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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

AARON H. DARSKY, On Behalf Of Himself And All ) **Civil Action No.** \_\_\_\_\_  
Others Similarly Situated, )  
 ) **CLASS ACTION COMPLAINT**  
 )  
 ) *Plaintiff,* )  
 )  
 ) v. )  
 ) **Jury Trial Demanded**  
 )  
 )  
 ) AVVO, INC. )  
 ) *Defendant.* )  
 )  
 )  
 )

**NATURE OF THE ACTION**

1. Plaintiff Aaron H. Darsky (“Plaintiff” or “Darsky”) brings this action on behalf of himself and all other similarly situated attorneys licensed to practice law in California who have not paid Defendant Avvo, Inc. (“Defendant” or “Avvo”) to advertise or market on Avvo’s website. As detailed below, Avvo operates a website in which it lists on separate individual webpages profiles of all licensed attorneys in California (and anywhere in the country). Avvo obtains this roster without any of the attorneys’ involvement or consent, but instead does so by compiling the list from public records like bar admissions or other court records. For each attorney, without any input from the lawyer, Avvo then creates a personal profile page, which lists that attorney’s name, employer (where applicable), years of experience, educational information, areas of practice, as well as an Avvo rating (where applicable) and

1 any “client endorsements” (where applicable). Avvo does not charge for this profile listing but instead  
2 makes its money by using these attorneys’ names and/or likenesses without their consent to sell  
3 advertisement or marketing programs to other attorneys who agree to pay Avvo an advertisement or  
4 marketing fee.

5 2. For example, without any involvement, consent, or input whatsoever from Plaintiff  
6 Darsky, Avvo created a profile webpage for Plaintiff Aaron H. Darsky, in which Avvo listed Mr.  
7 Darsky’s name, years of experience, former employer, educational information, and an Avvo rating. A  
8 copy of that webpage is attached hereto as Exhibit 1. Avvo then, without Mr. Darsky’s consent, sold to  
9 other attorneys practicing law in California, the right to place their advertisements or marketing profiles  
10 on the profile page identified by Mr. Darsky’s name and/or likeness. As a result, any person who visits  
11 the Avvo page identifying Mr. Darsky’s name and/or likeness will see on Mr. Darsky’s same webpage  
12 profile, advertisements or marketing profiles of three or more other attorneys in California whose  
13 names and marketing profiles have been placed on Mr. Darsky’s page solely because these other  
14 attorneys have paid Avvo an advertising or marketing fee. *See* Exhibit 1 hereto (containing marketing  
15 profiles for other California attorneys on Mr. Darsky’s Avvo page). In this way, Avvo has used and  
16 misappropriated Mr. Darsky’s name and/or likeness without Mr. Darsky’s consent in violation of  
17 California statutory law and the common law against misappropriation of another’s name and/or  
18 likeness. Avvo engages in this practice across the board, and uses the names and/or likenesses of  
19 virtually all California licensed attorneys who do not pay Avvo an advertising or marketing fee to sell  
20 advertising or marketing to other attorneys who do pay Avvo to advertise or market on Avvo’s site. In  
21 this way, Avvo unlawfully capitalizes on the names and/or likenesses of Plaintiff and the Class  
22 members.

23 3. The only way for Plaintiff or other aggrieved attorney to obtain relief from Avvo’s use  
24 and misappropriation of his or her name and/or likeness to sell advertising or marketing to other paying  
25 attorneys is for that attorney himself for herself to pay Avvo an advertising or marketing fee. This is  
26 because, as detailed below, part of Avvo’s selling pitch for its advertising or marketing programs is that  
27 those attorneys who pay Avvo to advertise or market on Avvo’s site will have their ads placed on the  
28 Avvo pages of other lawyers but will not have any ads from lawyers placed on their Avvo profile

1 webpage. Plaintiff brings this action to seek monetary, statutory, and punitive money damages, as well  
2 as equitable, declaratory, and injunctive relief, and attorneys' fees and costs of suit against Avvo for its  
3 unlawful conduct.

4 4. Count I of this Class Action Complaint seeks redress for Avvo's violation of California  
5 Civil Code Section 3344, which provides in pertinent part that:

6 (a) Any person who knowingly uses another's name, voice, signature, photograph,  
7 or likeness, in any manner, on or in products, merchandise, or goods, or for  
8 purposes of advertising or selling, or soliciting purchases of, products,  
9 merchandise, goods or services, without such person's prior consent, or, in the  
10 case of a minor, the prior consent of his parent or legal guardian, shall be liable  
11 for any damages sustained by the person or persons injured as a result thereof. In  
12 addition, in any action brought under this section, the person who violated the  
13 section shall be liable to the injured party or parties in an amount equal to the  
14 greater of seven hundred fifty dollars (\$750) or the actual damages suffered by  
15 him or her as a result of the unauthorized use, and any profits from the  
unauthorized use that are attributable to the use and are not taken into account in  
computing the actual damages. In establishing such profits, the injured party or  
parties are required to present proof only of the gross revenue attributable to such  
use, and the person who violated this section is required to prove his or her  
deductible expenses. Punitive damages may also be awarded to the injured party  
or parties. The prevailing party in any action under this section shall also be  
entitled to attorney's fees and costs.

16 Cal. Civil Code, § 3344(a).

17 5. Count II of this Class Action Complaint seeks redress for Avvo's common law  
18 misappropriation of Plaintiff's and the Class members' respective names and/or likenesses. Count III  
19 of this Class Action Complaint seeks redress under California's Unfair Competition Law ("UCL"),  
20 California Business and Professions Code, § 17200 *et seq.*

21 6. The Class Period applicable to this Class Action Complaint is spans from December 5, 2013  
22 until such date as the Court enters an Order on Plaintiff's anticipated motion for class certification  
23 ("Class Period").  
24

25 **PARTIES**

26 7. Plaintiff Aaron H. Darsky is a resident of San Francisco, California, and an attorney  
27  
28

1 admitted to practice law in the State of California with over 14 years' experience. Mr. Darsky practices  
2 litigation, and is currently a partner at The Law Offices of Eric L. Lifschitz in San Francisco, where he  
3 litigates landlord-tenant matters and class actions. He previously was employed at the law firm of  
4 Schubert & Reed LLP (now known as Schubert, Jonckheer & Kolbe LLP), also in San Francisco, where  
5 he litigated class action matters.

6 8. During the Class Period and continuing until the present, Defendant Avvo, without Mr.  
7 Darsky's involvement, input, or consent, featured a webpage on its Avvo site dedicated to Mr. Darsky's  
8 profile as a practicing lawyer in California. A copy of the current version of that profile webpage that  
9 Avvo created using Mr. Darsky's name and/or likeness is attached hereto as Exhibit 1. The page  
10 identifies Mr. Darsky's full name, his area of practice (litigation), his location (San Francisco,  
11 California), his years of experience (14 years), and lists his contact information of his employer,  
12 Schubert & Reed (Avvo did not update the information to reflect that Mr. Darsky no longer is  
13 employed by Schubert & Reed but is now a partner at The Law Offices of Eric L. Lifschitz). *See* Ex. 1  
14 hereto. The Avvo webpage purports to list a "Resume" for Mr. Darsky that lists the States where Mr.  
15 Darsky is admitted to practice law (California), date of admission, and his educational background (Mr.  
16 Darsky did not craft this resume and provided no input or consent to its posting). *Id.* The Avvo  
17 webpage for Mr. Darsky also contains what Avvo terms an "Avvo Rating."

18 9. Aside from the name and other information identifying Mr. Darsky's name and likeness,  
19 Avvo has also placed right in the middle of the profile webpage featuring Mr. Darsky's name and/or  
20 likeness, three attorney photographs and short write-ups for other California attorneys that Avvo  
21 designates as "Sponsored Listings." In the current version of Mr. Darsky's Avvo-created webpage,  
22 these "Sponsored Listings" featured in the middle of Mr. Darsky's page tout the purported  
23 qualifications of one Ayad Michael Nalu, with a photograph of Mr. Nalu, an advertising slogan for Mr.  
24 Nalu's firm, and a link to Mr. Nalu's firm website, as well as a separate advertisement of Daniel Adam  
25 Kaplan, with a photograph of Mr. Kaplan, an advertising slogan for Mr. Kaplan's firm, and a link to  
26 Mr. Kaplan's law firm. *See* Ex. 1 hereto at p.1. Mr. Darsky never authorized the use of his name  
27 and/or likeness by Avvo for the purposes of promoting or advertising the foregoing California  
28 attorneys.

1           10.     Aside from the foregoing these two “Sponsored Listings” placed by Avvo in the  
2 Profile webpage featuring Mr. Darsky’s name and/or likeness, Avvo also placed a separate picture and  
3 advertisement for yet a third California attorney at the bottom of Mr. Darsky’s Avvo-created webpage.  
4 That third attorney picture and advertisement is purported to be that of one Pajman Jassim, who is  
5 described in the advertisement placed by Avvo on Mr. Darsky’s Avvo-created webpage as having a  
6 “Full Service Firm,” and “Putting Clients First,” and “Attentive and Prepared.” See Exhibit 1 hereto.  
7 Mr. Darsky never authorized or consented in any way to the use of his name and/or likeness by Avvo to  
8 advertise or sell advertising space to Mr. Jassim (or to any other attorney or law firm).

9           11.     Defendant Avvo, Inc. is a corporation organized under the laws of the State of  
10 Washington, having its principal place of business at 705 Fifth Avenue South, Suite 600, Seattle,  
11 Washington 98104. It was founded by attorney Mark Britton. Avvo is in the business of creating an  
12 online directory of lawyers in the United States. It obtains the roster of attorneys to be included in  
13 Avvo’s online directory not from the attorneys themselves, but instead by scouring the public records  
14 like bar admissions and other court or regulatory records. Thus, Avvo creates a directory listing of  
15 attorneys without any input, involvement, or consent the attorneys listed in Avvo’s directory.

16           12.     While compiling a list of publicly admitted attorneys may be a permissible First  
17 Amendment exercise of reporting matters of public concern, Avvo’s business practices go far beyond  
18 that mere exercise. Instead of merely compiling and posting a list of licensed attorneys, Avvo goes  
19 further and, without the consent of the very attorneys whose names and/or likeness-identifying  
20 information Avvo has compiled, Avvo uses those attorneys’ names and/or likenesses to sell advertising  
21 or marketing programs to other attorneys who pay Avvo for these advertising and marketing services.  
22 In July 2015, Bloomberg Business News reported that Avvo had a valuation of \$650 million, and had  
23 managed to raise a total of \$132 million in funding. The revenues generated by Avvo come almost  
24 exclusively from its unauthorized use of the names and/or likenesses of attorneys like Plaintiff Darsky  
25 and the Class members in order to sell advertisement or marketing programs to other attorneys who pay  
26 Avvo a fee for this advertising or promotion.



1 in the United States that is accessible to anyone online. Avvo’s online attorney directory features  
2 separate webpage profiles for each of the attorneys that Avvo lists in its online directory. *See, e.g.*, Ex.  
3 1 hereto (Avvo-created webpage profile for Mr. Darsky). Avvo obtains the information for these  
4 webpages and initially creates these profile webpages without the involvement, consent, or input from  
5 the attorneys featured in the online listings. Instead, Avvo purportedly gathers this information from  
6 the public records, like bar admissions or other court or regulatory records. Avvo touts this directory as  
7 benefitting consumers, who can access identifying information about attorneys when consumers do an  
8 online search for a particular lawyer, or for a lawyer in a particular region or area of practice. Avvo  
9 does not charge attorneys for posting their Avvo-created basic profile webpage on Avvo’s online  
10 directory (indeed the attorneys need not even consent to being listed), and does not charge consumers a  
11 fee for accessing Avvo’s online attorney directory. Avvo’s revenues, therefore, derive not from the  
12 mere creation or compiling of this online attorney directory, but instead from the use and  
13 misappropriation of these attorneys’ names and/or likenesses to sell advertising and marketing  
14 programs to other attorneys who do pay Avvo a fee for such services.

15  
16 **The “Avvo Pro” Service – Avvo Charges Attorneys For Them To Avoid Having Their Names  
And Likeness Used To Sell Advertising To Other Attorneys**

17 17. As the foregoing allegations detail, Avvo’s initial compiling and posting of what it calls  
18 its “Avvo Profile” for each licensed attorney is done by Avvo without the involvement, consent, or  
19 input of the attorney to whom the profile belongs. Avvo does not charge a fee for this Avvo Profile.  
20 Instead Avvo uses that Avvo Profile to sell and place marketing profiles or advertisements of other  
21 attorneys who pay Avvo a fee.

22 18. One of Avvo’s paid marketing programs is called “Avvo Pro.” Unlike the free “Avvo  
23 Profile” that Avvo itself creates and posts without charge, the Avvo Pro profile is a fee-based marketing  
24 plan for which Avvo charges participating attorneys a recurring monthly fee. In Avvo’s online  
25 description of its “Avvo Pro” paid marketing program (a copy of which is attached hereto as Exhibit 2),  
26 Avvo touts its “Avvo Pro” marketing program to attorneys as follows:  
27  
28

1 Take your profile to the next level.

2  
3 Your Avvo Profile represents your first opportunity to make an impression on  
4 prospective clients. Using the suite of tools offered by Avvo Pro gives you the  
opportunity to customize your profile and maximize its impact.

5 ■ Create a personal introduction for each of your practice areas to capture the  
6 attention of potential clients.

7 ■ **Other lawyers' sponsored ads won't appear on your profile, keeping the**  
8 **focus on the services you can provide.**

9 Ex. 2 hereto at p.1 (emphasis added).

10 19. In other words, in order for an attorney not to have his or her name and/or likeness used  
11 by Avvo to sell and feature the ads of other or competing attorneys, Avvo informs attorneys that they  
12 need subscribe to, and pay Avvo for, the “Avvo Pro” marketing program so that “[o]ther lawyers’  
13 sponsored ads won’t appear on your profile.” *Id.*

14 20. Mr. Darsky, like the members of the Class he seeks to represent, did not pay Avvo to  
15 purchase an “Avvo Pro” marketing program, so his name and/or likeness (and those of the putative  
16 Class members) was used to sell marketing profiles and advertisements to other California attorneys  
17 who did pay Avvo for advertising or marketing fees.

18  
19 **The “Avvo Advertising” – Avvo Uses The Names And/Or Likenesses Of The Class Members To**  
20 **Sell Advertising To Paying Advertising Attorneys**

21 21. In addition to the “Avvo Pro” program, Avvo also sells an “Avvo Advertising” program.  
22 Unlike the free “Avvo Profile” that Avvo itself creates and posts without charge, the “Avvo  
23 Advertising,” like the “Avvo Pro” program, is a fee-based marketing plan for which Avvo charges  
24 participating attorneys a fee. In Avvo’s online description of its “Avvo Advertising” paid advertising  
25 program (a copy of which is attached hereto as Exhibit 3), Avvo touts its “Avvo Advertising” program  
26 to attorneys as follows:

27 More Visibility. More Business.

28 As the premier destination on the web for people seeking legal services, Avvo advertising  
gets you greater exposure among the millions of Avvo visitors each month.

- 1       ▪ Targeted, low-cost advertising solutions put your services in front of those most likely to need them.
- 2       ▪ Sponsored listings and display ads appear across the site, getting you noticed by
- 3       more potential clients every day.

4 Exhibit 3 hereto, at p.1.

5       22. Avvo’s description of its “Avvo Advertising” program also emphasizes how the ads of  
6 paying attorneys will be prominently displayed as “Sponsored Listings” within the profile pages of  
7 other attorneys whose geographic location and practice area are most relevant to the advertiser:

8               Smart, proven paid options to help you generate more leads and get more clients.

9 Avvo Advertising is targeted, measurable, and flexible, allowing you to focus your resources and maximize exposure to the prospective clients most likely to hire you.

- 10       ▪ Define who sees your ad **based on practice area and geography to make sure you’re**  
11       **reaching the clients who need your services.**
- 12       ▪ Receive detailed reporting to know how your ads are performing.
- 13       ▪ With no long-term contracts or set up fees, you’ll have increased flexibility with your marketing strategies.

14       .....

15                               Sponsored listing

16 With their prominent location, sponsored listings are often the first thing potential clients see. Quickly and easily place your services in front of those in need of them.

- 17       ▪ Appearing across the site, **including above lawyer search results**, Q&A forum  
18       pages, Legal Guides and competitor profiles.
- 19       ▪ Easy-to-use so your ad will often go live within 24 hours.

20 *Id.* (emphasis added).

21       23. Neither Plaintiff nor the members of the Class he seeks to represent paid Avvo to  
22 purchase an “Avvo Advertising” program, so their names and/or likenesses featured on their Avvo-  
23 created profile pages were used by Avvo to sell and place ads and “Sponsored Listings” of those  
24 attorneys who did pay Avvo for the “Avvo Advertising” program.

25                               CLASS ACTION ALLEGATIONS

26       24. Pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3), Plaintiff brings this  
27 action on behalf of himself and all other similarly situated attorneys licensed to practice law in  
28 California who during the Class Period did not pay Avvo fees for marketing or advertising on Avvo’s

1 site. Excluded from the Class definition are all counsel of record in this action, as well as all judicial  
2 officers assigned to this case and their staff. indirect purchasers who purchased the foregoing apparel  
3 solely for purposes of resale. Plaintiff reserves the right to amend this Class definition as discovery or  
4 other case circumstances warrant.

5 25. Although the exact number of class members is presently unknown, Plaintiff is informed  
6 informed and believe, based on Avvo's own representations, that there are at least thousands of class  
7 members, thereby readily satisfying the numerosity requirement for class certification. Avvo's own  
8 website, for example, touts that Avvo maintains Avvo-rated profiles for 97% of the lawyers in the  
9 United States. Even limiting the Class definition to California, as this Class Action Complaint does,  
10 this still amounts to thousands of individual class members.

11 26. Class certification is also appropriate because there is an identifiable class on whose  
12 behalf this class action would be prosecuted. Specifically, Plaintiffs seek to represent a Class of all  
13 California licensed attorneys who did not pay Avvo any fees to market or advertise on Avvo's website.  
14 This is an objectively defined class whose members can be identified and ascertained.

15 27. Class certification is also appropriate because there are questions of fact and/or law that  
16 are common to the Class members, and that predominate over any issues that may affect only individual  
17 members of the Class. Among these predominating common questions of fact and/or law are:

- 18 a. Whether Plaintiff and the Class members have a protectable legal interest in their  
19 respective names and/or likenesses;
- 20 b. Whether Defendant has misappropriated Plaintiff's and the Class members' names  
21 and/or likenesses;
- 22 c. Whether Defendant has violated California's statutory prohibition on using another's  
23 name and/or likeness for advertising or other commercial purposes without consent;
- 24 d. Whether Plaintiff and the Class members have suffered any injury and, if so, the  
25 measure of their damages;
- 26 e. Whether Avvo's conduct amounts to an unlawful, unfair, or deceptive business  
27 practice within the meaning of California's Unfair Competition Law;
- 28 f. Whether Plaintiff and the Class members will suffer irreparable harm if Defendant's

1 actions are permitted to continue.

2 28. Plaintiff's claims are typical of the claims of the absent Class members in that Plaintiff,  
3 like all the absent Class members, is a California-licensed attorney who, because he did not pay Avvo  
4 and advertising or marketing fee, has had his name and/or likeness misappropriated and used by Avvo  
5 to sell advertising or marketing programs to paying advertising attorneys. The claims Plaintiff  
6 advances on his own behalf are identical to the claims asserted on behalf of the Class.

7 29. Plaintiff is an adequate class representative in that, as a member of the Class and a  
8 California-licensed attorney who has had his name and/or likeness misappropriated or used by Avvo  
9 without his consent, his interests are entirely aligned with those of the Class. There are no individual  
10 conflicts that prevent Plaintiff from adequately representing the Class. Plaintiff has also retained  
11 competent counsel experienced in class action litigation.

12 30. Class certification is also independently proper because Defendant has acted or refused  
13 to act on grounds generally applicable to the entire Class. Defendant has created webpage profiles  
14 identifying the name and/or likeness of the Class members and used their name and/or likeness to sell  
15 advertising to other paying advertisers, thereby misappropriating and misusing the Class members'  
16 respective names and/or likenesses. Absent a class action, there would be a risk of inconsistent rulings  
17 with respect to Defendant's duties to each of the thousands of putative Class members.

18 31. A class action presents a superior form of adjudication over individual litigation. The  
19 costs of litigating this action against large and sophisticated defendant like Avvo, whose valuation is  
20 reported to be over \$600 million, in comparison to the recovery or relief sought, would make individual  
21 litigation impracticable. In addition, forcing individual litigation would risk the result of inconsistent  
22 rulings with respect to the Defendant's duties owed to the various Class members.

23 32. A class action is manageable. The proposed class represents an identifiable community  
24 in a single State (California) asserting claims for relief under the laws of a single State (California) that  
25 can be readily identified, and the relief sought is one that can be overseen by the Court.

26 **COUNT I**

27 **VIOLATION OF CALIFORNIA CIVIL CODE § 3344**

28 33. Plaintiff hereby incorporates by reference paragraphs 1-32 of this Class Action

1 Complaint with the same force and effect as if they had been fully restated herein.

2 34. Through the foregoing conduct alleged in this Class Action Complaint, Defendant has  
3 knowingly used the name and/or likeness of Plaintiff and the Class members without their prior consent  
4 in order to sell advertising or marketing programs on Defendant's Avvo website.

5 35. Plaintiff and each of the Class members have been injured at law and in fact as a direct,  
6 proximate, and foreseeable result of Defendant's conduct by having their name and/or likeness, in  
7 which they each possess a personal and property interest, used by Avvo in commerce without the Class  
8 members' consent.

9 36. Pursuant to California Civil Code § 3344(a), Avvo is liable to each of the Class members  
10 in at least the amount of \$750 per class member, as well as being liable for the Class members'  
11 attorneys fees and cost of suit.

12 37. Given the open, repeated, persistent, and brazen nature of Defendant's conduct, and the  
13 fact that Avvo effectively extorts a fee from attorneys so that their name and/or likeness will not be  
14 used to sell advertising or marketing programs to other attorneys, Plaintiff and the Class members are  
15 entitled to and do seek an award of punitive damages against Defendant.

16 38. Avvo's conduct is ongoing and continuing in nature, such that unless it is enjoined by  
17 the Court, Plaintiff and the Class members will continue suffering injury and that injury may be  
18 irreparable in that it consists of misuse of Plaintiff and the Class members' respective names and/or  
19 likenesses. Plaintiff and the Class members, therefore, are entitled to and do seek and order enjoining  
20 and restraining Defendant from continuing to use the names and/or likenesses of Plaintiff and the Class  
21 members without obtaining their prior express consent.

22  
23 **COUNT II**

24 **VIOLATION OF CALIFORNIA COMMON LAW OF MISAPPROPRIATION OF ONE'S**  
25 **NAME AND/OR LIKENESS**

26 39. Plaintiff hereby incorporates by reference paragraphs 1-32 of this Class Action  
27 Complaint with the same force and effect as if they had been fully restated herein.

28 40. Through the foregoing conduct alleged in this Class Action Complaint, Defendant Avvo  
*Darsky v. Avvo, Inc.,*

1 has used the identity of Plaintiff and the Class members, without their consent, to sell advertising or  
2 marketing programs on Avvo's website to other attorneys who pay Avvo fees for such advertising or  
3 marketing.

4 41. As a result, Avvo has misappropriated the name and/or likeness of Plaintiff and the Class  
5 members to Avvo's commercial advantage, which Avvo realizes in advertising and marketing fees for  
6 ads and marketing programs placed on the profile pages of Plaintiff and the Class members.

7 42. Avvo has not sought nor obtained the consent of Plaintiff or the Class members before  
8 so appropriating Plaintiff and the Class members' respective names and/or likenesses.

9 43. As a result of Avvo's misappropriation, Plaintiff and the Class members have all be  
10 injured at law and in fact by having their name and/or likeness, in which they each possess a personal  
11 and property interest, appropriated and used by Avvo in commerce without the Class members'  
12 consent.

13 44. Avvo's conduct is ongoing and continuing in nature, such that unless it is enjoined by  
14 the Court, Plaintiff and the Class members will continue suffering injury and that injury may be  
15 irreparable in that it consists of misuse of Plaintiff and the Class members' respective names and/or  
16 likenesses. Plaintiff and the Class members, therefore, are entitled to and do seek and order enjoining  
17 and restraining Defendant from continuing to use the names and/or likenesses of Plaintiff and the Class  
18 members without obtaining their prior express consent.

19  
20 **COUNT III**

21 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**

22 45. Plaintiff hereby incorporates by reference paragraphs 1-43 of this Class Action  
23 Complaint with the same force and effect as if they had been fully restated herein.

24 46. The conduct engaged in by Defendants, as alleged herein, is unlawful in that it violates,  
25 *inter alia*, California's Civil Code, Section 3344, as well as California's common law of preventing the  
26 misappropriation of another's name and/or likeness for commercial purposes.

27 47. Defendant's conduct described herein was undertaken as part of a business practice.

28 48. Defendant's conduct, as alleged herein, is also unfair within the meaning of California's

1 Unfair Competition Law because, *inter alia*, it threatens competition at its incipiency by thwarting  
2 Plaintiff and the Class members from making full competitive use of the value of their name and/or  
3 likeness.

4 49. Through Defendant's actions Plaintiff and the Class members conveyed money or  
5 interest to Defendants because the names and or likenesses of Plaintiff and the Class members that  
6 Defendant used for its own commercial purposes were ones in which Plaintiff and the Class members  
7 had a personal and property protectable interest.

8 50. Plaintiffs and the Class members have standing to and do seek all forms of equitable,  
9 declaratory and restitutionary relief available to them under California's Unfair Competition Law.  
10  
11

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff and the Class members pray for judgment against Defendant as follows:

- 14 A. That the Court determine that this action may be litigated as a class action, and  
15 that Plaintiff and his counsel be appointed class representative.s and class  
16 counsel, respectively;
- 17 B. That Defendant be Ordered to erect a common fund from which it will be  
18 required to pay Plaintiff and the Class members statutory, compensatory, and  
19 punitive damages to the full extent available under law, as well as all attorneys'  
20 fees and costs of suit awarded by the Court;
- 21 C. That Defendant be permanently enjoined from continuing in any manner the  
22 violations alleged herein, and that Defendant's conduct be declared unlawful and  
23 violative of the pertinent California statutes (i.e., Calif. Civil Code, § 3344) and  
24 common law;
- 25 D. That Defendant be ordered to pay Plaintiff and the Class members' counsel  
26 attorneys' fees and costs of suit, as awarded by the Court;
- 27 E. That judgment be entered against Defendants and in favor of Plaintiffs and the  
28 class members on all counts;

- 1 F. That Defendant be ordered to bear the cost of notifying the absent class members  
2 of this class action, and of the class members' rights respecting the same;
- 3 G. That Plaintiffs and the class members be awarded all such other relief as this  
4 Court deems just and proper.

5 **JURY DEMAND**

6 Plaintiffs respectfully request a trial by jury on all claims and causes of action properly triable  
7 before a jury.

8  
9 Dated: December 1, 2015

Respectfully submitted,

10 /s/ Roy A. Katriel

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*Counsel for Plaintiff and the Putative Class*