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7
8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 VINCENT GALLO, an individual.

Case No.:

11 Plaintiff,

COMPLAINT

12 vs.

DEMAND FOR JURY TRIAL

13 FACEBOOK, INC. a Delaware
14 Corporation; and DOES 1-10,
15 inclusive.

16 Defendant.
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20
21 Plaintiff VINCENT GALLO (“Plaintiff” or “Mr. Gallo”) alleges as follows:
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24 **JURISDICTION AND VENUE**

25 1. The claims asserted herein arise under and pursuant to 15 U.S.C.
26 §1125.
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1 Chloe Sevigny as the co-star. The film debuted at The Cannes Film Festival and
2 received media attention due to the provocative nature of the film and some of its
3 advertising photos. The releases of *Buffalo '66* and *The Brown Bunny* solidified
4 Mr. Gallo's media position as a cult icon; however, due to the provocative nature
5 of *The Brown Bunny*, Mr. Gallo limited his willingness to do interviews and has
6 remained a relatively private person.
7

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9 8. Over the course of Mr. Gallo's artistic career, he has been extremely
10 guarded and calculated as to his exposure with the media. In fact, he has
11 intentionally never had any sort of social media account, as Mr. Gallo goes through
12 great measures to control and protect many private aspects of his life.
13

14 9. Defendant Facebook owns the registered domain name facebook.com,
15 and pursuant thereto, <https://www.facebook.com/vincent.gallo.927> (the "Fake
16 Account"). As described in more detail below, the Fake Account contains
17 unauthorized photographs of Mr. Gallo, and written statements impliedly written
18 by Plaintiff himself, when in fact they are not. The domain name of the Fake
19 Account, and Plaintiff's name used on the Fake Account itself, are unauthorized
20 uses of Plaintiff's name and likeness.
21

22
23 10. In early 2016, Mr. Gallo began having various friends mention "his"
24 Facebook page to him. This was extremely troublesome to Mr. Gallo since he did
25 not, nor had he ever, had a Facebook page.
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1 11. As Mr. Gallo began to investigate this fraudulent page, he realized this
2 was more than just a tribute page or parody page. Rather, this was created by a
3 person who not only created a fake Facebook page, but was managing it and
4 interacting with “friends” as if he was actually Mr. Gallo.
5

6 12. As of the date of drafting this Complaint, the Fake Account had over
7 3,000 friends, some of who Mr. Gallo knows in real life, and who thought (or still
8 thinks) this is Mr. Gallo’s real Facebook account.
9

10 13. In or around March, 2016, shortly after learning about the Fake
11 Account, Mr. Gallo contacted Facebook through their official reporting system and
12 reported the Fake Account and requested that it immediately be taken down. After
13 several days, Mr. Gallo received what seemed to be an automated response
14 requesting proof of Mr. Gallo’s identity (ie, a driver’s license). Mr. Gallo promptly
15 provided a scanned copy of the driver’s license. Again, days later, Facebook
16 responded and stated that the they “weren’t able to verify your identity with the
17 image you attached...Please take a new photo of your ID...Once we’re able to
18 view your ID, we’ll take a look at the status of your account...”
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22 14. Mr. Gallo then responded explaining the ongoing harm that was
23 occurring as a result of the Fake Account, including the user initiating sexual
24 conversations with others, and attached a professionally color scanned copy of his
25 driver’s license. To date, the Fake Account remains active, and Facebook has
26 refused to take any action to remove the Fake Account. Plaintiff is informed and
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1 believes and alleges thereon that Facebook is either intentionally choosing to
2 ignore the requests of Mr. Gallo and those complaining Facebook users to remove
3 the Fake Account, or has acted with a reckless indifference to Plaintiff's rights
4 because to act promptly to remove the Fake Account would be against its own
5 financial interests.
6

7 15. During this same time frame, Mr. Gallo encouraged all of his friends
8 and acquaintances who were on Facebook to report the Fake Account to Facebook
9 as well. Mr. Gallo is informed and believes that numerous friends have done so,
10 with no response or actions from Facebook.
11

12 16. Meanwhile, the Fake Account continues to operate with daily activity.
13 In fact, the person who operates the Fake Account ("Doe 1", and collectively with
14 Facebook referred to as "Defendants"), has on numerous occasions had
15 conversations through Facebook Messenger with people while pretending to be
16 Mr. Gallo.
17

18 17. Mr. Gallo alleges upon information and belief, that Doe 1 has reached
19 out to several females, and under the auspice of being Mr. Gallo has flirted with
20 them, and then lured them to meet Doe 1 in person in Los Angeles. Mr. Gallo
21 further alleges, upon information and belief, that Doe 1 repeatedly engages females
22 to have conversations that are sexual in nature, while pretending to be Mr. Gallo.
23

24 18. Mr. Gallo also learned from his ex-girlfriend, who happens to be a well
25 known international model, that Doe 1 made contact with her pretending to be Mr.
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1 Gallo. The two had Facebook messenger conversations for a period of two months,
2 where Doe 1 flirted, sent nude pictures from the waist down, and convinced her not
3 only to send nude pictures back, but to travel from Europe to the United States to
4 visit him. Once she solidified her plans to visit him, Doe 1 (the Fake Account
5 proprietor) backed down and gave an excuse that he would be out of town during
6 her planned visit. At this time, she sensed something was wrong and discovered, to
7 her horror and embarrassment, that Doe 1 was in fact, not Mr. Gallo.
8
9

10 19. Because Mr. Gallo is a public figure, the harm caused by the Fake
11 Account is heightened. Besides the obvious outrageous and inappropriate behavior
12 of engaging females to meet up, Doe 1 has posted political, inflammatory, and
13 otherwise controversial comments and videos on the Fake Account. For example:
14

- 15 a. On March 26, 2016 Doe 1, posing as Vincent Gallo, posted a
16 political video regarding Israel and the Gaza Strip.
17
- 18 b. Throughout March, 2016, Doe 1 posted over 20 links to you
19 tube performances by various musicians, making various
20 comments about the music.
21
- 22 c. On February 21, 2016, Doe 1 “checked in” at Bellagio Las
23 Vegas and said, “Degenerate gamblers never learn, more
24 dieting and less blowing your mortgage”.
25
- 26 d. On February 14, 2016, he posted a you tube video of a song by
27 Pete Doherty and said, “More Valentines day smooch, this time
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from Pete Doherty. I hang out with him a few times when he was with Kate Moss and he was truly a sweet, sensitive guy and an intensely gifted songwriter. Was a shame the drugs got hold of him the way the did.”

e. On January 31, 2016, he posted, “Hey guys ive had a few goons messaging me calling me a fake, I'm sorry but I have little time to connect with the people who kindly enjoy my work. If you continually question my authenticity I will have to unfortunately block you. Thanks VG”

20. According to a recent Wall Street Journal article, Facebook’s first quarter advertising revenue for 2016 was \$3.3 billion. Each time one of Doe 1’s over 3,000 “friends” views the Fake Account, advertisements appear all over the screen, which is how Facebook generates its advertising revenue adding up to over \$3 billion a quarter. The Fake Account also has a high level of “activity” with people actively posting on the Fake Account to interact with Doe 1, thinking it is Mr. Gallo.

FIRST CLAIM FOR RELIEF

43(a) of Lanham Act False Designation of Origin

(Against Facebook and Doe 1)

21. Plaintiff repeats and incorporates the allegations set forth in paragraphs 1 through and including 20 of this Complaint as if set forth in full

1 herein.

2 22. As described above, Defendants have used Plaintiff's name and
3 persona by advertising and representing that the Fake Account belonged to Mr.
4 Gallo, when in fact, it did not. Such use has caused confusion to the origin,
5 sponsorship and approval of the Fake Account by the general public.

6
7 23. Defendants' actions as described herein are in direct violation of
8 Section 43(a) of the Lanham Act (15 U.S.C. §1125).

9
10 24. As a direct and proximate result of Defendants' actions as stated
11 herein, Mr. Gallo has suffered significant emotional distress, damage to his
12 reputation, and damage to the goodwill of his Vincent Gallo mark. Further,
13 Plaintiff is entitled to enhanced damages as a result of Defendants' malicious
14 actions described above.

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17 25. The acts of Defendants are believed to be willful and accordingly,
18 Plaintiff is entitled to receive treble damages as a result of Defendants' actions.
19 Similarly, this is an exceptional case, warranting an award of attorneys' fees to
20 Plaintiff in an amount to be proven at trial.

21
22 26. As a direct and proximate result of said wrongful conduct by
23 Defendants, Plaintiff has suffered damages in an amount to be proven at trial.

24
25 27. Unless Defendants are preliminarily and permanently enjoined from
26 hosting the Fake Account on Facebook, Plaintiff will be irreparably harmed in a
27 manner in which he cannot be adequately compensated in money damages.

1 Plaintiff accordingly also seeks injunctive relief against Defendants.

2 **SECOND CLAIM FOR RELIEF**

3 **Violation of California Common Law Right of Publicity**

4 **(Against Doe 1)**

5
6 28. Plaintiff incorporates by reference and repeats and re-alleges
7 paragraphs 1 through 20, and 22 - 27 of this Complaint as if set forth in full herein.
8

9 29. At all relevant times, Plaintiff had the sole and exclusive right of
10 publicity with regard to the use of his name and likeness, which includes the
11 unauthorized use of photographs of him. Doe 1 used Plaintiff's name and likeness
12 in connection with the Fake Account without Plaintiff's permission, consent or
13 authorization.
14

15 30. Plaintiff was readily identifiable in photographs on the Fake Account.
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17 31. In doing the acts alleged herein, Doe 1 has used for commercial
18 purposes Plaintiff's name, likeness, identity and persona without his consent by
19 attracting consumers of the public to Doe 1's Fake Account and by leading them to
20 believe that Mr. Gallo was connected to, authorized, and/or endorsed the Fake
21 Account.
22

23 32. The commercial use and misappropriation of Plaintiff's name, likeness,
24 identity and persona is a violation of the California common law right of privacy,
25 which includes the right of publicity.
26

27 33. Doe 1's wrongful conduct as alleged hereinabove, without regard to
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1 whether Doe 1 acted intentionally or with any other particular state of mind or
2 scienter, renders Doe 1 liable to Plaintiff for the wrongful misappropriation of his
3 likeness and for the damages caused thereby. In doing the acts as alleged
4 hereinabove, Doe 1 acted with actual malice and constitutional malice, that is, he
5 acted intentionally, or with conscious disregard to Plaintiff's rights of publicity,
6 and that as a direct and proximate result of Doe 1's collective and individual acts,
7 Plaintiff is entitled to punitive damages to punish Doe 1, and to deter such conduct
8 in the future, in an amount to be determined at trial.

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11 34. As a proximate result of Doe 1's acts alleged herein, Plaintiff has
12 suffered and will continue to suffer damages in an amount to be proven at trial.

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14 **THIRD CLAIM FOR RELIEF**

15 **Violation of the California Statutory Right of Publicity; Civil Code §3344**

16
17 **(Against Doe 1)**

18 35. Plaintiff repeats and incorporates the allegations set forth in paragraphs
19 1 through and including 20, 22-27, and 29 - 34 of this Complaint as if set forth in
20 full herein.

21
22 36. California Civil Code §3344(a) provides that anyone who knowingly
23 uses another's name, signature, photograph or likeness, in any manner, for the
24 purpose of selling or soliciting without such person's prior consent shall be liable
25 for any damages sustained.
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1 37. At all relevant times, Plaintiff had the sole and exclusive right of
2 publicity with regard to the use of his name and likeness, including his name,
3 image and persona. Doe 1 used Plaintiff's name and likeness on the Fake Account
4 without Plaintiff's permission, consent or authorization.
5

6 38. Doe 1 has made an unauthorized use of Plaintiff's name, signature,
7 photograph and likeness, in a manner to which he has not consented.
8

9 39. Plaintiff was readily identifiable in the profile pictures, as well as
10 numerous posted pictures on the Fake Account.
11

12 40. In doing the acts alleged herein, Doe 1 has knowingly, willfully, and
13 unlawfully used and misappropriated Plaintiff's name and likeness in connection
14 with the Fake Account by attracting consumers of the public to Doe 1's Fake
15 Account and by leading them to believe that Mr. Gallo was connected to,
16 authorized, and/or endorsed the Fake Account.
17

18 41. Doe 1's wrongful conduct as alleged hereinabove, without regard to
19 whether Doe 1 acted intentionally or with any other particular state of mind or
20 scienter, renders Doe 1 liable to Plaintiff for the misappropriation of his likeness
21 and for the damages caused thereby. In doing the acts as alleged hereinabove, Doe
22 1 acted with actual malice and constitutional malice, that is, he acted intentionally,
23 or with conscious disregard of Plaintiff's rights. As a result, Plaintiff is entitled to
24 punitive damages to punish Doe 1, and to deter such conduct in the future, in an
25 amount to be determined at trial.
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1 42. As a result of Doe 1's actions, Plaintiff has suffered, and will continue
2 to suffer, damages in an amount to be proven at trial, and is entitled to statutory
3 attorneys' fees.

4
5 43. Pursuant to the provisions of California Civil Code §3344, Mr. Gallo is
6 entitled to an award of reasonable attorney's fees in connection with this action.

7
8 44. Further, pursuant to California Civil Code §3344, Mr. Gallo is entitled
9 to a recovery of punitive damages.

10 **FOURTH CLAIM FOR RELIEF**

11 **Intentional Infliction of Emotion Distress**

12
13 **(Against Facebook and Doe 1)**

14 45. Plaintiff repeats and incorporates the allegations set forth in paragraphs
15 1 through and including 20, 22-27, 29-34, and 36-44 of this Complaint as if set
16 forth in full herein.

17
18 46. As described in detail above, Defendants engaged in outrageous
19 conduct by together, creating, maintaining and refusing to remove a fake Facebook
20 account whereby the operator of the account was pretending to be a celebrity to
21 form relationships with, have explicitly sexual conversations, and to lure girls to
22 meet him in person. Further, despite knowing this was occurring, Facebook
23 ignored multiple requests to have the Fake Account removed.

24
25
26 47. By refusing to remove the Facebook page, and by engaging in the
27 conduct described above, Defendants intended to cause Mr. Gallo emotional
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1 distress, or in the alternative, Defendants acted with reckless disregard of the
2 probability that Mr. Gallo would suffer emotional distress.

3 48. As a result of the aforementioned conduct, Mr. Gallo has suffered
4 severe emotional distress, of which Defendants' conduct was a substantial factor in
5 causing such severe emotional distress.
6

7 49. In doing the acts as alleged hereinabove, Defendants acted with actual
8 malice, that is, they acted intentionally, or with conscious disregard of Plaintiff's
9 rights. As a result, Plaintiff is entitled to punitive damages to punish Defendants,
10 and to deter such conduct in the future, in an amount to be determined at trial.
11

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13 **FIFTH CLAIM FOR RELIEF**

14 **Violation of California Penal Code Section 528.5**

15 (Defendant Doe 1 Only)

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17 50. Plaintiff repeats and incorporates the allegations set forth in paragraphs
18 1 through and including 20, 22-27, 29-34, 36-44, and 46-49 of this Complaint as if
19 set forth in full herein.
20

21 51. California Penal Code Section 528.5 states that "any person who
22 knowingly and without consent credibly impersonates another actual person
23 through or on an Internet Web site or by other electronic means for purposes of
24 harming, intimidating, threatening, or defrauding another person is guilty of a
25 public offense..."
26
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1 52. California Penal Code Section 528.5 (e) allows for a civil action to be
2 brought by a person who suffers damage or loss by reason of a violation of
3 subdivision (a) against the violator for compensatory damages and injunctive
4 relief.
5

6 53. As described above, Doe 1 knowingly and without consent of Mr.
7 Gallo created a fake Facebook account, whereby he credibly, and continues to
8 credibly, impersonate Mr. Gallo for the purposes of tricking the public, luring
9 women to meet him, and otherwise harm, intimidate, threatening, and/or defraud.
10

11 54. As a result of the aforementioned conduct, Mr. Gallo is entitled to
12 compensatory damages, attorneys' fees and injunctive relief.
13

14 **SIXTH CLAIM FOR RELIEF**

15 **Violation of State Common Law Unfair Competition**

16 (Against Facebook and Doe 1)
17

18 55. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1
19 through 20, 22-27, 29-34, 36-44, 46-49, and 51-54 of this Complaint and reiterates
20 the same, as though fully set forth herein.
21

22 56. Plaintiff owns and enjoys common law trademark rights to his name in
23 California and throughout the United States.
24

25 57. Defendants' unlawful acts in appropriating rights in using Plaintiff's
26 mark Vincent Gallo was intended to capitalize on Plaintiff's notoriety and goodwill
27 associated therewith for Defendants' own pecuniary gain. Plaintiff has spent
28

1 substantial time and effort to obtain a reputation known throughout the world. As a
2 result of Plaintiff's efforts, Defendants are now unjustly enriched and are
3 benefiting from property rights that rightfully belong to Plaintiff.
4

5 58. Defendants' unauthorized use of Plaintiffs mark has caused and is
6 likely to cause confusion as to the source of the Fake Account, to the detriment of
7 Plaintiff.
8

9 59. The acts and conduct of Defendants as alleged above constitute unfair
10 competition pursuant to the common law of the State of California.
11

12 60. As a result, Defendants' wrongful conduct has caused direct and
13 proximate damage to Plaintiff.
14

15 61. Plaintiff is further informed and believes that Defendants' wrongful
16 conduct was willful, intentional and with conscious disregard of and with
17 indifference to Plaintiff's rights. As a result, Plaintiff is entitled to punitive
18 damages to punish Defendants and to deter such conduct in the future, in an
19 amount to be determined at trial.
20

21 62. Defendants' conduct as alleged above has damaged and will continue
22 to damage Plaintiff's goodwill and reputation and has resulted in losses to Plaintiff
23 and an illicit gain of profit to Defendant in an amount which is unknown at the
24 present time.
25

26 63. Unless Defendants are preliminarily and permanently enjoined from
27 hosting the Fake Account on Facebook, Plaintiff will be irreparably harmed in a
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1 manner in which he cannot be adequately compensated in money damages.
2 Plaintiff accordingly also seeks injunctive relief against Defendants.

3 **SEVENTH CLAIM FOR RELIEF**

4 **(Unfair Business Practices – Bus. and Prof. §17200)**

5 (Against Facebook Only)

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7 64. Plaintiff repeats and re-alleges the allegations contained in paragraphs
8
9 1 through 20, 22-27, 29-34, 36-44, 46-49, 51-54, and 56-63 of this Complaint and
10 reiterates the same, as though fully set forth herein.

11 65. Plaintiff brings this action on its own behalf and on behalf of all
12
13 persons and companies similarly situated. The class that Plaintiff represents is
14 composed of all persons or companies who at any time since the date four years
15 before the filing of this action have had their property usurped by Facebook. The
16
17 persons in this class are believed to be so numerous that the joinder of all such
18
19 persons is impracticable and that the disposition of their claims in a class action is
20 a benefit to the parties and to the Court.

21 66. There is a well-defined community of interest in the questions of law
22
23 and fact involved affecting the parties to be represented in that each member of the
24
25 class is or has been in the same factual circumstances, hereinafter alleged, as
26
27 Plaintiff. Proof of a common or single state of facts will establish the right of each
28
member of the class to recover. The claims of Plaintiff are typical of those of the
class and Plaintiff will fairly and adequately represent the interests of the class.

1 67. Plaintiff has invested time, money and effort into creating his career,
2 image, persona and mark.

3 68. By allowing individuals to create fake Facebook accounts, interact
4 with the public, and lure women, and continue to do so after being given notice,
5 Facebook has knowingly caused a likelihood of confusion in the eyes of the public.
6

7 69. Facebook's acts constitute a false representation and designation of
8 origin in connection with the advertising and sale of goods or services and is an
9 unfair business practice pursuant to California's Business and Professions Code
10 §17200 *et seq.*
11

12 70. As a direct, proximate, and foreseeable result of Facebook's wrongful
13 conduct, as alleged above, Plaintiff's goodwill and reputation and that of the other
14 members of the plaintiff class, who are unknown to Plaintiff, have been damaged
15 and will continue to be damaged, resulting in losses to Plaintiff and an illicit gain
16 of profit to Facebook in an amount which is unknown at the present time.
17 Consumers are entitled to relief, including full restitution and/or disgorgement of
18 all revenues, earnings, profits, compensation, and benefits that may have been
19 obtained by Facebook as a result of such unfair business acts or practices.
20

21 71. Despite receiving notice from Plaintiff of these unfair practices,
22 Facebook has refused, and continues to refuse, to cease such actions.
23

24 72. Facebook's acts hereinabove alleged are acts of unfair competition
25 within the meaning of California's Business and Professions Code §17200 *et seq.*
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1 Plaintiff is informed and believes that Facebook will continue to do those acts
2 unless the Court Orders Defendant to cease and desist.

3 73. Plaintiff has incurred and, during the pendency of this action, will
4 incur expenses for attorney fees and costs. Such attorney fees and costs are
5 necessary for the prosecution of this action and will result in a benefit to each of
6 the members of the class.
7

8 74. Accordingly, Plaintiff is entitled to an injunction barring Facebook, its
9 agents, employees and representative from: (i) ignoring requests from consumers
10 regarding impersonator accounts; (ii) continuing to allow the Fake Account to
11 exist; (iii) profiting from any unauthorized Facebook accounts.
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15 WHEREFORE, Mr. Gallo seeks the following determination:
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17 1. For special, consequential and general damages in an amount to be
18 established at trial but believed to be no less than the jurisdictional amount in
19 principal, together with allowable interest thereon at the maximum legal rate.
20

21 2. For costs of suit and attorneys' fees to the extent recoverable by law
22 and herein incurred;

23 3. For an injunction preventing the Fake Account from being hosted on
24 facebook.com.
25

26 4. For an injunction prohibiting Doe 1 from holding himself or herself
27 out to be Plaintiff;
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