities of Ms. Nunes's goods, services, and commercial activities within the meaning of section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

98. Such false or misleading descriptions or representations regarding Ms. Nunes's goods, services and commercial activities were made by Defendant in connection with Ms. Nunes's online promotional materials, including websites containing reviews of Ms. Nunes's books.

99. Defendant's conduct, as alleged herein, constitutes false or misleading descriptions of fact or representations of fact regarding the nature, characteristics, or qualities of her own goods, services, and commercial activities within the meaning of section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

100. Such false or misleading descriptions or representations regarding her own goods, services and commercial activities were made by Defendant in connection with her own online promotional materials, including websites containing reviews of her own books.

101. Because *The Auction Deal* is a work of plagiarism that infringes on *A Bid for Love*, these are competing works.

102. As a result of Defendants' conduct as alleged herein, Ms. Nunes has suffered irreparable harm and other damages, including, without limitation, loss of goodwill, damage to her reputation, and losses and damages arising from lost sales and lost revenue, and will continue to do so unless Defendant is restrained and enjoined by this Court from engaging in further violations of section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

103. Ms. Nunes has no adequate remedy at law.

104. As a result of Defendant's conduct as alleged herein, Ms. Nunes is entitled to the entry by the Court of a temporary restraining order, preliminary injunction, and permanent injunction, restraining and enjoining Defendant from engaging in any further violations of section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B), and ordering corrective advertising.

105. Pursuant to section 35 of the Lanham Act, 15 U.S.C. § 1117, in addition to injunctive relief, Ms. Nunes is entitled to recover Defendant's profits and treble the damages sustained by Ms. Nunes that were caused by Defendant's conduct in violation of 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

106. Pursuant to section 35 of the Lanham Act, 15 U.S.C. § 1117, Ms. Nunes is further entitled to recover from Defendants the costs incurred by Ms. Nunes herein and, since this is an exceptional case, Ms. Nunes's attorneys' fees.

EIGHTH CLAIM FOR RELIEF
**(Violation by Defendants of the Utah Truth in Advertising Act's
Prohibition against Deceptive Trade Practices)**

107. Plaintiff incorporates into this Claim for Relief all of the allegations of the prior paragraphs of this Complaint as if they were fully restated herein.

108. A deceptive trade practice under section 13-11a-3(1)(h) of the Utah Truth in Advertising Act occurs when, in the course of a person's business, that person disparages the goods, services or business of another by a false or misleading representation of fact.

109. Defendant has disparaged Ms. Nunes's business, services and products by making false and misleading representations of fact regarding Ms. Nunes and her business, services and products in online forums and websites in violation of subsection 13-11a-3(1)(h) of the Utah Truth in Advertising Act.

110. Defendant has disparaged Ms. Nunes's business, services and products through her disingenuous book reviews, and through false and defamatory statements, including statements to the effect that Ms. Nunes is pursuing a baseless copyright infringement claim, and is guilty of harassment and fraud. Defendant has made false and misleading representations of fact regarding Ms. Nunes and her business, services and products, in violation of subsection 13-11a-3(1)(h) of the Utah Truth in Advertising Act.

111. Defendant is continuing to engage in the wrongful conduct alleged above in violation of subsections 13-11a-3(1)(h) of the Utah Truth in Advertising Act.

112. As a result of Defendant's conduct as alleged herein, Ms. Nunes has suffered irreparable harm to her goodwill and reputation, as well as losses and damages arising from lost sales and lost revenue, and will continue to do so unless Defendant is restrained and enjoined by

this Court from engaging in further deceptive trade practices in violation of the Utah Truth in Advertising Act.

113. Ms. Nunes has no adequate remedy at law.

114. Pursuant to Utah Code Ann. § 13-11a-4(2)(b), in addition to injunctive relief, Ms. Nunes is entitled to recover from Defendant the amount of actual damages sustained by Ms. Nunes as a result of Defendant's violation of the Utah Truth in Advertising Act or \$2,000 for each violation, whichever is greater.

115. Pursuant to Utah Code Ann. § 13-11a-4(2)(c), Ms. Nunes is entitled to recover from Defendant her attorneys' fees and costs incurred herein.

NINTH CLAIM FOR RELIEF
(Common Law Business Disparagement/Injurious Falsehood)

116. Plaintiff incorporates into this Claim for Relief all of the allegations of the prior paragraphs of this Complaint as if they were fully restated herein.

117. Defendant engaged in the publication of false and disparaging statements about Ms. Nunes as alleged herein, with the intent to cast doubt on the integrity of Ms. Nunes and the quality of her books.

118. In making those false and disparaging statements, Defendant acted with malice, in that she knew of the falsity of her statements or acted with reckless disregard for their truth and/or intended to cause pecuniary harm to Ms. Nunes's business or to interfere in the economic interest of Ms. Nunes, and Defendant was without privilege in doing so.

119. As a proximate result of Defendant's false and disparaging statements and wrongful conduct as alleged herein, Ms. Nunes has suffered irreparable harm to her goodwill and

reputation, as well as economic loss and other monetary damages arising from lost sales and lost revenue.

120. Unless Defendant is restrained and enjoined by this Court, Ms. Nunes will continue to suffer irreparable harm to her business, goodwill and reputation, and monetary damages from lost sales and lost revenue in the future, as a result of Defendant's wrongful conduct.

PRAYER FOR RELIEF

WHEREFORE, Ms. Nunes prays for the following relief:

1. For statutory damages in the amount of \$150,000 pursuant to 17 U.S.C. § 504(c);
2. Alternatively, for monetary damages in an amount adequate to compensate Plaintiff for each of Defendant's aforesaid copyright infringements and for each copyright infringement induced by Defendant in addition to any of Defendant's profits;
3. For monetary damages in an amount adequate to compensate Plaintiff for each of the causes of action brought above other than for infringement of a federally registered copyright;
4. For a finding that this case is exceptional and an award to Ms. Nunes of all remedies available under 35 U.S.C. § 285, including reasonable attorneys' fees incurred in this action;
5. For preliminary and permanent injunctions against Defendant prohibiting further infringement of Plaintiff's copyrights;

6. For preliminary and permanent injunctions against Defendant prohibiting further contact, virtual or otherwise, with Plaintiff;
7. For preliminary and permanent injunctions against Defendant prohibiting further discussion, review, or reference to Plaintiff or Plaintiff's works;
8. For preliminary and permanent injunctions against Defendant prohibiting further discussion, review, or reference to herself or her works without expressly identifying herself as the subject of the discussion, review, or reference;
9. For preliminary and permanent injunctions against Defendant prohibiting Defendant from any internet posting, email, or messaging using any name or identity other than her own;
10. For an order directing Defendant to issue a retraction of all messages, postings, emails, comments, or reviews relating to Plaintiff in the medium, forum, or website in which such messages, postings, emails, comments, postings, or reviews were originally made;
11. For an order directing Defendant to issue a correction of all messages, postings, emails, comments, or reviews relating to Plaintiff in the medium, forum, or website in which such messages, postings, emails, comments, postings, or reviews were originally made;
12. For an order directing Defendant to identify herself publically as the actual author of any message, post, email, comment, or review wherein the message, post, email, comment, or review may be attributable to any person or identity other than Tiffanie Rushton;

13. For an order directing Defendant to publicly acknowledge her plagiarism of Defendant's and any other person's work;
14. For treble the amount of any compensatory damages as a result of this case being designated as exceptional;
15. For an award of Plaintiff's costs incurred in this action;
16. For an award of Plaintiff's attorneys' fees incurred in this action;
17. For pre-judgment and post-judgment interest as provided by law; and
18. For such other and further relief as the Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Ms. Nunes hereby demands a trial by jury on all issues and claims so triable.

DATED: August 29, 2014

DURHAM JONES & PINEGAR, P.C.

/s/ Clinton E. Duke

Clinton E. Duke

Attorney for Plaintiff Rachel Ann Nunes