San Francisco County Strouter Court MAR 16 2011 CLERK OF THE LOURT
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E STATE OF CALIFORNIA
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NO.
CLASS ACTION
COMPLAINT FOR DAMAGES FOR UNFAIR COMPETITION
THIDV TOTAL DEMANDED
[JURY TRIAL DEMANDED]

Plaintiff MODERN APPEALING CLOTHING, on behalf of itself and all other persons similarly situated, brings this civil action against the abovenamed defendants, and each of them, demands trial by jury and complains and alleges as follows:

THE PARTIES

- 1. This is an action for unfair competition by a San Francisco clothing and accessories business in California that directly competes with defendant IVANKA TRUMP MARKS, LLC, in the sale of women's clothing and accessories. Plaintiff seeks a court order forbidding defendant IVANKA TRUMP MARKS, LLC, and DOES 1 through 50 from continuing to compete unfairly with plaintiff in the woman's clothing and accessories business in California.
- 2. As more fully set forth below, plaintiff's claims are based on unfair advantage that defendant IVANKA TRUMP MARKS, LLC has gained from Donald J. Trump being the President of the United States and from Ivanka Trump and her husband, Jared, working for the President of the United States. That advantage is specifically prohibited by the Constitution and laws of the United States and the laws of the State of California. The effects of that unfair advantage are magnified greatly by marketing activities of defendant IVANKA TRUMP's officers and employees and the similar activities of Donald J. Trump, his family, his agents and employees and the White House staff and advisors, including, but not limited to,

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Counselor to the President Kellyanne Conway and White House Press Secretary and Communications Director Sean Spicer.

- 3. Plaintiff MODERN APPEALING CLOTHING ("MAC") is a California partnership consisting of Ben Ospital, Chris Ospital, and Jerry Ospital. Plaintiff MAC's principal place of business is in the State of California in San Francisco. Plaintiff MAC owns and operates two clothing and accessories businesses in San Francisco and specializes in women's clothing and accessories. Plaintiff MAC, which has been in business for nearly 40 years, has a worldwide reputation.
- 4. Plaintiff MAC brings this class action on behalf of itself and all other similarly situated clothing and accessories businesses in California against defendant IVANKA TRUMP MARKS, LLC ("IVANKA TRUMP") and DOES 1 through 50, inclusive. This action is maintainable as a representative action pursuant to California Code of Civil Procedure §382. Plaintiff MAC is representative of other women's clothing and accessories businesses and is acting on behalf of their interests. The similarly situated businesses are readily identifiable and locatable. The Class that plaintiff MAC seeks to represent is defined as follows: "All women's clothing and accessories businesses in California at any time from November 9, 2016, through the date of the trial." The individuals included within the Class are so numerous that joinder of each of them would be impracticable and the disposition of their claims in a class action, rather than in numerous individual actions, will benefit the parties, the Court, and the interests of justice. Among the proposed Class there is a welldefined community of interest in the questions of law and/or fact involved

affecting the Class Members. Common questions of law and/or fact predominate over questions that affect only individual Class Members. Plaintiff MAC's claims are typical of those belonging to the members of the Class they seek to represent and plaintiff MAC can adequately represent the Class it seeks to represent.

- 5. Plaintiff is informed and believes and thereon alleges that at all material times defendant IVANKA TRUMP is a limited liability corporation organized and existing under and by virtue of the laws of Delaware and doing business in the State of California in San Francisco County and throughout California.
- 6. Plaintiff is unaware of the true names and capacities of the individuals sued herein as DOES ("DOES") 1 through 50, inclusive. Plaintiff, therefore, sues these defendants by these fictitious names. Plaintiff is informed and believes and thereon alleges that each of these fictitiously named defendants are responsible in some manner for the acts, omissions, and occurrences herein alleged and that plaintiff's losses as herein alleged were proximately caused by such acts, omissions, and occurrences. Plaintiff will amend this Complaint to allege the true names and capacities of these fictitiously named defendants when ascertained.
- 7. Plaintiff is informed and believes and thereon alleges that at all material times, DOES 1 through 25, inclusive, own and control defendant IVANKA TRUMP and exercise substantial authority in devising and implementing policies at defendant IVANKA TRUMP. Any reference to

defendant IVANKA TRUMP in this Complaint includes DOES 1 through 25, inclusive, as well.

- 8. At all material times, defendant IVANKA TRUMP acted by and through its officers, agents, and employees, including the defendants fictitiously named herein, each of whom was acting within the purpose and scope of his or her agency or employment and whose acts, omissions and conduct alleged herein were known to, authorized by and ratified by defendant IVANKA TRUMP.
- 9. At all material times, defendants, and each of them, acted as the agents of one another in the acts, omissions and occurrences herein alleged.
- 10. The acts, omissions, conduct, contracts, promises and violations of the law herein alleged were done, made, performed or to be performed in substantial part in the County of San Francisco, State of California.

I.

FIRST CAUSE OF ACTION UNFAIR BUSINESS PRACTICES

11. Plaintiff incorporates herein by reference the allegations contained in the Paragraphs above as though fully set forth herein.

5/ COMPLAINT FOR DAMAGES FOR UNFAIR COMPETITION

12. Plaintiff brings this Cause of Action individually and as a representative of all others subject to defendants' unfair business practices.

- 13. Business and Professions Code §17200 prohibits unfair competition in the form of any unlawful, unfair, or fraudulent act or practice.
- 14. Business and Professions Code §17204 allows "any person who has suffered injury in fact and has lost money or property" to prosecute a civil action for violation of the Unfair Competition Law.
- 15. Because plaintiff MAC and defendant IVANKA TRUMP are both in the women's clothing and accessories business, they compete against one another.
- 16. On November 9, 2016, the day after Donald J. Trump was elected President of the United States, the competition between plaintiff MAC and defendant IVANKA TRUMP began to favor defendant IVANKA TRUMP. Plaintiff MAC is informed and believes and thereon alleges based on news reports that, since the election, sales of defendant IVANKA TRUMP's women's clothing and accessories have surged several hundred percent compared to last year.
- 17. Plaintiff MAC is informed and believes and thereon alleges that defendant IVANKA TRUMP's sales of women's clothing and accessories have surged since the election because of unlawful, unfair, or fraudulent

promotional activities by, but not limited to, defendant IVANKA TRUMP, agents and employees of defendant IVANKA TRUMP, Donald J. Trump (individually, as Ivanka Trump's father and as President), agents and employees of Donald J. Trump (individually, as Ivanka Trump's father and as President). These unlawful, unfair, or fraudulent promotional activities include, but are not limited to:

- A. Defendant IVANKA TRUMP and its employees and agents have, since the election, promoted defendant IVANKA TRUMP's brand by exploiting the power and prestige of the White House for personal gain, including, but not limited to, piggy-backing promotion of defendant IVANKA TRUMP products on appearances at executive branch and other governmental events.
- B. President Donald J. Trump and his individual and White House employees and agents have, since the election, promoted defendant IVANKA TRUMP brand by exploiting the power and prestige of the White House. For example, President Donald J. Trump has condemned Nordstrom and other retailers for dropping defendant IVANKA TRUMP's line. As another example, Counselor to the President Kellyanne Conway endorsed defendant IVANKA TRUMP's products on February 9, 2017, in an interview on Fox News from the White House briefing room with the White House insignia visible behind her. As another example, White House Press Secretary and Communications Director Sean Spicer has used his

positions at the White House to support defendant IVANKA TRUMP.

- 18. The above-described unlawful actions constitute false, unfair, fraudulent, and/or deceptive practices within the meaning of California Business and Professions Code §17200 et seq.
- 19. Plaintiff is informed and believes and thereon alleges that the increase in defendant IVANKA TRUMP's sales will continue and the competition between plaintiff MAC and defendant IVANKA TRUMP will continue to favor defendant IVANKA TRUMP because defendants continue to fail to take appropriate steps to avoid exploiting public office for private gain.
- 20. As a result of their unlawful acts, defendants have reaped and continue to reap unfair benefits and illegal profits at the expense of plaintiff MAC and the Class it seeks to represent. Defendants should be enjoined from this illegal activity and made to disgorge these ill-gotten gains and pay restitution to plaintiff MAC and the members of the Class.
- 21. Plaintiff incorporates herein by reference the damage allegations below as though fully set forth herein.

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II.

SECOND CAUSE OF ACTION

CONSPIRACY

- 22. Plaintiff incorporates herein by reference the allegations contained in the Paragraphs above as though fully set forth herein.
- 23. Defendants, and each of them, knowingly and willfully conspired and agreed among themselves to damage plaintiffs financially by the unfair business practices herein alleged ("Defendants' Conspiracy").
- 24. Pursuant to Defendants' Conspiracy, and in furtherance thereof, defendants acted as herein alleged.
- 25. As a proximate result of defendants' wrongful acts and omissions herein alleged pursuant to Defendants' Conspiracy, defendants, knowing of and participating in Defendants' Conspiracy herein alleged, did wrongfully act as herein alleged.
- 26. Plaintiff incorporates herein by reference the damage allegations below as though fully set forth herein.

DAMAGES

27. The extent of plaintiff's losses as a result of defendants' unfair business practices are subtle and difficult to quantify. As a result, plaintiff has no adequate remedy at law.

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28. To remedy the unfair competition by defendants, this Court should order defendants to discontinue their unfair competition.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for relief and judgment against defendants, and each of them, as follows:

- A. Certification of plaintiff's claims as a class action pursuant to California Code of Civil Procedure Section 382 on behalf of the proposed Class:
- B. Class Notice to all women's clothing and accessories businesses in California at any time from November 9, 2016, through the date of the trial;
- That the Court adjudge and decree the rights, duties and C. liabilities of the parties:
- D. That the Court declare that defendants have engaged in unfair competition;
- E. That the Court issue an order preliminarily and permanently enjoining defendants from engaging in the practices challenged herein;
- F. For an order that defendants make restitution to plaintiff MAC and Class Members due to their unlawful business practices as described herein pursuant to California Business and Professions Code Section 17200 et seg.:

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- G. That the Court adjudge and decree that defendants, and each of them, pay plaintiffs' attorneys' fees and costs of suit herein; and
- H. That the Court grant such other and further relief as the Court deems just and proper under the circumstances.

DATED: March 15, 2017

LAW OFFICES OF R. MICHAEL LIEBERMAN

BY:

R. MICHAEL LIEBERMAN

Attorneys for Plaintiff MODERN APPEALING CLOTHING