

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

AMBER LANCASTER, BRITTANY CRIPLIVER, BROOKE TAYLOR JOHNSON, CIELO JEAN GIBSON, CORA SKINNER, GEMMA LEE FARRELL, HEATHER RAE YOUNG, IRINA VORONINA, JESSE GOLDEN, JESSA HINTON, JOANNA KRUPA, KATARINA VAN DERHAM, MAYSA QUY, PAOLA CANAS, SANDRA VALENCIA, SARA UNDERWOOD, TIFFANY SELBY, TIFFANY TOTH, VIDA GUERRA, and KIM COZZENS,

Civil Action No.:

COMPLAINT
(Jury Trial Demanded)

Plaintiffs,

- against -

THE BOTTLE CLUB, LLC, JLA INVESTMENT CORP., HEDONISM, INC. d/b/a EYZ WIDE SHUT and/or EYZ WIDE SHUT II, ANDREW HARROW, and SUSAN HARROW,

Defendants.

COMPLAINT

COME NOW plaintiffs AMBER LANCASTER, BRITTANY CRIPLIVER, BROOKE TAYLOR JOHNSON, CIELO JEAN GIBSON, CORA SKINNER, GEMMA LEE FARRELL, HEATHER RAE YOUNG, IRINA VORONINA, JESSE GOLDEN, JESSA HINTON, JOANNA KRUPA, KATARINA VAN DERHAM, MAYSA QUY, PAOLA CANAS, SANDRA VALENCIA, SARA UNDERWOOD, TIFFANY SELBY, TIFFANY TOTH, VIDA GUERRA, and KIM COZZENS (collectively, "Plaintiffs"), by and through their undersigned counsel, as and for their Complaint against defendants THE BOTTLE CLUB, LLC, JLA INVESTMENT CORP., HEDONISM, INC., d/b/a EYZ WIDE SHUT and/or EYZ WIDE SHUT II, (collectively, "Eyz

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Wide Shut”), ANDREW HARROW, and SUSAN HARROW (collectively, “Defendants”) state as follows:

INTRODUCTION

1. Over the course of at least five (5) years, Defendants pirated various images, likeness and/or identities (referred to herein from time to time, collectively, as “Images”) of each Plaintiff for self-serving commercial purposes, to wit: to advertise, promote and market Defendants’ own business interests on social media accounts owned, operated, hosted, or controlled by Defendants.

2. Defendants are unapologetic, chronic and habitual infringers.
3. Defendants did not negotiate for or purchase the images.
4. Defendants did not seek or obtain consent or authority to use any of the Plaintiffs’ images for any purpose.

5. None of the Plaintiffs agreed, nor would any Plaintiff have agreed, to Defendants’ use of their Image.

6. Had each Plaintiff been afforded the opportunity to consider whether to consent and release rights as to the use of any image, each Plaintiff would have promptly and unequivocally declined.

7. Defendants’ conduct is misleading and deceptive by falsely and fraudulently representing that each Plaintiff depicted in the misappropriated images is somehow affiliated with Defendants, has contracted to perform at and/or participate in events at Eyz Wide Shut, has been hired to promote, advertise, market or endorse its events and other activities offered at Eyz Wide Shut, and/or that each Plaintiff depicted in the advertisements has attended or will attend each event and has participated in or intends to participate in the swingers-related activities advertised.

8. Defendants' conduct is injurious to each Plaintiff.

9. Defendants circumvented the typical arms-length negotiation process entirely and pirated the subject images. In doing so, Defendants have knowingly, and utterly, deprived each Plaintiff the right and ability to say "no."

10. Defendants have prevented each Plaintiff from engaging in arms-length negotiations regarding the terms and conditions of use of their images, including the terms of any release, remuneration per Image or use, or the ability to decline the business opportunity entirely. In short, Defendants deprived each Plaintiff the ability to protect her/his image, brand and reputation.

11. In the end, Defendants gained an economic windfall by using the Image of Plaintiffs, each of whom are professional and successful models, for Defendants' own commercial purposes.

12. They did so by luring and enticing patrons worldwide to view the Images and visit Eyz Wide Shut without having to compensate the models a single penny for such usage.

13. On the other hand, Plaintiffs have sustained injuries to their Images, brands and marketability due to their affiliation with Eyz Wide Shut, which advertises itself as the largest swingers club in Florida.

14. Having operated a business in the adult entertainment and swingers club industry, Defendants are well aware of the standard negotiation process over terms of use, conditions of release, licensing issues, and other contractual incidences related to use and exploitation of Image for their commercial benefit.

15. By entirely circumventing the negotiation process, they have defamed and embarrassed Plaintiffs by associating Plaintiffs' images and likenesses with Eyz Wide Shut.

16. Indeed, Defendants' conduct is not merely a misuse in connection with an innocuous brand or event, but rather with a club, and lifestyle, that opens Plaintiffs to ridicule, aversion and contempt by the general public, and companies that would hire Plaintiffs to promote their brands.

PARTIES

A. Plaintiffs

17. Given the multitude of violations harming numerous models, and the similarity of misconduct from Defendants harming all models, in the interest of judicial economy, Plaintiffs, through counsel, respectfully consolidate all actionable violations *presently known* into this single collective action on behalf of the following models.

18. Plaintiff Amber Lancaster ("Lancaster") is a well-known professional model, and a resident of Los Angeles County, California.

19. Plaintiff Brittany Cripliver ("Cripliver") is a well-known professional model, and a resident of Cobb County, Georgia.

20. Plaintiff Brooke Taylor Johnson ("Johnson") is a well-known professional model, and a resident of Santa Barbara County, California.

21. Plaintiff Cielo Jean Gibson ("Gibson") is a well-known professional model, and a resident of Los Angeles County, California.

22. Plaintiff Cora Skinner ("Skinner") is a well-known professional model, and a resident of Los Angeles County, California.

23. Plaintiff Gemma Lee Farrell ("Farrell") is a well-known professional model, and a resident of Los Angeles County, California.

24. Plaintiff Heather Rae Young (“Heather Young”) is a well-known professional model, and a resident of Los Angeles County, California.

25. Plaintiff Irina Voronina (“Voronina”) is a well-known professional model, and a resident of Los Angeles County, California.

26. Plaintiff Jesse Golden (“Golden”) is a well-known professional model, and a resident of Los Angeles County, California.

27. Plaintiff Jessa Hinton (“Hinton”) is a well-known professional model, and a resident of Los Angeles County, California.

28. Plaintiff Joanna Krupa (“Joanna Krupa”) is a well-known professional model, and a resident of Los Angeles County, California.

29. Plaintiff Katarina Van Derham (“Van Derham”) is a well-known professional model, and a resident of Los Angeles County, California.

30. Plaintiff Maysa Quy (“Quy”) is a well-known professional model, and a resident of Clark County, Nevada.

31. Plaintiff Paola Canas (“Canas”) is a well-known professional model, and a resident of Los Angeles County, California.

32. Plaintiff Sandra Valencia (“Valencia”) is a well-known professional model, and a resident of Los Angeles County, California.

33. Plaintiff Sara Underwood (“Underwood”) is a well-known professional model, and a resident of Columbia County, Oregon.

34. Plaintiff Tiffany Selby (“Selby”) is a well-known professional model, and a resident of Duval County, Florida.

35. Plaintiff Tiffany Toth (“Toth”) is a well-known professional model, and a resident of Orange County, California.

36. Plaintiff Vida Guerra (“Guerra”) is a well-known professional model, and a resident of Los Angeles County, California.

37. Plaintiff Kim Cozzens (“Cozzens”) is a well-known professional model, and a resident of Santa Clara County, California.

B. **Defendants**

38. Based on publicly available records, The Bottle Club, LLC (“The Bottle Club”) is a limited liability corporation organized and existing under the laws of the State of Florida, with a principal place of business located at 8504 Adamo Drive, Suites 150, 160, 165, Tampa, Florida 33619. According to publicly available records, The Bottle Club has a mailing address of 105 US Highway 301 South, Suite 110, Tampa, Florida 33619.

39. Based on publicly available records, JLA Investment Corp. (“JLA Investment”) is a corporation organized and existing under the laws of the State of Florida, with a principal place of business located at 8504 Adamo Drive, Suites 150, 160, 165, Tampa, Florida 33619. According to publicly available records, JLA Investment has a mailing address of 105 US Highway 301 South, Suite 110, Tampa, Florida 33619. Both the principal address and mailing address of JLA Investment are identical to that of The Bottle Club.

40. Based on publicly available records, Hedonism, Inc. (“Hedonism”) is a corporation organized and existing under the laws of the State of Florida, with a principal place of business located at 8504 Adamo Drive, Suite 150, 160, 165, Tampa, Florida 33619. According to publicly available records, Hedonism has a mailing address of 105 US Highway 301 South, Suite 110,

Tampa, Florida 33619. Both the principal address and mailing address of Hedonism are identical to that of The Bottle Club and JLA Investment.

41. According to publicly available records, defendant Susan Harrow is the principal and manager of The Bottle Club.

42. According to publicly available records, defendant Andrew Harrow is the President of JLA Investment, and defendant Susan Harrow is the Vice-President of JLA Investment.

43. According to publicly available records, defendant Andrew Harrow is the President of Hedonism, and defendant Susan Harrow is the Vice-President of Hedonism.

44. Upon information and belief, defendants Andrew and Susan Harrow are residents of Hillsborough County, Florida.

45. Upon information and belief, each of The Bottle Club, JLA Investment and Hedonism have, at times relevant to the misappropriations complained of herein, owned and operated Eyz Wide Shut, which has a principal place of business at 8504 Adamo Drive, Suite 150 160 165, Tampa, Florida 33619.

46. Upon information and belief, defendants during all times relevant to the allegations raised herein, Andrew and Susan Harrow had operational and managerial control and responsibility over the business operations of, and decision-making authority for Eyz Wide Shut, including decisions relating to Eyz Wide Shut promotional, advertising, marketing and endorsement activities such as those detailed in this Complaint.

47. Eyz Wide Shut holds and at all times relevant, has held itself out as a swingers club that engages in the business of entertaining its patrons with alcohol, music, hotel rooms, and several amenities including a nightclub.

48. Eyz Wide Shut owns and/or operates www.eyzwideshut.com (the “Eyz Wide Shut Website”) as well as other social media accounts and websites through which it advertises its business, events, and parties.

49. As set forth herein, Defendants used Images of one or more Plaintiff in order to market and promote the Eyz Wide Shut events.

50. Upon information and belief, Eyz Wide Shut coordinated its advertising, marketing and promotional activities through, among other things, active and dynamic use of the Eyz Wide Shut Website among others, and various coordinated social media promotions through Facebook, and Twitter, among others.

JURISDICTION AND VENUE

51. This Court has original federal question jurisdiction over the claims in this action pursuant to 28 U.S.C. § 1331 as Plaintiffs have each individually stated claims under the Lanham Act, 28 U.S.C. § 1125(a), *et seq.* This Court has supplemental jurisdiction over the Florida state law claims alleged herein pursuant to 28 U.S.C. § 1337.

52. The Court has personal jurisdiction over Defendants based on their contact with the State of Florida, including but not limited to Defendants’ registration to conduct business in Florida, Defendants’ physical location and principal place of business in Florida, and Andrew and Susan Harrow’s residence in the State of Florida where, upon information and belief, they committed, facilitated, assisted, encouraged or conspired to commit the actions giving rise to the harm and damages alleged herein in the State of Florida.

53. Venue is proper in the United States District Court for the Middle District of Florida pursuant to 28 U.S.C. §§ 1391(a) and (b) because Defendants principal place of business and/or

residence is in the Middle District of Florida and all acts giving rise to the claims set forth herein occurred or originated in Hillsborough County, which is in the Middle District of Florida.

FACTUAL BACKGROUND

A. Standard and Customary Business Practices in the Modeling Industry Require Arms-Length Negotiations over the Terms and Conditions of Usage and Remuneration for any Modeling Images

54. In the modeling industry, reputation is critical. Protection of a model's reputation is therefore of paramount importance.

55. Each Plaintiff is a professional model and/or actress who earns a living by promoting his/her image and likeness to select clients, commercial brands, media and entertainment outlets, as well as relying on his/her reputation and own brand for modeling, acting, hosting, and other opportunities.

56. Each Plaintiff's career in modeling, acting, and/or private enterprise has value stemming from the goodwill and reputation that each of them have built, all of which is critical to establishing a brand, being selected for jobs and maximizing earnings.

57. Each Plaintiff has worked to establish himself/herself as reliable, reputable and professional.

58. Each Plaintiff must necessarily be vigilant in protecting his/her "brand" from harm, taint, or other diminution.

59. Any improper or unauthorized use of an Image could substantially injure the career and career opportunities of each Plaintiff.

60. In the modeling industry, models such as Plaintiffs typically do not have a single employer, but rather work as independent contractors for different agents or entities.

61. Each Plaintiff is a responsible professional in the ordinary course. Each Plaintiff seeks to control the use and dissemination of his/her image and, thus, actively participates in vetting and selecting modeling, acting, brand spokesperson, or hosting engagements.

62. Plaintiffs' vetting and selection of a professional engagement involves a multi-tiered assessment, such as, but not limited to:

- a. determining whether the individual or entity seeking a license and release of a model's Image is reputable, has reputable products or services, and, through affiliation therewith, would either enhance or harm a model's stature or reputation;
- b. this reputational information is used in negotiating compensation which typically turns on the work a model is hired to do, the time involved, travel and how his/her image is going to be used – known as "usage" (among other variables);
- c. to protect his/her reputation and livelihood, Plaintiffs and/or their agents carefully and expressly define the terms and conditions of use;
- d. the entire negotiated deal is reduced to and memorialized in an integrated, written agreement of limited duration (typically 1-3 years) which define the parties' relationship. The terms and conditions of the agreement typically, unless otherwise expressly delineated, bind and are applicable to only the parties to that agreement.

63. Endorsing, promoting, advertising or marketing the "wrong" product, service or corporate venture, or working in or being affiliated with a disreputable industry can severely impact Plaintiffs' careers by limiting or foreclosing future modeling or brand endorsement opportunities. Conversely, association with high-end companies, products, or magazines can enhance and amplify Plaintiffs' earning potential and career opportunities by making Plaintiffs more sought after and desirable.

B. Defendants Have Misappropriated Each Plaintiff's Image Without Authority, for Self-Serving Commercial Gain and Without Offering or Paying Compensation to any Plaintiff

64. As set forth below, each Plaintiff's Image has been misappropriated by or at the direction of Defendants. Defendants' conduct creates the false and misleading appearance and impression that each Plaintiff either works for Defendants, has appeared and participated or will appear and participate in activities or events at Eyz Wide Shut, and/or has agreed and consented to advertise, promote, market or endorse Eyz Wide Shut or one or more Eyz Wide Shut events or activities.

Plaintiff Amber Lancaster

65. Lancaster began her career as Miss Washington Teen USA, became a Seattle Seahawks cheerleader, and in 2008 joined *The Price is Right*. As an actress, Lancaster co-starred as Jenny Swanson on MTV's *The Hard Times of RJ Berger*, the feature film *Redline*, and has appeared on episodes of *Days of Our Lives*, *CSI: Miami*, *The Bold and the Beautiful*, *Community*, and *Entourage*. In addition, Lancaster has appeared as herself on *Attack of the Show*, *The Scream Awards*, and *The Best Damn Sports Show Period*. Lancaster has likewise been featured in numerous spreads and fashion features in magazines, including *Maxim*, *US Weekly*, *People*, *Stylewatch*, *Life & Style* and *Star*, and as also been featured as part of *Maxim*'s annual "Hot 100" list. She has over 62,000 Instagram followers, 80,000 Facebook followers, and 52,000 Twitter followers.¹

¹ In the world of modeling, the number of online followers is a strong factor in determining the model's popularity, and, thus, earning capacity of a model.

66. In all instances of commercial marketing and promotion of her Image by third parties, Lancaster negotiated and expressly granted authority for such use pursuant to agreed-upon terms and conditions and for agreed-upon compensation.

67. Lancaster's is depicted in at least one (1) Image, annexed hereto as Exhibit A, which Defendants repeatedly published in order to promote Eyz Wide Shut. On March 12 and 17, 2012, Defendants superimposed Lancaster's Image onto a flyer and posted it to their Facebook page to advertise their "Bikers in Bikinis" event, and their "Let's get Lucky - Let's get Laid" event. The stolen Image of Lancaster was also used to promote SDC.com, www.EyzWideShut.com, Microkitten Brazilian Bikinis brand, as well as accommodations and couples packages. The Image of Lancaster was used without her consent, and was altered to give the impression that she was either a swinger who worked at, or frequented, Eyz Wide Shut, or that she endorsed the club.

68. Lancaster's Image in **Exhibit A** has been used by Defendants in various marketing and promotional mediums ("usages") such as advertising, on various social media accounts, as coupons, and for branding purposes.

69. Lancaster has never been employed by Defendants or contracted with Defendants to participate in events at Eyz Wide Shut.

70. Lancaster has never been hired by Defendants or contracted with Defendants to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

71. Defendants never sought permission or authority to use Lancaster's Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

72. Lancaster never gave permission, or assigned, licensed or otherwise consented to Defendants using her Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

73. Defendants neither offered nor paid any remuneration to Lancaster for the unauthorized use of her Image.

74. Defendants' use of Lancaster's Image in connection with Eyz Wide Shut event impugns Lancaster's character, embarrasses her, and suggests – falsely – her support for and participation in a swinger's lifestyle.

75. Upon information and belief, Defendants' improper use of the Image described herein permitted, encouraged, or facilitated other persons, firms, and entities to further utilize and misappropriate Lancaster's image in their market activities and business. In doing so, Defendants have further damaged Lancaster.

Plaintiff Brittany Cripliver

76. Cripliver is an American model, actress, and beauty pageant contestant. She is best known for her work as a cover girl model for *Coquette Lingerie*, as the reader's choice selection for *Maxim Magazine's Hometown Hottie of 2004*, and for her appearance as "Yvette" in the Carmen Electra's *Envy Girls Workout DVD*. Cripliver entered her first pageant while still in college at Jacksonville State. In 2002, she took second place in the *Rescada Beach Calendar Girl Contest* earning an appearance in the *2004 Rescada Beach Calendar*. In 2005, she took position #58 in the *Maxim* list of the *100 World's Most Beautiful Women*. In 2009, Cripliver made the cover of the *October Star* trade magazine modeling for *Coquette Lingerie* and worked as a cover girl and model for *Escante Lingerie*. She is currently a cover girl for *Pure Minerals* cosmetics and just completed a role in Ice Cube's new movie *Ride Along 2*.

77. In all instances of commercial marketing and promotion of her Image by third parties, Cripliver negotiated and expressly granted authority for such use pursuant to agreed-upon terms and conditions and for agreed-upon compensation.

78. Cripliver's Image is depicted in at least one photograph, enclosed as **Exhibit B** to the Complaint, which has been used at least one time to create the false impression that Cripliver has consented or agreed to promote, advertise, market and/or endorse Eyz Wide Shut. Specifically, Defendants stole Cripliver's Image to promote the "Pasties and Panties" event at Eyz Wide Shut. On April 9, 2014, Defendants used the Image of Criplever without her consent, and altered the Image in order to give the impression that she was either a swinger who worked at, or frequented, Eyz Wide Shut, or that she endorsed the club.

79. Cripliver's Image in **Exhibit B** has been used by Defendants in various marketing and promotional mediums ("usages") such as advertising, on various social media accounts, as coupons, and for branding purposes.

80. Cripliver has never been employed by Defendants or contracted with Defendants to participate in events at Eyz Wide Shut.

81. Cripliver has never been hired by Defendants or contracted with Defendants to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

82. Defendants never sought permission or authority to use Cripliver's Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

83. Cripliver never gave permission, or assigned, licensed or otherwise consented to Defendants using her Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

84. Defendants neither offered nor paid any remuneration to Cripliver for the unauthorized use of her Image.

85. Defendants' use of Cripliver's Image in connection with Eyz Wide Shut event impugns Cripliver's character, embarrasses her, and suggests – falsely – her support for and participation in a swinger's lifestyle.

86. Upon information and belief, Defendants' improper use of the image described herein permitted, encouraged, or facilitated other persons, firms, and entities to further utilize and misappropriate Cripliver's image in their market activities and business. In doing so, Defendants have further damaged Cripliver.

Plaintiff Brooke Taylor Johnson

87. Johnson is a world renowned model who has appeared in *FHM*, *Maxim*, and *Stuff*. She has also appeared in commercials and billboards Fredrick's of Hollywood, Coors Light, and Budweiser. Johnson been also featured in countless other catalogs, magazines, billboards, and television commercials and shows including, most recently, *Viva Glam*.

88. In all instances of commercial marketing and promotion of her Image by third parties, Johnson negotiated and expressly granted authority for such use pursuant to agreed-upon terms and conditions and for agreed-upon compensation.

89. Johnson's Image is depicted in at least one photograph, enclosed as **Exhibit C** to the Complaint, which has been used at least one time to create the false perception that Johnson has consented or agreed to promote, advertise, market and/or endorse Eyz Wide Shut. On September 14, 2012, this image of Johnson was published on the Eyz Wide Shut Facebook page in order promote its "Halloween Ball" costume contest and "adult toy giveaway." The Image was used without the consent of Johnson and was altered to give the impression that Johnson was either a swinger working at Eyz Wide Shut or that she endorsed the swingers club.

90. Johnson's Image in **Exhibit C** has been used by Defendants in various marketing

and promotional mediums (“usages”) such as advertising, on various social media accounts, as coupons, and for branding purposes.

91. Johnson has never been employed by Defendants or contracted with Defendants to participate in events at Eyz Wide Shut.

92. Johnson has never been hired by Defendants or contracted with Defendants to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

93. Defendants never sought permission or authority to use Johnson’s Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

94. Johnson never gave permission, or assigned, licensed or otherwise consented to Defendants using her Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

95. Defendants neither offered nor paid any remuneration to Johnson for the unauthorized use of her Image.

96. Defendants’ use of Johnson’s Image in connection with Eyz Wide Shut event impugns Johnson’s character, embarrasses her, and suggests – falsely – her support for and participation in a swinger’s lifestyle.

97. Upon information and belief, Defendants’ improper use of the image described herein permitted, encouraged, or facilitated other persons, firms, and entities to further utilize and misappropriate Johnson’s image in their market activities and business. In doing so, Defendants have further damaged Johnson.

Plaintiff Cielo Jean Gibson

98. Gibson is an extremely successful model who got her start in the industry when she won the *Import Turner* magazine Model Search. Gibson has a massive motor sport following, and

is currently the model for the Falken Drift Team and SBT, Inc. (Short Block Technologies), as well as being a Top Rank Boxing model. Gibson has been seen in the pages of *FHM*, *American Curves* (cover), *Supreme*, *MuscleMag International* and *Muscle & Fitness*, and has over 53,000 Instagram followers.

99. In all instances of commercial marketing and promotion of her Image by third parties, Gibson negotiated and expressly granted authority for such use pursuant to agreed-upon terms and conditions and for agreed-upon compensation.

100. Gibson's Image is depicted in at least one photograph, enclosed as **Exhibit D** to the Complaint, which has been used repeatedly to create the false perception that Gibson has consented or agreed to promote, advertise, market and/or endorse Eyz Wide Shut, or that she was a swinger that frequented Eyz Wide Shut. On August 12 and September 21, 2015, Gibson's Images were used to promote "SDC Pajama Party," and the "swingers meet & greet" at Eyz Wide Shut. Defendants also used Gibson's Image on discount coupons for Eyz Wide Shut. Defendants used Gibson's Image without her consent, and altered the Image in order to give the false impression that Gibson either was employed at, or frequented, Eyz Wide Shut, or that she endorsed the club.

101. Gibson's Image in **Exhibit D** has been used by Defendants in various marketing and promotional mediums ("usages") such as advertising, on various social media accounts, as coupons, and for branding purposes.

102. Gibson has never been employed by Defendants or contracted with Defendants to participate in events at Eyz Wide Shut.

103. Gibson has never been hired by Defendants or contracted with Defendants to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

104. Defendants never sought permission or authority to use Gibson's Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

105. Gibson never gave permission, or assigned, licensed or otherwise consented to Defendants using her Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

106. Defendants neither offered nor paid any remuneration to Gibson for the unauthorized use of her Image.

107. Defendants' use of Gibson's Image in connection with Eyz Wide Shut event impugns Gibson's character, embarrasses her, and suggests – falsely – her support for and participation in a swinger's lifestyle.

108. Upon information and belief, Defendants' improper use of the image described herein permitted, encouraged, or facilitated other persons, firms, and entities to further utilize and misappropriate Gibson's image in their market activities and business. In doing so, Defendants have further damaged Gibson.

Plaintiff Cora Skinner

109. Skinner is a model and actress who has appeared on *CSI: Miami*, *Rules of Engagement*, *Shark*, *Las Vegas*, and *The Tonight Show*. Skinner has also modeled for a variety of internationally known brands, including Sketchers, Nordstrom, Fredericks of Hollywood, Tecate, Skyy Vodka, and Muscle & Fitness, and has appeared in music videos for the likes of Def Leppard. In addition, Skinner has appeared in *Maxim*, in both the United States and various European versions, the *Playboy* lingerie catalog (to name just a few of her campaigns), and has her own set of Bench Warmer trading cards.

110. In all instances of commercial marketing and promotion of her Image by third

parties, Skinner negotiated and expressly granted authority for such use pursuant to agreed-upon terms and conditions and for agreed-upon compensation.

111. Skinner's Image is depicted in at least three (3) photographs, enclosed as **Exhibit E** to the Complaint, which have been used on repeated occasions to create the false impression that Skinner has consented or agreed to promote, advertise, market and/or endorse Eyz Wide Shut, or was a swinger who frequented Eyz Wide Shut. On February 5, 2014, a misappropriated image of Skinner was used to promote the Eyz Wide Shut "Pirates & Wenches Weekend #2" event. On February 11 and 14, 2014, another misappropriated image of Skinner was used to promote the "Valentine's Ladies in Red" and "Valentine's Naughty Nigthy Party" events and on February 19 and 24, 2014, a third images of Skinner was used to promote the the Eyz Wide Shut Mari Gras Party. As set forth on **Exhibit E**, after misappropriating Skinner's images, Defendants then added lewd and salacious captions which were meant to entice potential Eyz Wide Shut clientele to attend these parties. Based on the number of uses of Skinner's Images, it is clear that Defendants' intent was to misrepresent to the public that Skinner was the brand of Eyz Wide Shut, that she was a swinger working at Eyz Wide Shut, and/or that she endorsed Eyz Wide Shut.

112. Skinner's Image in **Exhibit E** has been used by Defendants in various marketing and promotional mediums ("usages") such as advertising, on various social media accounts, as coupons, and for branding purposes.

113. Skinner has never been employed by Defendants or contracted with Defendants to participate in events at Eyz Wide Shut.

114. Skinner has never been hired by Defendants or contracted with Defendants to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

115. Defendants never sought permission or authority to use Skinner's Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

116. Skinner never gave permission, or assigned, licensed or otherwise consented to Defendants using her Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

117. Defendants neither offered nor paid any remuneration to Skinner for the unauthorized use of her Image.

118. Defendants' use of Skinner's Image in connection with Eyz Wide Shut event impugns Skinner's character, embarrasses her, and suggests – falsely – her support for and participation in a swinger's lifestyle.

119. Upon information and belief, Defendants' improper use of the image described herein permitted, encouraged, or facilitated other persons, firms, and entities to further utilize and misappropriate Skinner's image in their market activities and business. In doing so, Defendants have further damaged Skinner.

Plaintiff Gemma Lee Farrell

120. Farrell is an extremely successful model and the November 2013 *Playboy* Playmate of the Month, the first model from New Zealand to be so appointed. Farrell has been a professional model since she was 17, and her modeling credits include Australian men's magazine *Ralph Magazine*, *Guitar World*, *Sports Illustrated*, and many others. Farrell was crowned the first Miss Monster Energy Cup spokes model, and was named the face of the Playboy Club. Farrell is likewise a social media influencer, with over 585,000 Instagram followers, and 660,000 Facebook followers. Farrell is also a reality television star in New Zealand, a client of Wilhelmina modeling agency, and a Healthy Brand lifestyle ambassador for Protein World and Skinny Bunny Teas.

121. In all instances of commercial marketing and promotion of her Image by third parties, Farrell negotiated and expressly granted authority for such use pursuant to agreed-upon terms and conditions and for agreed-upon compensation.

122. Farrell's Image is depicted in at least one photograph, enclosed as **Exhibit F** to the Complaint, which has been used at least one time to create the false perception that Farrell has consented or agreed to promote, advertise, market and/or endorse Eyz Wide Shut. Specifically, on September 10, 2014, Defendants published a stolen Image of Farrell on the Eyz Wide Shut Facebook page in order to promote Eyz Wide Shut's "Leather & Lace" event. The Image was used without the consent of Farrell, and was altered to intentionally give the impression that Ferrell was either a swinger working at Eyz Wide Shut or that she endorsed the club.

123. Farrell's Image in **Exhibit F** has been used by Defendants in various marketing and promotional mediums ("usages") such as advertising, on various social media accounts, as coupons, and for branding purposes.

124. Farrell has never been employed by Defendants or contracted with Defendants to participate in events at Eyz Wide Shut.

125. Farrell has never been hired by Defendants or contracted with Defendants to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

126. Defendants never sought permission or authority to use Farrell's Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

127. Farrell never gave permission, or assigned, licensed or otherwise consented to Defendants using her Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

128. Defendants neither offered nor paid any remuneration to Farrell for the unauthorized use of her Image.

129. Defendants' use of Farrell's Image in connection with Eyz Wide Shut event impugns Farrell's character, embarrasses her, and suggests – falsely – her support for and participation in a swinger's lifestyle.

130. Upon information and belief, Defendants' improper use of the image described herein permitted, encouraged, or facilitated other persons, firms, and entities to further utilize and misappropriate Farrell's image in their market activities and business. In doing so, Defendants have further damaged Farrell.

Plaintiff Heather Rae Young

131. Young is an extremely well-known swimsuit, glamour and lingerie model who was named the February 2010 *Playboy* Playmate of the Month. Young has likewise served as a spokesmodel for brands such as Captain Morgan, Smirnoff, Baileys, and Jose Cuervo, has appeared in the 2010 Import Turner calendar, the 2011 Fast Dates calendar, was featured in an advertising campaign for the Affliction Clothing Line, and has modeled for such clients as Calao Swimwear, DSO Eyewear, Carrie Amber lingerie, Hustler Lingerie, Superstar Swimwear, and 7 Til Midnight Lingerie. Young has also made various television appearances, and has 359,000 Instagram followers and 92,500 Twitter followers.

132. In all instances of commercial marketing and promotion of her Image by third parties, Young negotiated and expressly granted authority for such use pursuant to agreed-upon terms and conditions and for agreed-upon compensation.

133. Young's Image is depicted in at least one photograph, enclosed as **Exhibit G** to the Complaint, which has been used at least one time to create the false perception that Young has

consented or agreed to promote, advertise, market and/or endorse Eyz Wide Shut. Specifically, on March 11, 13, and 14, 2013, Defendants uploaded Young's stolen Image to its Facebook page and Google+ account to promote their "Lick My Lucky Charms" event and the "Eyz Member Appreciation Who's Your Paddy?" event. Defendants used Young's Image without her consent, and altered the Image in order to give the false impression that she was swinger who worked at, or frequented, Eyz Wide Shut, or that she endorsed the club.

134. Young's Image in **Exhibit G** has been used by Defendants in various marketing and promotional mediums ("usages") such as advertising, on various social media accounts, as coupons, and for branding purposes.

135. Young has never been employed by Defendants or contracted with Defendants to participate in events at Eyz Wide Shut.

136. Young has never been hired by Defendants or contracted with Defendants to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

137. Defendants never sought permission or authority to use Young's Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

138. Young never gave permission, or assigned, licensed or otherwise consented to Defendants using her Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

139. Defendants neither offered nor paid any remuneration to Young for the unauthorized use of her Image.

140. Defendants' use of Young's Image in connection with Eyz Wide Shut event impugns Young's character, embarrasses her, and suggests – falsely – her support for and participation in a swinger's lifestyle.

141. Upon information and belief, Defendants' improper use of the image described herein permitted, encouraged, or facilitated other persons, firms, and entities to further utilize and misappropriate Young's image in their market activities and business. In doing so, Defendants have further damaged Young.

Plaintiff Irina Voronina

142. Voronina, who was named *Playboy's* Miss January 2001, has represented international brands including SKYY Vodka, Miller Lite, Michelob Ultra, Bacardi, Sisley & Detour to name a few. She has millions of visual impressions around the globe via the covers and pages of worldwide magazines, including: *FHM*, *Maxim*, *Playboy* (in 20 countries), *Max* (Italy), *Ocean*, *Shape*, *944*, *Knockout*, *Q* (UK), *People* (Australia), and most recently *Kandy*, *Rukus*, *Vape* and *Browz* magazines. In 2008, Voronina was named the St. Pauli Girl spokesmodel, completed a 12-month public relations tour across United States, and became the first ever St. Pauli Girl to ring the NYSE closing bell, representing Constellation Brands. In 2013, Voronina was named *Kandy Magazine's* Model of the Year as a result of her fans downloading the highest number of digital issues that year. Voronina has more than 4 million followers on Facebook, Instagram, Twitter and YouTube. (Facebook: 3.5 million, Instagram: 437,000, Twitter: 105,000). As an actress, Voronina got her first big screen break in *Reno 911!: The movie*, and additional credits include *Svetlana*, *Saul of the Mole Men*, *iCarly*, *Balls of Fury*, and *Piranha 3DD*, to name a few. Most recently, Voronina has been seen in supporting roles in *Laser Team* and *Killing Hasselhoff*, and is currently starring in the independent action film *Scramble*, which she also co-produced.

143. In all instances of commercial marketing and promotion of her Image by third parties, Voronina negotiated and expressly granted authority for such use pursuant to agreed-upon terms and conditions and for agreed-upon compensation.

144. Voronina's Image is depicted in numerous photographs, enclosed as **Exhibit H** to the Complaint, which Defendants used on repeated occasions to create the false impression that Voronina consented or agreed to promote, advertise, market and/or endorse Eyz Wide Shut. On November 9, 11, and 13, 2011, one stolen Image of Voronina was superimposed onto flyers and uploaded to Defendants' Facebook account to promote "Free Fridays" and "Value Thursdays" at Eyz Wide Shut; Voronina appears as the model wearing a French maid outfit, and is beside a caption containing lewd and salacious language. On February 13, 2012, another image of Voronina was used to promote Eyz Wide Shut's "Gasparilla Pirate/Wench Party" event, and was published beside the caption: "Welcome Swinger, Exhibitionists, Voyeurs, Fetishists, Lovers of Red Hot Sex, Luv Motel, and Tampa Dungeon." On September 2 and 3, 2014, a third stolen Image of Voronina was used to promote the "Red Hot Lingerie Party" and "Tempt Me Thursdays" events at Eyz Wide Shut. That same Image was also used on February 9 and 23, 2012 to promote "Tempt me Thursdays" events. The caption next to the Image of Voronina provided, "Cum fulfill your temptations tonight." On October 14, 2013, a fourth stolen Image of Voronina was used by Defendants and uploaded to their Facebook page to promote the "Anything Goes Halloween Party" at Eyz Wide Shut. Lastly, on October 21, 23 and 24, 2013, a fifth Image of Voronina was used to promote a "Halloween Ball" at Eyz Wide Shut. These images of Voronina were used without her consent, and were altered to give the impression that she was swinger who frequented Eyz Wide Shut, or that she worked at or endorsed the club. Based on the number of uses of Voronina's Images, it is evident that Defendants' intent was to make Voronina the brand of Eyz Wide Shut.

145. Voronina's Image in **Exhibit H** has been used by Defendants in various marketing and promotional mediums ("usages") such as advertising, on various social media accounts, as coupons, and for branding purposes.

146. Voronina has never been employed by Defendants or contracted with Defendants to participate in events at Eyz Wide Shut.

147. Voronina has never been hired by Defendants or contracted with Defendants to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

148. Defendants never sought permission or authority to use Voronina's Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

149. Voronina never gave permission, or assigned, licensed or otherwise consented to Defendants using her Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

150. Defendants neither offered nor paid any remuneration to Voronina for the unauthorized use of her Image.

151. Defendants' use of Voronina's Image in connection with Eyz Wide Shut event impugns Voronina's character, embarrasses her, and suggests – falsely – her support for and participation in a swinger's lifestyle.

152. Upon information and belief, Defendants' improper use of the image described herein permitted, encouraged, or facilitated other persons, firms, and entities to further utilize and misappropriate Voronina's image in their market activities and business. In doing so, Defendants have further damaged Voronina.

Plaintiff Jesse Golden

153. Golden is a world renowned model, and successful businesswoman, who has appeared in modeling campaigns for a variety of high profile clients, including Abercrombie & Fitch, Victoria's Secret, Lucy Sport, Coca-Cola, GAP, and Nike, and on the covers of numerous magazines, including the *New York Times*, *Fitness*, *Newport Beach Magazine*, *Yoga International*,

and many others. Golden has also appeared in dozens of commercials, and television and film projects. In addition, Golden maintains her own website, www.jessegolden.com, where she aims to empower people through the sharing of her “Golden Secrets” concerning health, wellness and yoga. She also writes for a variety of other magazines and website, and has her own fitness and yoga brand and products. These expanding business interests are in addition to Golden’s continued work as a model for many notable fashion brands.

154. In all instances of commercial marketing and promotion of her Image by third parties, Golden negotiated and expressly granted authority for such use pursuant to agreed-upon terms and conditions and for agreed-upon compensation.

155. Golden’s Image is depicted in at least one photograph, enclosed as **Exhibit I** to the Complaint, which Defendants used on at least three occasions to create the false impression that Golden consented or agreed to promote, advertise, market and/or endorse Eyz Wide Shut. On February 28, 2012, March 3, 2012, and February 27, 2013, Golden’s Image was used by Defendants to promote the Eyz Wide Shut “Toga Party” on Facebook. Defendants used Golden’s Image without her consent, and altered the Image in order give the false impression that she was swinger who frequented Eyz Wide Shut, or worked at or endorsed the club.

156. Golden’s Image in **Exhibit I** has been used by Defendants in various marketing and promotional mediums (“usages”) such as advertising, on various social media accounts, as coupons, and for branding purposes.

157. Golden has never been employed by Defendants or contracted with Defendants to participate in events at Eyz Wide Shut.

158. Golden has never been hired by Defendants or contracted with Defendants to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

159. Defendants never sought permission or authority to use Golden's Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

160. Golden never gave permission, or assigned, licensed or otherwise consented to Defendants using her Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

161. Defendants neither offered nor paid any remuneration to Golden for the unauthorized use of her Image.

162. Defendants' use of Golden's Image in connection with Eyz Wide Shut event impugns Golden's character, embarrasses her, and suggests – falsely – her support for and participation in a swinger's lifestyle.

163. Upon information and belief, Defendants' improper use of the image described herein permitted, encouraged, or facilitated other persons, firms, and entities to further utilize and misappropriate Golden's image in their market activities and business. In doing so, Defendants have further damaged Golden.

Plaintiff Jessa Hinton

164. Hinton is a world-renowned and highly sought after model, who was the July 2011 *Playboy* Playmate of the Month. Hinton has been active in the entertainment industry since the age of sixteen (16), and has appeared in countless national commercial and television shows. In 2010 Hinton became the face of the Palms Hotel & Casino's advertising campaign, has hosted the television show *Victory Poker*, has served as the interview personality for *Top Rank Boxing*, and has been the centerpiece of an advertising campaign for Milwaukee's Best Beer in conjunction with Playboy Enterprises. Hinton has also served as a spokes model for Affliction Clothing, Enzo, Milano Hair Products, REVIV Wellness Spa, Protein World, Rhonda Shear Shapewear, Leg

Avenue and Roma Costume, and has been a featured cover model for magazines such as *FHM*, *Kandy*, *MMA Sports*, *Guitar World*, and *Muscle & Fitness*. Her images have likewise appeared on countless billboards, magazines, posters, and multiple forms of electronic media. Hinton has been named Creative Director for MAJR Media, and she also served as a guest host for the television station KTLA in Los Angeles. In addition, Hinton has earned an elite status as a social media celebrity, with more than 1.2 million followers on Instagram, 872,000 followers on Facebook, and 181,000 followers on Twitter.

165. In all instances of commercial marketing and promotion of her Image by third parties, Hinton negotiated and expressly granted authority for such use pursuant to agreed-upon terms and conditions and for agreed-upon compensation.

166. Hinton's Image is depicted in numerous photographs, enclosed as **Exhibit J** to the Complaint, which were published on repeated occasions by Defendants in order to create the false perception that Hinton has consented or agreed to promote, advertise, market and/or endorse Eyz Wide Shut. On July 28, 2014, as set forth on Exhibit J, Defendants used a stolen image of Hinton to promote the "Passion In The Purple Panties" event at Eyz Wide Shut. On or about July 13, 2015, additional stolen images of Hinton were used by Eyz Wide Shut to promote its "White Lingerie" event, its "Little Black Dress" event, and its "Sexy Pajama Party" event. On November 3, 2015, yet another Image of Hinton was used to promote a "TGIF Thank Goodness I'm Freaky" event. All of these images were used without Hinton's consent, and were altered to give the impression that she was swinger who frequented Eyz Wide Shut, or worked at or endorsed the club.

167. Hinton's Image in **Exhibit J** has been used by Defendants in various marketing and promotional mediums ("usages") such as advertising, on various social media accounts, as

coupons, and for branding purposes.

168. Hinton has never been employed by Defendants or contracted with Defendants to participate in events at Eyz Wide Shut.

169. Hinton has never been hired by Defendants or contracted with Defendants to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

170. Defendants never sought permission or authority to use Hinton's Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

171. Hinton never gave permission, or assigned, licensed or otherwise consented to Defendants using her Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

172. Defendants neither offered nor paid any remuneration to Hinton for the unauthorized use of her Image.

173. Defendants' use of Hinton's Image in connection with Eyz Wide Shut event impugns Hinton's character, embarrasses her, and suggests – falsely – her support for and participation in a swinger's lifestyle.

174. Upon information and belief, Defendants' improper use of the image described herein permitted, encouraged, or facilitated other persons, firms, and entities to further utilize and misappropriate Hinton's image in their market activities and business. In doing so, Defendants have further damaged Hinton.

Plaintiff Joanna Krupa

175. Krupa is a world-renowned model, actress, and television personality. As an actress, Krupa has appeared in the film *Max Havoc: Curse of the Dragon*, and the television show *Superstars*, and also appeared as a contestant on Season 9 of ABC's *Dancing with the Stars*. In

addition, since 2010 Krupa has been head judge of *Poland's Next Top Model*, and is a cast member of Bravo's *The Real Housewives of Miami*. As a model, Krupa has twice appeared on the cover of *Playboy*. She has also appeared on numerous other magazine covers, including *Personal*, *Steppin' Out*, *Envy*, *Shape*, *FHM*, *Stuff*, *Inside Sport*, *Teeze*, and *Maxim*. Krupa has been named the "Sexiest Swimsuit Model in the World," and in 2011 Maxim ranked her #55 in its 2011 Hot 100. In 2004-2005, she was voted German's Maxim Model of the Year. Krupa also models for ads with PETA.

176. In all instances of commercial marketing and promotion of her Image by third parties, Krupa negotiated and expressly granted authority for such use pursuant to agreed-upon terms and conditions and for agreed-upon compensation.

177. Krupa's Image is depicted in numerous photographs, enclosed as **Exhibit K** to the Complaint, which have been used on repeated occasions to create the false impression that Krupa has consented or agreed to promote, advertise, market and/or endorse Eyz Wide Shut and the swinger lifestyle. As set forth on **Exhibit K**, on June 6, 2012, September 25, 2012, April 12, 2013 and September 19, 2013, Defendants published a stolen Image of Krupa to promote the Eyz Wide Shut "Wet Wednesdays Ladies Night" event, its "Tempt Me Thursdays" event, and its "Fantasy Friday" event. Each Image was published beside the lewd caption: "Welcome Swingers, Exhibitionists, Voyeurs, Fetishists, and Lovers of Red Hot Sex" and "we're halfway through the week and already getting "Wet tonight!" On July 14, 2014, a second stolen Image of Krupa was used by Defendants to promote the "Boots, Boots and Booty" event on Defendants' Facebook page. On July 5 and 25, 2012, November 18, 2013, May 21, 2014 and November 11, 2014, a third stolen Image of Krupa was used by Defendants to promote the Eyz Wide Shut "Sexy Denim Party," "Sexy Veterans Affair," "SDC Stars, Stripes & Sexual Affair," and "Tempt Me

Thursdays,” event, each beside the caption: “[B]ring your own sexy temptress, and see what kind of naughty fun you can get into at Eyz Wide Shut tonight!” All of these Images were used without Krupa’s consent, and were altered to give the impression that she was swinger who frequented Eyz Wide Shut, or worked at or endorsed the club.

178. In light of the number of uses of Krupa’s Images by Eyz Wide Shut, it is clear that Defendants’ intent was to make Krupa the brand of Eyz Wide Shut.

179. Krupa’s Images in **Exhibit K** have been used by Defendants in various marketing and promotional mediums (“usages”) such as advertising, on various social media accounts, as coupons, and for branding purposes.

180. Krupa has never been employed by Defendants or contracted with Defendants to participate in events at Eyz Wide Shut.

181. Krupa has never been hired by Defendants or contracted with Defendants to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

182. Defendants never sought permission or authority to use Krupa’s Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

183. Krupa never gave permission, or assigned, licensed or otherwise consented to Defendants using her Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

184. Defendants neither offered nor paid any remuneration to Krupa for the unauthorized use of her Image.

185. Defendants’ use of Krupa’s Image in connection with Eyz Wide Shut event impugns Krupa’s character, embarrasses her, and suggests – falsely – her support for and participation in a swinger’s lifestyle.

186. Upon information and belief, Defendants' improper use of the image described herein permitted, encouraged, or facilitated other persons, firms, and entities to further utilize and misappropriate Krupa's image in their market activities and business. In doing so, Defendants have further damaged Krupa.

Plaintiff Katarina Van Derham

187. Van Derham is a successful model, actress, philanthropist, and entrepreneur. As a model, Van Derham has graced over 60 magazine covers and appeared in over 600 media outlets including CNN, FOX, and NBC. She has appeared in 17 national and international print and TV commercials, has been voted one of the 100 sexiest women in the world by magazines on three different continents, and has made history by being the only St. Pauli Girl spokesmodel to ever be re-elected. As an actress, Van Derham has appeared on "Entourage", "Unbelievable", "15 Minutes," "Redline," "CSI" and "Monk," and in music videos for Bobby Brown, Ja Rule, Andy, Big and Rich, among others. Katarina is a founder, CEO, and Editor-in-Chief of classic, glamour lifestyle magazine VIVA GLAM, established in 2012. Her well respected status gets her invited as a judge of model contests and beauty pageants around the world. She has more than 39,000 Instagram followers.

188. In all instances of commercial marketing and promotion of her Image by third parties, Van Derham negotiated and expressly granted authority for such use pursuant to agreed-upon terms and conditions and for agreed-upon compensation.

189. Van Derham's Image is depicted in numerous photographs, enclosed as **Exhibit L** to the Complaint, which have been used on repeated occasions by Defendants in order to create the false impression that Van Derham has consented or agreed to promote, advertise, market and/or endorse Eyz Wide Shut. On October 12, 2012, Defendants published a stolen photograph of Van

Derham to promote and market Eyz Wide Shut's "Fuktober Jugs Night" event, with the image also being used as a coupon for free alcohol. The lewd caption next to the Image of Van Derham provided: "...What better place to enjoy the season of boobs and beer?..." A second image of Van Derham was published on at least seven (7) separate occasions (December 1, 8, 15, 22 and 28, 2011, December 20, 2013 and December 15, 2014), by Defendants to promote various Eyz Wide Shut events, including the: "Closed to the Public and Open for Private Parties" event; "Jingle My Bells" event; "Santa's Naughty Elves" event; "Value Thursdays" event, and; "Bi-Ladies Night" event. These Images of Van Derham were used without her consent, and were altered to give the impression that she was swinger who frequented Eyz Wide Shut, or worked at or endorsed the club.

190. Van Derham's Images in **Exhibit L** have been used by Defendants in various marketing and promotional mediums ("usages") such as advertising, on various social media accounts, as coupons, and for branding purposes.

191. Van Derham has never been employed by Defendants or contracted with Defendants to participate in events at Eyz Wide Shut.

192. Van Derham has never been hired by Defendants or contracted with Defendants to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

193. Defendants never sought permission or authority to use Van Derham's Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

194. Van Derham never gave permission, or assigned, licensed or otherwise consented to Defendants using her Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

195. Defendants neither offered nor paid any remuneration to Van Derham for the unauthorized use of her Image.

196. Defendants' use of Van Derham's Image in connection with Eyz Wide Shut event impugns Van Derham's character, embarrasses her, and suggests – falsely – her support for and participation in a swinger's lifestyle.

197. Upon information and belief, Defendants' improper use of the image described herein permitted, encouraged, or facilitated other persons, firms, and entities to further utilize and misappropriate Van Derham's image in their market activities and business. In doing so, Defendants have further damaged Van Derham.

Plaintiff Maysa Quy

198. Quy is a beauty, fitness, commercial, and swimwear model who has worked for brands such as Sketchers Shoes, Benefit Cosmetics, CoverFX Cosmetics, Dreamgirl International Lingerie, Mini Cooper USA, T-Mobile, Apple, Nike, Microsoft, and David's Bridal. Quy has over 16,500 Instagram followers, over 4,000 Facebook followers, and over 4,000 Twitter followers.

199. In all instances of commercial marketing and promotion of her Image by third parties, Quy negotiated and expressly granted authority for such use pursuant to agreed-upon terms and conditions and for agreed-upon compensation.

200. Quy's Image is depicted in numerous photographs, enclosed as **Exhibit M** to the Complaint, which have been used on repeated occasions to create the false perception that Quy has consented or agreed to promote, advertise, market and/or endorse Eyz Wide Shut. On October 28, 2013, as set forth on Exhibit M, Defendants published a stolen photograph of Quy in order to promote the Eyz Wide Shut "Sexy Corset Party." Defendants used another misappropriated image of Quy to promote their "SDC Kinky In Pink Party" on October 13, 2014. A third image of Quy

was also uploaded to Defendants' website page to promote a "Frisky Friday" event. All of the Images of Quy were used without her consent, and were altered to give the impression that she was a swinger who frequented Eyz Wide Shut, or worked at or endorsed the club.

201. Quy's Image in **Exhibit M** has been used by Defendants in various marketing and promotional mediums ("usages") such as advertising, on various social media accounts, as coupons, and for branding purposes.

202. Quy has never been employed by Defendants or contracted with Defendants to participate in events at Eyz Wide Shut.

203. Quy has never been hired by Defendants or contracted with Defendants to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

204. Defendants never sought permission or authority to use Quy's Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

205. Quy never gave permission, or assigned, licensed or otherwise consented to Defendants using her Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

206. Defendants neither offered nor paid any remuneration to Quy for the unauthorized use of her Image.

207. Defendants' use of Quy's Image in connection with Eyz Wide Shut event impugns Quy's character, embarrasses her, and suggests – falsely – her support for and participation in a swinger's lifestyle.

208. Upon information and belief, Defendants' improper use of the image described herein permitted, encouraged, or facilitated other persons, firms, and entities to further utilize and

misappropriate Quy's image in their market activities and business. In doing so, Defendants have further damaged Quy.

Plaintiff Paola Canas

209. Canas is a Colombian-born model, actress, and television host, who over the past 12 years has appeared as a runway model at fashion shows throughout the world, and currently serves as the international face of Curve lingerie. Canas was recently chosen as the face of the Masters Gold Tournament in Dubai, and was the image for the "International Surf and Sport expo" in Orlando. She has worked for international brands and labels such as SOHO, KISS underwear, Salon International, Zona Rosa, and Esteban Escobar. She has appeared in numerous TV shows like FOX Sports and on both Telemundo and TV Azteca as herself.

210. In all instances of commercial marketing and promotion of her Image by third parties, Canas negotiated and expressly granted authority for such use pursuant to agreed-upon terms and conditions and for agreed-upon compensation.

211. Canas's Image is depicted in at least one photograph, enclosed as **Exhibit N** to the Complaint, which has been used at least one time to create the false perception that Canas has consented or agreed to promote, advertise, market and/or endorse Eyz Wide Shut. On August 12, 2015, Defendants published a stolen Image of Canas in order to promote their "Leather & Lace" event on the Eyz Wide Shut Facebook page, and likewise published the same photo on the Eyz Wide Shut webpage. The image of Canas was used without her consent, and was altered to give the impression that she was swinger who frequented Eyz Wide Shut, or worked at or endorsed the club.

212. Canas's Image in **Exhibit N** has been used by Defendants in various marketing and promotional mediums ("usages") such as advertising, on various social media accounts, as

coupons, and for branding purposes.

213. Canas has never been employed by Defendants or contracted with Defendants to participate in events at Eyz Wide Shut.

214. Canas has never been hired by Defendants or contracted with Defendants to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

215. Defendants never sought permission or authority to use Canas's Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

216. Canas never gave permission, or assigned, licensed or otherwise consented to Defendants using her Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

217. Defendants neither offered nor paid any remuneration to Canas for the unauthorized use of her Image.

218. Defendants' use of Canas's Image in connection with Eyz Wide Shut event impugns Canas's character, embarrasses her, and suggests – falsely – her support for and participation in a swinger's lifestyle.

219. Upon information and belief, Defendants' improper use of the image described herein permitted, encouraged, or facilitated other persons, firms, and entities to further utilize and misappropriate Canas's image in their market activities and business. In doing so, Defendants have further damaged Canas.

Plaintiff Sandra Valencia

220. Valencia is a Colombian-born model with a large international following who has worked throughout Latin America and the United States. Valencia has modeled for clients such as Diesel, Americanino, Leonisa, Chevignon, Onde de Mar and many more. Valencia recently

became the contract face of BESAME lingerie, and continues to be one of the most popular and successful Colombian models with a growing social media profile, and over 66,000 Instagram followers.

221. In all instances of commercial marketing and promotion of her Image by third parties, Valencia negotiated and expressly granted authority for such use pursuant to agreed-upon terms and conditions and for agreed-upon compensation.

222. Valencia's Image is depicted in at numerous photographs, enclosed as **Exhibit O** to the Complaint, which have been used on repeated occasions in order to create the false perception that Valencia has consented or agreed to promote, advertise, market and/or endorse Eyz Wide Shut. On February 11, 2014, Valencia's image was used to promote Eyz Wide Shut's hotel rooms and on February 17, 2014, another image of Valencia was used to promote various amenities at Eyz Wide Shut. These images of Valencia were used without her consent, and were altered to give the impression that she was swinger who frequented Eyz Wide Shut, or worked at or endorsed the club.

223. Valencia's Image in **Exhibit O** has been used by Defendants in various marketing and promotional mediums ("usages") such as advertising, on various social media accounts, as coupons, and for branding purposes.

224. Valencia has never been employed by Defendants or contracted with Defendants to participate in events at Eyz Wide Shut.

225. Valencia has never been hired by Defendants or contracted with Defendants to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

226. Defendants never sought permission or authority to use Valencia's Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

227. Valencia never gave permission, or assigned, licensed or otherwise consented to Defendants using her Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

228. Defendants neither offered nor paid any remuneration to Valencia for the unauthorized use of her Image.

229. Defendants' use of Valencia's Image in connection with Eyz Wide Shut event impugns Valencia's character, embarrasses her, and suggests – falsely – her support for and participation in a swinger's lifestyle.

230. Upon information and belief, Defendants' improper use of the image described herein permitted, encouraged, or facilitated other persons, firms, and entities to further utilize and misappropriate Valencia's image in their market activities and business. In doing so, Defendants have further damaged Valencia.

Plaintiff Sara Underwood

231. Underwood is a world famous model whom first appeared on the cover of *Playboy* in October 2005, was *Playboy*'s Playmate of the Month for July 2006, and was named *Playboy*'s Playmate of the Year for 2007. Underwood has not only been featured in various *Playboy* videos, but has likewise appeared, as herself, in the major motion pictures *The House Bunny* and *Miss March*. She has also appeared on episodes of such reality TV series as *Kendra*, *The Girls Next Door*, and *Bridget's Sexiest Beaches*. Underwood also works regularly in television as a continuity announcer for the Blackbelt TV cable network, and has served as co-host of G4's *Attack of the Show*. Underwood has more than 5 million social media followers.

232. In all instances of commercial marketing and promotion of her Image by third parties, Underwood negotiated and expressly granted authority for such use pursuant to agreed-

upon terms and conditions and for agreed-upon compensation.

233. Underwood's Image is depicted in at least one photograph, enclosed as **Exhibit P** to the Complaint, which has been used at least one time to create the false perception that Underwood has consented or agreed to promote, advertise, market and/or endorse Eyz Wide Shut. On September 28 and 30, 2014 Defendants used a misappropriated Image of Underwood to promote their "Naughty School Girl Party" and "Pimps & Hoes" events at Eyz Wide Shut. The caption next to the Image of Underwood provided: "Join n Get #Eyzwideshut #Night School girls For Sex - Dating wink emoticon Night school girl party.in tamap." Not only was the said caption made with the intent to deceive the public into believing that Underwood is a swinger at Eyz Wide Shut, but the caption directly implies that Underwood is open for sexual activities with the visiting patrons. On January 5, 2015, Defendants also uploaded the same image of Underwood to their Facebook page to promote a "Kinky School Girl Plaid Skirt Party." This image of Underwood was used without her consent, and was altered to give the impression that she was swinger who frequented Eyz Wide Shut, or worked at or endorsed the club.

234. Underwood's Image in **Exhibit P** has been used by Defendants in various marketing and promotional mediums ("usages") such as advertising, on various social media accounts, as coupons, and for branding purposes.

235. Underwood has never been employed by Defendants or contracted with Defendants to participate in events at Eyz Wide Shut.

236. Underwood has never been hired by Defendants or contracted with Defendants to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

237. Defendants never sought permission or authority to use Underwood's Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

238. Underwood never gave permission, or assigned, licensed or otherwise consented to Defendants using her Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

239. Defendants neither offered nor paid any remuneration to Underwood for the unauthorized use of her Image.

240. Defendants' use of Underwood's Image in connection with Eyz Wide Shut event impugns Underwood's character, embarrasses her, and suggests – falsely – her support for and participation in a swinger's lifestyle.

241. Upon information and belief, Defendants' improper use of the image described herein permitted, encouraged, or facilitated other persons, firms, and entities to further utilize and misappropriate Underwood's image in their market activities and business. In doing so, Defendants have further damaged Underwood.

Plaintiff Tiffany Selby

242. Selby is a well-known model and actress, the *Playboy Playmate of the Month* for July 2007, and has appeared on many television shows, including: *The Girl's Next Door*, *Bikini Destinations*, *Poor Man's Bikini Beach* (which she hosted), *Last Comic Standing* (model), and *Deal or No Deal* (case model). Selby has likewise appeared in commercials for brands such as Guitar Hero 5 (with Hugh Hefner), Ab Lounge, and Reflections Boutique, and has appeared in countless magazines and catalogs. Selby has also served as a spokesmodel for brands including Budweiser, Suzuki and Bang Vodka, and done additional promotional work on behalf of Skoal Promotion, Stacker 2 Promotion, Hawaiian Tropic Promotion, and Guitar Center Grand Opening. In addition, Selby has twice been named Miss Hawaiian Tropic.

243. In all instances of commercial marketing and promotion of her Image by third

parties, Selby negotiated and expressly granted authority for such use pursuant to agreed-upon terms and conditions and for agreed-upon compensation.

244. Selby's Image is depicted in at least one photograph, enclosed as **Exhibit Q** to the Complaint, which has been used at least one time to create the false impression that Selby has consented or agreed to promote, advertise, market and/or endorse Eyz Wide Shut. Selby's Image was posted to the Eyz Wide Shut website for promotional and marketing purposes in order to promote the "Naughty Nurses" event. The Image of Selby was used without her consent and was altered to give the impression that she was swinger who frequented Eyz Wide Shut, or worked at or endorsed the club.

245. Selby's Image in **Exhibit Q** has been used by Defendants in various marketing and promotional mediums ("usages") such as advertising, on various social media accounts, as coupons, and for branding purposes.

246. Selby has never been employed by Defendants or contracted with Defendants to participate in events at Eyz Wide Shut.

247. Selby has never been hired by Defendants or contracted with Defendants to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

248. Defendants never sought permission or authority to use Selby's Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

249. Selby never gave permission, or assigned, licensed or otherwise consented to Defendants using her Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

250. Defendants neither offered nor paid any remuneration to Selby for the unauthorized use of her Image.

251. Defendants' use of Selby's Image in connection with Eyz Wide Shut event impugns Selby's character, embarrasses her, and suggests – falsely – her support for and participation in a swinger's lifestyle.

252. Upon information and belief, Defendants' improper use of the image described herein permitted, encouraged, or facilitated other persons, firms, and entities to further utilize and misappropriate Selby's image in their market activities and business. In doing so, Defendants have further damaged Selby.

Plaintiff Tiffany Toth

253. Toth is an extremely successful model who was the September 2011 *Playboy* Playmate of the Month. Toth has also appeared in a variety of magazines including *Super Street Bike*, *Import Tuner*, *Sport Truck*, *Iron Man*, *Seventeen*, and *Maxim*, as well as appearing in countless other catalogs and publications. Toth's popularity and renown is evidence by the fact that she has over 2 million Facebook followers, over 700,000 Instagram followers, and over 100,000 Twitter followers. In addition to her Toth's modeling work, she owns and maintains her own e-commerce site.

254. In all instances of commercial marketing and promotion of her Image by third parties, Toth negotiated and expressly granted authority for such use pursuant to agreed-upon terms and conditions and for agreed-upon compensation.

255. Toth's Image is depicted in at least two (2) photographs, enclosed as **Exhibit R** to the Complaint, which have been used on repeated occasions in order to create the false perception that Toth has consented or agreed to promote, advertise, market and/or endorse Eyz Wide Shut. On November 7 and 26, 2013, Defendants used stolen Images of Toth in order to promote the Eyz Wide Shut "Shake Ya Tailfeather Pre-Thanksgiving Party" event and on October 26, 2015,

Defendants uploaded a second image of Toth to promote Eyz Wide Shut's "Erotic Halloween Ball" event. Both Images of Toth were used without her consent, and were altered to give the impression that she was swinger who frequented Eyz Wide Shut, or worked at or endorsed the club.

256. Toth's Image in **Exhibit R** has been used by Defendants in various marketing and promotional mediums ("usages") such as advertising, on various social media accounts, as coupons, and for branding purposes.

257. Toth has never been employed by Defendants or contracted with Defendants to participate in events at Eyz Wide Shut.

258. Toth has never been hired by Defendants or contracted with Defendants to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

259. Defendants never sought permission or authority to use Toth's Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

260. Toth never gave permission, or assigned, licensed or otherwise consented to Defendants using her Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

261. Defendants neither offered nor paid any remuneration to Toth for the unauthorized use of her Image.

262. Defendants' use of Toth's Image in connection with Eyz Wide Shut event impugns Toth's character, embarrasses her, and suggests – falsely – her support for and participation in a swinger's lifestyle.

263. Upon information and belief, Defendants' improper use of the image described herein permitted, encouraged, or facilitated other persons, firms, and entities to further utilize and

misappropriate Toth's image in their market activities and business. In doing so, Defendants have further damaged Toth.

Plaintiff Vida Guerra

264. Guerra is a Cuban-born actress and model who has been named *FHM*'s Model of the Year, and has appeared in music videos for artists such as Kanye West and Nelly. In addition to her appearances in *FHM* – which voted her Number 26 in that its “Top 100 Sexiest Females” list -- Guerra has appeared in various other magazines, including *DUB*, *Smooth*, *Escape*, and *Open Your Eyes*. As an actress, Guerra has made multiple appearances on several Spanish language television programs, including, *El Gordo y la Flaca*, on Comedy Central’s *The Chappelle Show*, in *National Lampoon’s Dorm Daze 2*, and in commercials for various companies, including Burger King. Guerra also appeared in the video game “Scarface: The World Is Yours.” In addition to her modeling and acting endeavors, Ms. Guerra has produced her own swimsuit calendars (and accompanying “behind the scenes” DVDs), as well as and a 2006 DVD entitled, *Vida Guerra: Exposed*. Guerra is in high demand as a spokeswoman for fitness equipment, and in television shows and movies, and has over 260,000 Instagram followers.

265. In all instances of commercial marketing and promotion of her Image by third parties, Guerra negotiated and expressly granted authority for such use pursuant to agreed-upon terms and conditions and for agreed-upon compensation.

266. Guerra’s Image is depicted in at least one photograph, enclosed as **Exhibit S** to the Complaint, which has been used repeatedly to create the false perception that Guerra has consented or agreed to promote, advertise, market and/or endorse Eyz Wide Shut. On April 14, 2012, May 21, 2014, August 21 and 29, 2014, September 10, 2014 and May 18, 2015, Defendants misappropriated Guerra’s Image in order to promote their “Official SLS Event: Combat Camo

Party,” a “SLS Combat Camo Night,” a “SDC Military Men & Pin Up Girls” event, and a “Salute Your Soldier” event. Guerra’s Image was also used as an admission coupon. The Image of Guerra was used without her consent, and was altered in order give the impression that she was either a swinger working at Eyz Wide Shut, or that she endorsed the club.

267. Guerra’s Image in **Exhibit S** were used by Defendants in various marketing and promotional mediums (“usages”) such as advertising, on various social media accounts, as coupons, and for branding purposes.

268. Guerra has never been employed by Defendants or contracted with Defendants to participate in events at Eyz Wide Shut.

269. Guerra has never been hired by Defendants or contracted with Defendants to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

270. Defendants never sought permission or authority to use Guerra’s Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

271. Guerra never gave permission, or assigned, licensed or otherwise consented to Defendants using her Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

272. Defendants neither offered nor paid any remuneration to Guerra for the unauthorized use of her Image.

273. Defendants’ use of Guerra’s Image in connection with Eyz Wide Shut event impugns Guerra’s character, embarrasses her, and suggests – falsely – her support for and participation in a swinger’s lifestyle.

274. Upon information and belief, Defendants’ improper use of the image described herein permitted, encouraged, or facilitated other persons, firms, and entities to further utilize and

misappropriate Guerra's image in their market activities and business. In doing so, Defendants have further damaged Guerra.

Plaintiff Kim Cozzens

275. Cozzens is a model and actress who has appeared on commercials for Old Spice and New Amsterdam Vodka, among others. Cozzens has modeled for campaigns with Guess, Old Spice, Grey Goose, Sephora Cosmetics, Con Air Hair Tools, Sketcher Shoes, Sandals Resort, Dodge and Pepsi, as has appeared in *Maxim*, among other magazines. In total, Cozzens has signed with 12 top agencies internationally, two of them being LA Models and LATALENT

276. In all instances of commercial marketing and promotion of her Image by third parties, Cozzens negotiated and expressly granted authority for such use pursuant to agreed-upon terms and conditions and for agreed-upon compensation.

277. Cozzens's Image is depicted in at least one photograph, enclosed as **Exhibit T** to the Complaint, which has been used at least one time to create the false perception that Cozzens has consented or agreed to promote, advertise, market and/or endorse Eyz Wide Shut. On April 11, 2014, Defendants misappropriated an image of Cozzens to promote the Eyz Wide Shut "Mardi Gras Weekend" on their Facebook and Twitter pages beside the caption: "We welcome swingers, exhibitionists, voyeurs, fetishists and lovers of RED HOT SEX!" The caption, together with the logo of Eyz Wide Shut above the image of Cozzens, was used to wrongfully imply that Cozzens is a swinger at Eyz Wide Shut, or endorsed the club.

278. Cozzens's Image in **Exhibit T** has been used by Defendants in various marketing and promotional mediums ("usages") such as advertising, on various social media accounts, as coupons, and for branding purposes.

279. Cozzens has never been employed by Defendants or contracted with Defendants to

participate in events at Eyz Wide Shut.

280. Cozzens has never been hired by Defendants or contracted with Defendants to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

281. Defendants never sought permission or authority to use Cozzens's Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

282. Cozzens never gave permission, or assigned, licensed or otherwise consented to Defendants using her Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event.

283. Defendants neither offered nor paid any remuneration to Cozzens for the unauthorized use of her Image.

284. Defendants' use of Cozzens's Image in connection with Eyz Wide Shut event impugns Cozzens's character, embarrasses her, and suggests – falsely – her support for and participation in a swinger's lifestyle.

285. Upon information and belief, Defendants' improper use of the image described herein permitted, encouraged, or facilitated other persons, firms, and entities to further utilize and misappropriate Cozzens's image in their market activities and business. In doing so, Defendants have further damaged Cozzens.

C. Defendants Ignored Plaintiffs' Demand Letter that Notified Defendants of the Potential Claims Should Defendants Fail or Refuse to Comply

286. On December 8, 2015, Plaintiffs, through counsel, sent Defendants a demand and cease/desist letter ("Demand Letter"), enclosed herein as **Exhibit U**.

287. The Demand Letter provided Defendants with notice of their wrongful actions and demanded that Defendants immediately cease and desist any further use of the models' images.

Appended to the Demand Letter was a Preliminary Expert Report regarding image infringement which provided illustrative examples of the offending images.

288. The Demand Letter further demanded that Defendants pay \$1,850,625.00 in aggregate compensatory, or actual, single damages to compensate the models for the theft and unauthorized use of their images. The amount demanded was a significantly smaller figure than actual damages, and was equivalent to the valuation of the infringed images. It did not include any demand fee for the tortious damages to the Plaintiffs themselves.

289. The Demand Letter further demanded that Defendants disclose, pursuant to Section 627.4137, Florida Statutes, all insurance policy coverage information.

290. Defendants were given thirty (30) days to satisfy the conditions set forth in the Demand Letter.

291. Defendants failed and refused to compensate Plaintiffs for the unauthorized use of their images.

CAUSES OF ACTION

Plaintiff Amber Lancaster's Causes of Action

LANCASTER COUNT I **(Violation of the Lanham Act, 15 U.S.C. § 1125(a): False Advertising against all Defendants)**

292. Section 43 of the Lanham Act, 15 U.S.C. § 1125, *et seq.* applies to Defendants and protects Lancaster from the conduct described herein. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from “misrepresent[ing] the nature, characteristics, qualities or geographic origin of his or her or another person’s goods, services or commercial activities . . .” 15 U.S.C. §1125(a)(1)(B).

293. Defendants used Lancaster's Image as described herein without authority in order to create the perception that Lancaster worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business and activities, and/or consented to or authorized Defendants to use her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities.

294. Lancaster's Image is recognizable in the photo identified in **Exhibit A**.

295. Defendants' use of Lancaster's Image to advertise, promote and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities as described in this First Amended Complaint was false and misleading.

296. Defendants' unauthorized use of Lancaster's Image as described in this First Amended Complaint constitutes false advertising by suggesting or implying, among other things, that Lancaster worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants business or Eyz Wide Shut events and activities and/or that Lancaster would participate in or appear at the specific events promoted in the advertisement.

297. Defendants' false advertising described above has the capacity or tendency to confuse consumers, including actual and prospective patrons of Eyz Wide Shut, as to the general quality of attendees and participants of Eyz Wide Shut and in its events, as well as specifically whether Lancaster worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities.

298. Upon information and belief, Defendants' false advertising described above did, in fact, deceive and/or cause consumer confusion as to whether Lancaster worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events and activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities. Among other things, upon information and belief, such unauthorized use misled and served to entice consumers and prospective consumers to join Eyz Wide Shut, visit Eyz Wide Shut, and participate in events at Eyz Wide Shut and had a material effect and impact on the decision of members and prospective members and participants to join Eyz Wide Shut, visit Eyz Wide Shut and take part in the events at Eyz Wide Shut.

299. Defendants' advertisements, promotions and marketing of Eyz Wide Shut and events at Eyz Wide Shut occur in and are targeted to interstate commerce. Specifically, Defendants promote their business and events through interstate promotions and campaigns to target persons from different states throughout the United States. Defendants principally use the World Wide Web, social media and other vehicles of interstate commerce to advertise, market, promote, and entice or lure membership and attendance at Eyz Wide Shut events.

300. Defendants' unauthorized use of Lancaster's Image as described herein was designed to benefit Defendants' business interests by, among other things, promoting Eyz Wide Shut and its activities and attracting clientele to Eyz Wide Shut.

301. Defendants knew or should have known that their unauthorized use of Lancaster's Image would cause consumer confusion as described in this First Amended Complaint.

302. Defendants' unauthorized use of Lancaster's Image as described herein violates 15 U.S.C. §1125(a) and was wrongful.

303. Defendants' wrongful conduct as described herein was willful.

304. As such, the present case is an exceptional case warranting an award of reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

305. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Lancaster of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Lancaster.

306. The method and manner in which Defendants used the image of Lancaster further evinces that Defendants were aware of or consciously disregarded the fact that Lancaster did not consent to Defendants' use of the image to advertise Defendants' business.

307. Defendants have caused irreparable harm to Lancaster, her reputation and brand by attributing to Lancaster the swinger's lifestyle and activities at Eyz Wide Shut.

308. Defendants' unauthorized use of Lancaster's Image directly and proximately caused and continue to cause damage to Lancaster in an amount to be determined at trial.

WHEREFORE, Lancaster respectfully requests that the Court issue a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

LANCASTER COUNT II
(Violation of Fla. Stat. § 540.08: Right of Publicity;
Unauthorized Misappropriation of Name/Likeness against all Defendants)

309. Lancaster has a statutory right of publicity under Section 540.08, Florida Statutes.

310. Section 540.08, Florida Statutes, provides that: "[n]o person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising

purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use.”

311. Despite the clear language of Section 540.08, Defendants published Lancaster’s Image on social media outlets, among others, in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut event and activities.

312. Lancaster’s Image is recognizable in the photo identified in **Exhibit A**.

313. Defendants never sought permission or authority to use Lancaster’s Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

314. Lancaster never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants’ use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

315. Defendants intentionally or, at a minimum, recklessly published, printed, displayed, or otherwise publicly disseminated or used Lancaster’s Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

316. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or with reckless disregard to deprive Lancaster of a property interest during the entire time period in which the unauthorized use took place.

317. At a minimum, Defendants’ conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Lancaster’s rights.

318. Alternatively, Defendants acted negligently towards Lancaster in using and disseminating, without authority, her Image on social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

319. Defendants have caused irreparable harm to Lancaster, her reputation and brand by attributing to Lancaster the swinger's lifestyle and activities at Eyz Wide Shut.

320. Defendants have also damaged Lancaster as a direct and proximate result of their unauthorized use of Lancaster's Image without compensating Lancaster. Defendants' conduct has been despicable and taken in conscious disregard of Lancaster's rights.

WHEREFORE, Lancaster respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. §540.08, including but not limited to, both actual loss and damages, costs, interest, royalties, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

LANCASTER COUNT III
(Violation of Common Law Right of Publicity;
Unauthorized Misappropriation of Name or Likeness against all Defendants)

321. Lancaster has a common law right of publicity.

322. Defendants may not publish, print, display or publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of Lancaster without express written or oral consent to such use.

323. Defendants published, printed, displayed and/or publicly used Lancaster's Image on their social media outlets, among others, for purposes of trade and/or commercial advertising including, but not limited to, promoting, advertising and marketing of Eyz Wide Shut and Eyz Wide Shut events and activities.

324. Lancaster's Image is recognizable in the photo identified in **Exhibit A**.

325. Defendants took these actions without Lancaster's permission, consent or authority.

In fact, Defendants never sought permission nor authority to use Lancaster's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

326. Lancaster never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

327. Defendants intentionally or, at a minimum, recklessly, published, printed, displayed, or otherwise publicly disseminated or used Lancaster's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

328. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or reckless disregard to deprive Lancaster of a property interest during the entire time period in which the unauthorized use took place.

329. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Lancaster's rights.

330. Alternatively, Defendants acted negligently towards Lancaster in using and disseminating, without authority, her Image on Eyz Wide Shut social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

331. Defendants have caused irreparable harm to Lancaster, her reputation and brand by attributing to Lancaster the swinger's lifestyle and activities at Eyz Wide Shut.

332. Defendants have also damaged Lancaster as a direct and proximate result of their unauthorized use of Lancaster's Image without compensating Lancaster.

WHEREFORE, Lancaster respectfully requests that the Court issue a judgment against Defendants for all remedies available under a claim of misappropriation including, but not limited to, actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

LANCASTER COUNT IV
(Violation of Fla. Stat. § 501.204:
Florida's Deceptive and Unfair Trade Practices Act against all Defendants)

333. Section 501.204(1), Florida Statutes ("FDUTPA") provides that "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

334. Defendants are direct and active participants in market dealings with Lancaster by using her image to advertise and promote Eyz Wide Shut not only to patrons of Eyz Wide Shut, but to the general public in interstate commerce.

335. Lancaster's Image is recognizable in the photo identified in **Exhibit A**.

336. Defendants at all material times were engaged in a trade or commerce, as defined within Section 501.203, Florida Statutes.

337. Defendants have engaged in deceptive acts and unfair practices in the course of their business activities by:

- a. failing to obtain consent from Lancaster prior to promoting Defendants' business by and through the misappropriation and use of Lancaster's Image;
- b. failing to obtain authorization from Lancaster prior to the publication of Lancaster's Image on Eyz Wide Shut social media outlets;
- c. failing to compensate Lancaster for the misappropriation and use of her Image on Eyz Wide Shut social media outlets;
- d. falsely representing by implication to the public that Lancaster endorsed the Defendants' business, or would be present at and participate in Eyz Wide Shut events; and
- e. falsely representing by implication that Lancaster sanctioned the type of business, events, lifestyle, or other activities promoted by Defendants.

338. Defendants' conduct described herein was misleading.

339. Defendants knew their unauthorized use of Lancaster's Image was misleading.

340. Defendants' unauthorized use of Lancaster's Image as detailed herein violates Section 501.204(1), Florida Statutes, and was wrongful.

341. Defendants' wrongful conduct as detailed herein was willful and malicious.

342. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Lancaster of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Lancaster.

343. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Lancaster's rights.

344. Alternatively, the method and manner in which Defendants used Lancaster's Image further evinces that Defendants were aware or consciously disregarded that Lancaster did not consent to Defendants' use to advertise Defendants' business.

345. Defendants have caused irreparable harm to Lancaster, her reputation and brand by attributing to Lancaster the swinger's lifestyle and activities at Eyz Wide Shut.

346. Defendants' unauthorized use of Lancaster's Image directly and proximately caused damage to Lancaster in an amount to be determined at trial.

WHEREFORE, Lancaster respectfully requests that the Court issue a judgment against Defendants for actual damages, including loss of profit, attorneys' fees, interest, costs, compensatory damages, damage to professional reputation, consequential damages, statutory civil penalties under Fla. Stat. § 501.2075, and such other relief as this Court deems just and proper.

LANCASTER COUNT V
(Violation of Fla. Stat. § 812.014 and Fla. Stat. § 772.11:
Civil Theft against all Defendants)

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347. Section 772.11, Florida Statutes, creates a private right of action for victims of theft of tangible and intangible personal property, including rights, privileges, interests and claims.

348. Defendants knowingly appropriated, used and disseminated Lancaster's Image without authorization or consent.

349. Lancaster's Image is recognizable in the photo identified in **Exhibit A**.

350. Defendants' misappropriation of Lancaster's Image was for Defendants' own use and benefit and to deprive Lancaster of certain rights.

351. Defendants' misconduct detailed in this First Amended Complaint denied Lancaster the right to engage in arms-length negotiations over the use and dissemination of her Image, the right to negotiate over reasonable bargained-for compensation, the right to say "no" to the proposed use by Defendants and the right to otherwise protect her Image from harm at the hands of Defendants.

352. Defendants' appropriation of Lancaster's Image as detailed herein without authority violates Sections 772.11 and 812.014, Florida Statutes, and was wrongful.

353. Defendants' wrongful conduct as detailed herein was willful and malicious.

354. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Lancaster of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Lancaster.

355. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Lancaster's rights.

356. Alternatively, the method and manner in which Defendants used Lancaster's Image further evinces that Defendants were aware or consciously disregarded the fact that Lancaster did not consent to Defendants' use in order to advertise Defendants' business.

357. Defendants' appropriation and use of Lancaster's Image without authority directly and proximately caused damage to Lancaster in an amount to be determined at trial.

WHEREFORE, Lancaster respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. § 772.11(1), including but not limited to, treble the amount of actual damages, costs, interest, and attorneys' fees and other relief deemed just and proper by this Court.

LANCASTER COUNT VI
(Unjust Enrichment against all Defendants)

358. Lancaster has conferred a benefit upon Defendants by virtue of Defendants' usage of her image without compensation.

359. Lancaster's Image is recognizable in the photo identified in **Exhibit A**.

360. Defendants were aware that Lancaster's Image were valuable.

361. Defendants were aware of the resulting benefit from usage of Lancaster's Image.

362. Defendants have retained profits and other benefits conferred upon them by using Lancaster's Image to promote and advertise Defendants' business, Eyz Wide Shut or Eyz Wide Shut events.

363. It would be inequitable for Defendants to retain the benefits conferred upon them by using Lancaster's Image without paying fair value for the image.

WHEREFORE, Lancaster respectfully requests that the Court issue a judgment against Defendants for damages, including but not limited to actual damages, costs, interest, imposition of a constructive trust, restitution of unlawful proceeds, including Defendants' gross profits and such other and further relief in law or equity as this Court deems just and proper.

LANCASTER COUNT VII
(Conversion against all Defendants)

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364. Lancaster is, and at relevant times was, the exclusive owner of all rights, title, and interest to her Image unlawfully converted by Defendants for Defendants' benefit.

365. Lancaster's Image is recognizable in the photo identified in **Exhibit A**.

366. Lancaster has, and for all times relevant herein had, an intangible property interest in her Image unlawfully converted by Defendants for Defendants' benefit.

367. By their acts and conduct alleged above, Defendants have converted Lancaster's property rights, including without limitation, Lancaster's Image for Defendants' use and wrongful disposition for financial gain.

368. Lancaster is informed and believes and on such information alleges that Defendants have refused to return Lancaster's property to her or pay for the deprivation of Lancaster's property.

369. As a result, Lancaster has suffered compensatory and exemplary damages to be determined according to proof at trial; but Lancaster alleges that the same are within the jurisdiction of the Court.

370. Further, Lancaster is informed and believes and thereon alleges that in engaging in the conduct described above, Defendants acted with oppression, fraud, and/or malice. Defendants' conduct has been despicable and taken in conscious disregard of Lancaster's rights.

WHEREFORE, Lancaster respectfully requests this Court to issue a judgment against Defendants and for all remedies available under the common law claim for conversion, including but not limited to actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits, and/or other relief deemed just and proper.

LANCATER COURT VIII
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Endorsement against all Defendants)

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371. Section 43 of the Lanham Act, 15 U.S.C. § 1125, et seq. applies to Defendants and protects Lancaster from the conduct described herein.

372. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from committing any act that “is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person . . . or approval of his or her goods, services, or commercial activities by another person . . .” 15 U.S.C. §1125(a)(1)(A).

373. Lancaster is a model, entertainer, and spokesperson who earns a living based solely on marketing, endorsing, and advertising products and services for her clients.

374. Lancaster works diligently to build herself into a brand that becomes inseparable from her persona.

375. In fact, Lancaster’s personae is so associated with her brand that the use of the same or similar images and likenesses by Defendants constitutes a false representation by Defendants that its goods and services, i.e. swinger club activities, come from the same source as Lancaster’s brand.

376. In other words, Defendants’ use of Lancaster’s personae is, on its face, a false statement that she has, in fact, endorsed Defendants’ swingers club and activities.

377. Moreover, Lancaster’s images are inherently distinctive or, in the alternative, have through their use acquired a distinctiveness through secondary meaning.

378. Lancaster’s images either suggest the basic nature of her product or service, identify the characteristic of her product or service, or suggest characteristics of her product or service that requires an effort of the imagination by the consumer in order to be understood as descriptive.

379. Lancaster’s brand - the reason her clients seek to hire her - is unique in that it is encompassed in Lancaster’s identity, i.e., her persona.

380. Lancaster's rights to her personae rises to the level of common law trademarks and is entitled to protection under Section 2 of the Lanham Act. Therefore, Defendants' use of Lancaster's image constitutes a False Endorsement under section 2 of the Lanham Act.

381. Defendants used and altered Lancaster's image, likeness and/or identity as described herein without authority in order to create the false perception that she worked at or was otherwise affiliated with Eyz Wide Shut, or endorsed Defendants, Eyz Wide Shut or Eyz Wide Shut's business activities, and/or consented to or authorized Defendants' or Eyz Wide Shut's usage of her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut's events and activities.

382. Lancaster's Image is recognizable in the photo identified in **Exhibit A**.

383. Defendants use of Lancaster's image was for Defendants' commercial benefit and was designed for the sole and express purpose of attracting clientele to Eyz Wide Shut thereby generating revenue for Defendants.

384. Most (if not all) of the Eyz Wide Shut patrons have undoubtedly viewed Lancaster's images in magazines and online.

385. Defendants' unauthorized use and alteration of Lancaster's image, likeness and/or identity to advertise, endorse, promote and market Defendants' business, Eyz Wide Shut and/or Eyz Wide Shut's events and activities as described in this Complaint has led to a competitive injury to Lancaster.

386. Defendants' unauthorized use and alteration of Lancaster's image, likeness and/or identity as described in this Complaint constitutes a false designation of the source or origin, sponsorship, approval, association, or endorsement, which has deceived Lancaster's fans and present and prospective clients into believing that, among other things, Lancaster works at or is

otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut's events or activities, or consented to or authorized Defendants' or Eyz Wide Shut's usage or alteration of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut's events and activities and/or that Lancaster would participate in or appear at the specific events promoted in the advertisement.

387. Despite the fact that Defendants were at all times aware that Lancaster did not work at, nor endorse Eyz Wide Shut, Defendants nevertheless used Lancaster's image to mislead potential customers as to Lancaster's employment at Eyz Wide Shut.

388. Defendants knew that their use of Lancaster's image would cause consumer confusion as to each Plaintiff's sponsorship, endorsement, and/or employment at Eyz Wide Shut.

389. Upon information and belief, Defendants' use of Lancaster's image as described above did, in fact, deceive and/or cause consumer confusion as to whether Lancaster worked at and/or endorsed Eyz Wide Shut, and endorsed Eyz Wide Shut's business.

390. As a direct and proximate results of Defendants' actions, Lancaster has no control over the nature and quality of the services provided by Eyz Wide Shut, the nature of the advertisements depicting her image, likeness and/or identity, or how her image is being depicted by Eyz Wide Shut.

391. Defendants' unauthorized use and alteration of Lancaster's image, likeness and identity as described herein violates 15 U.S.C. §1125(a) and was wrongful.

392. Defendants' wrongful conduct as described herein was willful.

393. As such, the present case is an exceptional case warranting an award of reasonable attorney's fees pursuant to 15 U.S.C. § 1117.

394. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to wrongfully portray Lancaster as endorsing Defendants' business, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Lancaster from such an endorsement.

395. Further, any failure, neglect or default by Defendants will reflect adversely on Lancaster as the believed source of origin, sponsorship, approval or association thereof, hampering efforts by Lancaster to continue to protect her reputation for high quality professional modeling, resulting in loss of sales thereof and the considerable expenditures to promote her personal modeling services to legitimate mainstream media, all to the irreparable harm of Lancaster.

396. Due to Defendants' unauthorized use of Lancaster's image, Lancaster has been damaged in an amount to be determined at trial.

WHEREFORE, Lancaster respectfully requests that the Court enter a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, pre-judgment and post-judgment interest, and/or such further relief that is just and proper.

Plaintiff Brittany Cripliver's Causes of Action

CRIPLIVER COUNT I
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Advertising against all Defendants)

397. Section 43 of the Lanham Act, 15 U.S.C. § 1125, *et seq.* applies to Defendants and protects Cripliver from the conduct described herein. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from "misrepresent[ing] the nature, characteristics,

qualities or geographic origin of his or her or another person's goods, services or commercial activities" 15 U.S.C. §1125(a)(1)(B).

398. Defendants used Cripliver's Image as described herein without authority in order to create the perception that Cripliver worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business and activities, and/or consented to or authorized Defendants to use her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities.

399. Cripliver's Image is recognizable in the photo identified in **Exhibit B**.

400. Defendants' use of Cripliver's Image to advertise, promote and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities as described in this First Amended Complaint was false and misleading.

401. Defendants' unauthorized use of Cripliver's Image as described in this First Amended Complaint constitutes false advertising by suggesting or implying, among other things, that Cripliver worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants business or Eyz Wide Shut events and activities and/or that Cripliver would participate in or appear at the specific events promoted in the advertisement.

402. Defendants' false advertising described above has the capacity or tendency to confuse consumers, including actual and prospective patrons of Eyz Wide Shut, as to the general quality of attendees and participants of Eyz Wide Shut and in its events, as well as specifically whether Cripliver worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized

Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities.

403. Upon information and belief, Defendants' false advertising described above did, in fact, deceive and/or cause consumer confusion as to whether Cripliver worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events and activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities. Among other things, upon information and belief, such unauthorized use misled and served to entice consumers and prospective consumers to join Eyz Wide Shut, visit Eyz Wide Shut, and participate in events at Eyz Wide Shut and had a material effect and impact on the decision of members and prospective members and participants to join Eyz Wide Shut, visit Eyz Wide Shut and take part in the events at Eyz Wide Shut.

404. Defendants' advertisements, promotions and marketing of Eyz Wide Shut and events at Eyz Wide Shut occur in and are targeted to interstate commerce. Specifically, Defendants promote their business and events through interstate promotions and campaigns to target persons from different states throughout the United States. Defendants principally use the World Wide Web, social media and other vehicles of interstate commerce to advertise, market, promote, and entice or lure membership and attendance at Eyz Wide Shut events.

405. Defendants' unauthorized use of Cripliver's Image as described herein was designed to benefit Defendants' business interests by, among other things, promoting Eyz Wide Shut and its activities and attracting clientele to Eyz Wide Shut.

406. Defendants knew or should have known that their unauthorized use of Cripliver's Image would cause consumer confusion as described in this First Amended Complaint.

407. Defendants' unauthorized use of Cripliver's Image as described herein violates 15 U.S.C. §1125(a) and was wrongful.

408. Defendants' wrongful conduct as described herein was willful.

409. As such, the present case is an exceptional case warranting an award of reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

410. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Cripliver of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Cripliver.

411. The method and manner in which Defendants used the image of Cripliver further evinces that Defendants were aware of or consciously disregarded the fact that Cripliver did not consent to Defendants' use of the image to advertise Defendants' business.

412. Defendants have caused irreparable harm to Cripliver, her reputation and brand by attributing to Cripliver the swinger's lifestyle and activities at Eyz Wide Shut.

413. Defendants' unauthorized use of Cripliver's Image directly and proximately caused and continue to cause damage to Cripliver in an amount to be determined at trial.

WHEREFORE, Cripliver respectfully requests that the Court issue a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

CRIPLIVER COUNT II
(Violation of Fla. Stat. § 540.08: Right of Publicity;
Unauthorized Misappropriation of Name/Likeness against all Defendants)

414. Cripliver has a statutory right of publicity under Section 540.08, Florida Statutes.

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415. Section 540.08, Florida Statutes, provides that: “[n]o person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use.”

416. Despite the clear language of Section 540.08, Defendants published Cripliver’s Image on social media outlets, among others, in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut event and activities.

417. Cripliver’s Image is recognizable in the photo identified in **Exhibit B**.

418. Defendants never sought permission or authority to use Cripliver’s Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

419. Cripliver never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants’ use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

420. Defendants intentionally or, at a minimum, recklessly published, printed, displayed, or otherwise publicly disseminated or used Cripliver’s Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

421. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or with reckless disregard to deprive Cripliver of a property interest during the entire time period in which the unauthorized use took place.

422. At a minimum, Defendants’ conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Cripliver’s rights.

423. Alternatively, Defendants acted negligently towards Cripliver in using and disseminating, without authority, her Image on social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

424. Defendants have caused irreparable harm to Cripliver, her reputation and brand by attributing to Cripliver the swinger's lifestyle and activities at Eyz Wide Shut.

425. Defendants have also damaged Cripliver as a direct and proximate result of their unauthorized use of Cripliver's Image without compensating Cripliver. Defendants' conduct has been despicable and taken in conscious disregard of Cripliver's rights.

WHEREFORE, Cripliver respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. §540.08, including but not limited to, both actual loss and damages, costs, interest, royalties, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

CRIPLIVER COUNT III
(Violation of Common Law Right of Publicity;
Unauthorized Misappropriation of Name or Likeness against all Defendants)

426. Cripliver has a common law right of publicity.

427. Defendants may not publish, print, display or publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of Cripliver without express written or oral consent to such use.

428. Defendants published, printed, displayed and/or publicly used Cripliver's Image on their social media outlets, among others, for purposes of trade and/or commercial advertising including, but not limited to, promoting, advertising and marketing of Eyz Wide Shut and Eyz Wide Shut events and activities.

429. Cripliver's Image is recognizable in the photo identified in **Exhibit B**.

430. Defendants took these actions without Cripliver's permission, consent or authority. In fact, Defendants never sought permission nor authority to use Cripliver's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

431. Cripliver never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

432. Defendants intentionally or, at a minimum, recklessly, published, printed, displayed, or otherwise publicly disseminated or used Cripliver's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

433. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or reckless disregard to deprive Cripliver of a property interest during the entire time period in which the unauthorized use took place.

434. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Cripliver's rights.

435. Alternatively, Defendants acted negligently towards Cripliver in using and disseminating, without authority, her Image on Eyz Wide Shut social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

436. Defendants have caused irreparable harm to Cripliver, her reputation and brand by attributing to Cripliver the swinger's lifestyle and activities at Eyz Wide Shut.

437. Defendants have also damaged Cripliver as a direct and proximate result of their unauthorized use of Cripliver's Image without compensating Cripliver.

WHEREFORE, Cripliver respectfully requests that the Court issue a judgment against Defendants for all remedies available under a claim of misappropriation including, but not limited to, actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

CRIPLIVER COUNT IV
(Violation of Fla. Stat. § 501.204:
Florida's Deceptive and Unfair Trade Practices Act against all Defendants)

438. Section 501.204(1), Florida Statutes ("FDUTPA") provides that "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

439. Defendants are direct and active participants in market dealings with Cripliver by using her image to advertise and promote Eyz Wide Shut not only to patrons of Eyz Wide Shut, but to the general public in interstate commerce.

440. Cripliver's Image is recognizable in the photo identified in **Exhibit B**.

441. Defendants at all material times were engaged in a trade or commerce, as defined within Section 501.203, Florida Statutes.

442. Defendants have engaged in deceptive acts and unfair practices in the course of their business activities by:

- a. failing to obtain consent from Cripliver prior to promoting Defendants' business by and through the misappropriation and use of Cripliver's Image;
- b. failing to obtain authorization from Cripliver prior to the publication of Cripliver's Image on Eyz Wide Shut social media outlets;
- c. failing to compensate Cripliver for the misappropriation and use of her Image on Eyz Wide Shut social media outlets;

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d. falsely representing by implication to the public that Cripliver endorsed the Defendants' business, or would be present at and participate in Eyz Wide Shut events; and

e. falsely representing by implication that Cripliver sanctioned the type of business, events, lifestyle, or other activities promoted by Defendants.

443. Defendants' conduct described herein was misleading.

444. Defendants knew their unauthorized use of Cripliver's Image was misleading.

445. Defendants' unauthorized use of Cripliver's Image as detailed herein violates Section 501.204(1), Florida Statutes, and was wrongful.

446. Defendants' wrongful conduct as detailed herein was willful and malicious.

447. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Cripliver of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Cripliver.

448. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Cripliver's rights.

449. Alternatively, the method and manner in which Defendants used Cripliver's Image further evinces that Defendants were aware or consciously disregarded that Cripliver did not consent to Defendants' use to advertise Defendants' business.

450. Defendants have caused irreparable harm to Cripliver, her reputation and brand by attributing to Cripliver the swinger's lifestyle and activities at Eyz Wide Shut.

451. Defendants' unauthorized use of Cripliver's Image directly and proximately caused damage to Cripliver in an amount to be determined at trial.

WHEREFORE, Cripliver respectfully requests that the Court issue a judgment against Defendants for actual damages, including loss of profit, attorneys' fees, interest, costs,

compensatory damages, damage to professional reputation, consequential damages, statutory civil penalties under Fla. Stat. § 501.2075, and such other relief as this Court deems just and proper.

CRIPLIVER COUNT V
(Violation of Fla. Stat. § 812.014 and Fla. Stat. § 772.11:
Civil Theft against all Defendants)

452. Section 772.11, Florida Statutes, creates a private right of action for victims of theft of tangible and intangible personal property, including rights, privileges, interests and claims.

453. Defendants knowingly appropriated, used and disseminated Cripliver's Image without authorization or consent.

454. Cripliver's Image is recognizable in the photo identified in **Exhibit B.**

455. Defendants' misappropriation of Cripliver's Image was for Defendants' own use and benefit and to deprive Cripliver of certain rights.

456. Defendants' misconduct detailed in this First Amended Complaint denied Cripliver the right to engage in arms-length negotiations over the use and dissemination of her Image, the right to negotiate over reasonable bargained-for compensation, the right to say "no" to the proposed use by Defendants and the right to otherwise protect her Image from harm at the hands of Defendants.

457. Defendants' appropriation of Cripliver's Image as detailed herein without authority violates Sections 772.11 and 812.014, Florida Statutes, and was wrongful.

458. Defendants' wrongful conduct as detailed herein was willful and malicious.

459. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Cripliver of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Cripliver.

460. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Cripliver's rights.

461. Alternatively, the method and manner in which Defendants used Cripliver's Image further evinces that Defendants were aware or consciously disregarded the fact that Cripliver did not consent to Defendants' use in order to advertise Defendants' business.

462. Defendants' appropriation and use of Cripliver's Image without authority directly and proximately caused damage to Cripliver in an amount to be determined at trial.

WHEREFORE, Cripliver respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. § 772.11(1), including but not limited to, treble the amount of actual damages, costs, interest, and attorneys' fees and other relief deemed just and proper by this Court.

CRIPLIVER COUNT VI
(Unjust Enrichment against all Defendants)

463. Cripliver has conferred a benefit upon Defendants by virtue of Defendants' usage of her image without compensation.

464. Cripliver's Image is recognizable in the photo identified in **Exhibit B**.

465. Defendants were aware that Cripliver's Image were valuable.

466. Defendants were aware of the resulting benefit from usage of Cripliver's Image.

467. Defendants have retained profits and other benefits conferred upon them by using Cripliver's Image to promote and advertise Defendants' business, Eyz Wide Shut or Eyz Wide Shut events.

468. It would be inequitable for Defendants to retain the benefits conferred upon them by using Cripliver's Image without paying fair value for the image.

WHEREFORE, Cripliver respectfully requests that the Court issue a judgment against Defendants for damages, including but not limited to actual damages, costs, interest, imposition of a constructive trust, restitution of unlawful proceeds, including Defendants' gross profits and such other and further relief in law or equity as this Court deems just and proper.

CRIPPLIVER COUNT VII
(Conversion against all Defendants)

469. Cripliver is, and at relevant times was, the exclusive owner of all rights, title, and interest to her Image unlawfully converted by Defendants for Defendants' benefit.

470. Cripliver's Image is recognizable in the photo identified in **Exhibit B**.

471. Cripliver has, and for all times relevant herein had, an intangible property interest in her Image unlawfully converted by Defendants for Defendants' benefit.

472. By their acts and conduct alleged above, Defendants have converted Cripliver's property rights, including without limitation, Cripliver's Image for Defendants' use and wrongful disposition for financial gain.

473. Cripliver is informed and believes and on such information alleges that Defendants have refused to return Cripliver's property to her or pay for the deprivation of Cripliver's property.

474. As a result, Cripliver has suffered compensatory and exemplary damages to be determined according to proof at trial; but Cripliver alleges that the same are within the jurisdiction of the Court.

475. Further, Cripliver is informed and believes and thereon alleges that in engaging in the conduct described above, Defendants acted with oppression, fraud, and/or malice. Defendants' conduct has been despicable and taken in conscious disregard of Cripliver's rights.

WHEREFORE, Cripliver respectfully requests this Court to issue a judgment against Defendants and for all remedies available under the common law claim for conversion, including

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but not limited to actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits, and/or other relief deemed just and proper.

CRIPLIVER COUNT VIII
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Endorsement against all Defendants)

476. Section 43 of the Lanham Act, 15 U.S.C. § 1125, et seq. applies to Defendants and protects Cripliver from the conduct described herein.

477. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from committing any act that "is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person . . . or approval of his or her goods, services, or commercial activities by another person . . ." 15 U.S.C. §1125(a)(1)(A).

478. Cripliver is a model, entertainer, and spokesperson who earns a living based solely on marketing, endorsing, and advertising products and services for her clients.

479. Cripliver works diligently to build herself into a brand that becomes inseparable from her persona.

480. In fact, Cripliver's personae is so associated her brand that the use of the same or similar images and likenesses by Defendants constitutes a false representation by Defendants that its goods and services, i.e. swinger club activities, come from the same source as Cripliver's brand.

481. In other words, Defendants use of Cripliver's personae is, on its face, a false statement that she has, in fact, endorsed Defendants' swingers club and activities.

482. Moreover, Cripliver's images are inherently distinctive or, in the alternative, have through their use acquired a distinctiveness through secondary meaning.

483. Cripliver's images either suggest the basic nature of her product or service, identify the characteristic of her product or service, or suggest characteristics of her product or service that requires an effort of the imagination by the consumer in order to be understood as descriptive.

484. Cripliver's brand - the reason her clients seek to hire her - is unique in that it is encompassed in Cripliver's identity, i.e., her persona.

485. Cripliver's rights to her personae rises to the level of common law trademarks and is entitled to protection under Section 2 of the Lanham Act. Therefore, Defendants' use of Cripliver's image constitutes a False Endorsement under section 2 of the Lanham Act.

486. Defendants used and altered Cripliver's image, likeness and/or identity as described herein without authority in order to create the false perception that she worked at or was otherwise affiliated with Eyz Wide Shut, or endorsed Defendants, Eyz Wide Shut or Eyz Wide Shut's business activities, and/or consented to or authorized Defendants' or Eyz Wide Shut's usage of her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut's events and activities.

487. Cripliver's Image is recognizable in the photo identified in **Exhibit B**.

488. Defendants use of Cripliver's image was for Defendants' commercial benefit and was designed for the sole and express purpose of attracting clientele to Eyz Wide Shut thereby generating revenue for Defendants.

489. Most (if not all) of the Eyz Wide Shut patrons have undoubtedly viewed Cripliver's images in magazines and online.

490. Defendants' unauthorized use and alteration of Cripliver's image, likeness and/or identity to advertise, endorse, promote and market Defendants' business, Eyz Wide Shut and/or

Eyz Wide Shut's events and activities as described in this Complaint has led to a competitive injury to Cripliver.

491. Defendants' unauthorized use and alteration of Cripliver's image, likeness and/or identity as described in this Complaint constitutes a false designation of the source or origin, sponsorship, approval, association, or endorsement, which has deceived Cripliver's fans and present and prospective clients into believing that, among other things, Cripliver works at or is otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut's events or activities, or consented to or authorized Defendants' or Eyz Wide Shut's usage or alteration of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut's events and activities and/or that Cripliver would participate in or appear at the specific events promoted in the advertisement.

492. Despite the fact that Defendants were at all times aware that Cripliver did not work at, nor endorse Eyz Wide Shut, Defendants nevertheless used Cripliver's image to mislead potential customers as to Cripliver's employment at Eyz Wide Shut.

493. Defendants knew that their use of Cripliver's image would cause consumer confusion as to each Plaintiff's sponsorship, endorsement, and/or employment at Eyz Wide Shut.

494. Upon information and belief, Defendants' use of Cripliver's image as described above did, in fact, deceive and/or cause consumer confusion as to whether Cripliver worked at and/or endorsed Eyz Wide Shut, and endorsed Eyz Wide Shut's business.

495. As a direct and proximate results of Defendants' actions, Cripliver has no control over the nature and quality of the services provided by Eyz Wide Shut, the nature of the advertisements depicting her image, likeness and/or identity, or how her image is being depicted by Eyz Wide Shut.

496. Defendants' unauthorized use and alteration of Cripliver's image, likeness and identity as described herein violates 15 U.S.C. §1125(a) and was wrongful.

497. Defendants' wrongful conduct as described herein was willful.

498. As such, the present case is an exceptional case warranting an award of reasonable attorney's fees pursuant to 15 U.S.C. § 1117.

499. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to wrongfully portray Cripliver as endorsing Defendants' business, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Cripliver from such an endorsement.

500. Further, any failure, neglect or default by Defendants will reflect adversely on Cripliver as the believed source of origin, sponsorship, approval or association thereof, hampering efforts by Cripliver to continue to protect her reputation for high quality professional modeling, resulting in loss of sales thereof and the considerable expenditures to promote her personal modeling services to legitimate mainstream media, all to the irreparable harm of Cripliver.

501. Due to Defendants' unauthorized use of Cripliver's image, Cripliver has been damaged in an amount to be determined at trial.

WHEREFORE, Cripliver respectfully requests that the Court enter a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

Plaintiff Brooke Taylor Johnson's Causes of Action

JOHNSON COUNT I

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**(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Advertising against all Defendants)**

502. Section 43 of the Lanham Act, 15 U.S.C. § 1125, *et seq.* applies to Defendants and protects Johnson from the conduct described herein. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from “misrepresent[ing] the nature, characteristics, qualities or geographic origin of his or her or another person’s goods, services or commercial activities . . .” 15 U.S.C. §1125(a)(1)(B).

503. Defendants used Johnson’s Image as described herein without authority in order to create the perception that Johnson worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants’ business and activities, and/or consented to or authorized Defendants to use her image in order to advertise, promote, and market Defendants’ business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities.

504. Johnson’s Image is recognizable in the photo identified in **Exhibit C**.

505. Defendants’ use of Johnson’s Image to advertise, promote and market Defendants’ business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities as described in this First Amended Complaint was false and misleading.

506. Defendants’ unauthorized use of Johnson’s Image as described in this First Amended Complaint constitutes false advertising by suggesting or implying, among other things, that Johnson worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants’ business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants’ usage of her image in order to advertise, promote, and market Defendants business or Eyz Wide Shut events and activities and/or that Johnson would participate in or appear at the specific events promoted in the advertisement.

507. Defendants' false advertising described above has the capacity or tendency to confuse consumers, including actual and prospective patrons of Eyz Wide Shut, as to the general quality of attendees and participants of Eyz Wide Shut and in its events, as well as specifically whether Johnson worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities.

508. Upon information and belief, Defendants' false advertising described above did, in fact, deceive and/or cause consumer confusion as to whether Johnson worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events and activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities. Among other things, upon information and belief, such unauthorized use misled and served to entice consumers and prospective consumers to join Eyz Wide Shut, visit Eyz Wide Shut, and participate in events at Eyz Wide Shut and had a material effect and impact on the decision of members and prospective members and participants to join Eyz Wide Shut, visit Eyz Wide Shut and take part in the events at Eyz Wide Shut.

509. Defendants' advertisements, promotions and marketing of Eyz Wide Shut and events at Eyz Wide Shut occur in and are targeted to interstate commerce. Specifically, Defendants promote their business and events through interstate promotions and campaigns to target persons from different states throughout the United States. Defendants principally use the World Wide Web, social media and other vehicles of interstate commerce to advertise, market, promote, and entice or lure membership and attendance at Eyz Wide Shut events.

510. Defendants' unauthorized use of Johnson's Image as described herein was designed to benefit Defendants' business interests by, among other things, promoting Eyz Wide Shut and its activities and attracting clientele to Eyz Wide Shut.

511. Defendants knew or should have known that their unauthorized use of Johnson's Image would cause consumer confusion as described in this First Amended Complaint.

512. Defendants' unauthorized use of Johnson's Image as described herein violates 15 U.S.C. §1125(a) and was wrongful.

513. Defendants' wrongful conduct as described herein was willful.

514. As such, the present case is an exceptional case warranting an award of reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

515. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Johnson of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Johnson.

516. The method and manner in which Defendants used the image of Johnson further evinces that Defendants were aware of or consciously disregarded the fact that Johnson did not consent to Defendants' use of the image to advertise Defendants' business.

517. Defendants have caused irreparable harm to Johnson, her reputation and brand by attributing to Johnson the swinger's lifestyle and activities at Eyz Wide Shut.

518. Defendants' unauthorized use of Johnson's Image directly and proximately caused and continue to cause damage to Johnson in an amount to be determined at trial.

WHEREFORE, Johnson respectfully requests that the Court issue a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use,

attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

JOHNSON COUNT II
(Violation of Fla. Stat. § 540.08: Right of Publicity;
Unauthorized Misappropriation of Name/Likeness against all Defendants)

519. Johnson has a statutory right of publicity under Section 540.08, Florida Statutes.

520. Section 540.08, Florida Statutes, provides that: “[n]o person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use.”

521. Despite the clear language of Section 540.08, Defendants published Johnson's Image on social media outlets, among others, in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut event and activities.

522. Johnson's Image is recognizable in the photo identified in **Exhibit C**.

523. Defendants never sought permission or authority to use Johnson's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

524. Johnson never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

525. Defendants intentionally or, at a minimum, recklessly published, printed, displayed, or otherwise publicly disseminated or used Johnson's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

526. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or with reckless disregard to deprive Johnson of a property interest during the entire time period in which the unauthorized use took place.

527. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Johnson's rights.

528. Alternatively, Defendants acted negligently towards Johnson in using and disseminating, without authority, her Image on social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

529. Defendants have caused irreparable harm to Johnson, her reputation and brand by attributing to Johnson the swinger's lifestyle and activities at Eyz Wide Shut.

530. Defendants have also damaged Johnson as a direct and proximate result of their unauthorized use of Johnson's Image without compensating Johnson. Defendants' conduct has been despicable and taken in conscious disregard of Johnson's rights.

WHEREFORE, Johnson respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. §540.08, including but not limited to, both actual loss and damages, costs, interest, royalties, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

JOHNSON COUNT III
(Violation of Common Law Right of Publicity;
Unauthorized Misappropriation of Name or Likeness against all Defendants)

531. Johnson has a common law right of publicity.

532. Defendants may not publish, print, display or publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of Johnson without express written or oral consent to such use.

533. Defendants published, printed, displayed and/or publicly used Johnson's Image on their social media outlets, among others, for purposes of trade and/or commercial advertising including, but not limited to, promoting, advertising and marketing of Eyz Wide Shut and Eyz Wide Shut events and activities.

534. Johnson's Image is recognizable in the photo identified in **Exhibit C**.

535. Defendants took these actions without Johnson's permission, consent or authority. In fact, Defendants never sought permission nor authority to use Johnson's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

536. Johnson never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

537. Defendants intentionally or, at a minimum, recklessly, published, printed, displayed, or otherwise publicly disseminated or used Johnson's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

538. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or reckless disregard to deprive Johnson of a property interest during the entire time period in which the unauthorized use took place.

539. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Johnson's rights.

540. Alternatively, Defendants acted negligently towards Johnson in using and disseminating, without authority, her Image on Eyz Wide Shut social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

541. Defendants have caused irreparable harm to Johnson, her reputation and brand by attributing to Johnson the swinger's lifestyle and activities at Eyz Wide Shut.

542. Defendants have also damaged Johnson as a direct and proximate result of their unauthorized use of Johnson's Image without compensating Johnson.

WHEREFORE, Johnson respectfully requests that the Court issue a judgment against Defendants for all remedies available under a claim of misappropriation including, but not limited to, actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

JOHNSON COUNT IV
(Violation of Fla. Stat. § 501.204:
Florida's Deceptive and Unfair Trade Practices Act against all Defendants)

543. Section 501.204(1), Florida Statutes ("FDUTPA") provides that "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

544. Defendants are direct and active participants in market dealings with Johnson by using her image to advertise and promote Eyz Wide Shut not only to patrons of Eyz Wide Shut, but to the general public in interstate commerce.

545. Johnson's Image is recognizable in the photo identified in **Exhibit C**.

546. Defendants at all material times were engaged in a trade or commerce, as defined within Section 501.203, Florida Statutes.

547. Defendants have engaged in deceptive acts and unfair practices in the course of their business activities by:

a. failing to obtain consent from Johnson prior to promoting Defendants' business by and through the misappropriation and use of Johnson's Image;

b. failing to obtain authorization from Johnson prior to the publication of Johnson's Image on Eyz Wide Shut social media outlets;

c. failing to compensate Johnson for the misappropriation and use of her Image on Eyz Wide Shut social media outlets;

d. falsely representing by implication to the public that Johnson endorsed the Defendants' business, or would be present at and participate in Eyz Wide Shut events; and

e. falsely representing by implication that Johnson sanctioned the type of business, events, lifestyle, or other activities promoted by Defendants.

548. Defendants' conduct described herein was misleading.

549. Defendants knew their unauthorized use of Johnson's Image was misleading.

550. Defendants' unauthorized use of Johnson's Image as detailed herein violates Section 501.204(1), Florida Statutes, and was wrongfult.

551. Defendants' wrongfult conduct as detailed herein was willful and malicious.

552. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Johnson of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Johnson.

553. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Johnson's rights.

554. Alternatively, the method and manner in which Defendants used Johnson's Image further evinces that Defendants were aware or consciously disregarded that Johnson did not consent to Defendants' use to advertise Defendants' business.

555. Defendants have caused irreparable harm to Johnson, her reputation and brand by attributing to Johnson the swinger's lifestyle and activities at Eyz Wide Shut.

556. Defendants' unauthorized use of Johnson's Image directly and proximately caused damage to Johnson in an amount to be determined at trial.

WHEREFORE, Johnson respectfully requests that the Court issue a judgment against Defendants for actual damages, including loss of profit, attorneys' fees, interest, costs, compensatory damages, damage to professional reputation, consequential damages, statutory civil penalties under Fla. Stat. § 501.2075, and such other relief as this Court deems just and proper.

JOHNSON COUNT V
(Violation of Fla. Stat. § 812.014 and Fla. Stat. § 772.11:
Civil Theft against all Defendants)

557. Section 772.11, Florida Statutes, creates a private right of action for victims of theft of tangible and intangible personal property, including rights, privileges, interests and claims.

558. Defendants knowingly appropriated, used and disseminated Johnson's Image without authorization or consent.

559. Johnson's Image is recognizable in the photo identified in **Exhibit C**.

560. Defendants' misappropriation of Johnson's Image was for Defendants' own use and benefit and to deprive Johnson of certain rights.

561. Defendants' misconduct detailed in this First Amended Complaint denied Johnson the right to engage in arms-length negotiations over the use and dissemination of her Image, the right to negotiate over reasonable bargained-for compensation, the right to say "no" to the proposed use by Defendants and the right to otherwise protect her Image from harm at the hands of Defendants.

562. Defendants' appropriation of Johnson's Image as detailed herein without authority violates Sections 772.11 and 812.014, Florida Statutes, and was wrongful.

563. Defendants' wrongful conduct as detailed herein was willful and malicious.

564. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Johnson of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Johnson.

565. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Johnson's rights.

566. Alternatively, the method and manner in which Defendants used Johnson's Image further evinces that Defendants were aware or consciously disregarded the fact that Johnson did not consent to Defendants' use in order to advertise Defendants' business.

567. Defendants' appropriation and use of Johnson's Image without authority directly and proximately caused damage to Johnson in an amount to be determined at trial.

WHEREFORE, Johnson respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. § 772.11(1), including but not limited to, treble the amount of actual damages, costs, interest, and attorneys' fees and other relief deemed just and proper by this Court.

JOHNSON COUNT VI
(Unjust Enrichment against all Defendants)

568. Johnson has conferred a benefit upon Defendants by virtue of Defendants' usage of her image without compensation.

569. Johnson's Image is recognizable in the photo identified in **Exhibit C**.

570. Defendants were aware that Johnson's Image were valuable.

571. Defendants were aware of the resulting benefit from usage of Johnson's Image.

572. Defendants have retained profits and other benefits conferred upon them by using Johnson's Image to promote and advertise Defendants' business, Eyz Wide Shut or Eyz Wide Shut events.

573. It would be inequitable for Defendants to retain the benefits conferred upon them by using Johnson's Image without paying fair value for the image.

WHEREFORE, Johnson respectfully requests that the Court issue a judgment against Defendants for damages, including but not limited to actual damages, costs, interest, imposition of a constructive trust, restitution of unlawful proceeds, including Defendants' gross profits and such other and further relief in law or equity as this Court deems just and proper.

JOHNSON COUNT VII
(Conversion against all Defendants)

574. Johnson is, and at relevant times was, the exclusive owner of all rights, title, and interest to her Image unlawfully converted by Defendants for Defendants' benefit.

575. Johnson's Image is recognizable in the photo identified in **Exhibit C**.

576. Johnson has, and for all times relevant herein had, an intangible property interest in her Image unlawfully converted by Defendants for Defendants' benefit.

577. By their acts and conduct alleged above, Defendants have converted Johnson's property rights, including without limitation, Johnson's Image for Defendants' use and wrongful disposition for financial gain.

578. Johnson is informed and believes and on such information alleges that Defendants have refused to return Johnson's property to her or pay for the deprivation of Johnson's property.

579. As a result, Johnson has suffered compensatory and exemplary damages to be determined according to proof at trial; but Johnson alleges that the same are within the jurisdiction of the Court.

580. Further, Johnson is informed and believes and thereon alleges that in engaging in the conduct described above, Defendants acted with oppression, fraud, and/or malice. Defendants' conduct has been despicable and taken in conscious disregard of Johnson's rights.

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WHEREFORE, Johnson respectfully requests this Court to issue a judgment against Defendants and for all remedies available under the common law claim for conversion, including but not limited to actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits, and/or other relief deemed just and proper.

JOHNSON COUNT VIII
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Endorsement against all Defendants)

581. Section 43 of the Lanham Act, 15 U.S.C. § 1125, et seq. applies to Defendants and protects Johnson from the conduct described herein.

582. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from committing any act that "is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person . . . or approval of his or her goods, services, or commercial activities by another person . . ." 15 U.S.C. §1125(a)(1)(A).

583. Johnson is a model, entertainer, and spokesperson who earns a living based solely on marketing, endorsing, and advertising products and services for her clients.

584. Johnson works diligently to build herself into a brand that becomes inseparable from her persona.

585. In fact, Johnson's personae is so associated her brand that the use of the same or similar images and likenesses by Defendants constitutes a false representation by Defendants that its goods and services, i.e. swinger club activities, come from the same source as Johnson's brand.

586. In other words, Defendants use of Johnson's personae is, on its face, a false statement that she has, in fact, endorsed Defendants' swingers club and activities.

587. Moreover, Johnson's images are inherently distinctive or, in the alternative, have through their use acquired a distinctiveness through secondary meaning.

588. Johnson's images either suggest the basic nature of her product or service, identify the characteristic of her product or service, or suggest characteristics of her product or service that requires an effort of the imagination by the consumer in order to be understood as descriptive.

589. Johnson's brand - the reason her clients seek to hire her - is unique in that it is encompassed in Johnson's identity, i.e., her persona.

590. Johnson's rights to her personae rises to the level of common law trademarks and is entitled to protection under Section 2 of the Lanham Act. Therefore, Defendants' use of Johnson's image constitutes a False Endorsement under section 2 of the Lanham Act.

591. Defendants used and altered Johnson's image, likeness and/or identity as described herein without authority in order to create the false perception that she worked at or was otherwise affiliated with Eyz Wide Shut, or endorsed Defendants, Eyz Wide Shut or Eyz Wide Shut's business activities, and/or consented to or authorized Defendants' or Eyz Wide Shut's usage of her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut's events and activities.

592. Johnson's Image is recognizable in the photo identified in **Exhibit C**.

593. Defendants use of Johnson's image was for Defendants' commercial benefit and was designed for the sole and express purpose of attracting clientele to Eyz Wide Shut thereby generating revenue for Defendants.

594. Most (if not all) of the Eyz Wide Shut patrons have undoubtedly viewed Johnson's images in magazines and online.

595. Defendants' unauthorized use and alteration of Johnson's image, likeness and/or identity to advertise, endorse, promote and market Defendants' business, Eyz Wide Shut and/or Eyz Wide Shut's events and activities as described in this Complaint has led to a competitive injury to Johnson.

596. Defendants' unauthorized use and alteration of Johnson's image, likeness and/or identity as described in this Complaint constitutes a false designation of the source or origin, sponsorship, approval, association, or endorsement, which has deceived Johnson's fans and present and prospective clients into believing that, among other things, Johnson works at or is otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut's events or activities, or consented to or authorized Defendants' or Eyz Wide Shut's usage or alteration of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut's events and activities and/or that Johnson would participate in or appear at the specific events promoted in the advertisement.

597. Despite the fact that Defendants were at all times aware that Johnson did not work at, nor endorse Eyz Wide Shut, Defendants nevertheless used Johnson's image to mislead potential customers as to Johnson's employment at Eyz Wide Shut.

598. Defendants knew that their use of Johnson's image would cause consumer confusion as to each Plaintiff's sponsorship, endorsement, and/or employment at Eyz Wide Shut.

599. Upon information and belief, Defendants' use of Johnson's image as described above did, in fact, deceive and/or cause consumer confusion as to whether Johnson worked at and/or endorsed Eyz Wide Shut, and endorsed Eyz Wide Shut's business.

600. As a direct and proximate results of Defendants' actions, Johnson has no control over the nature and quality of the services provided by Eyz Wide Shut, the nature of the

advertisements depicting her image, likeness and/or identity, or how her image is being depicted by Eyz Wide Shut.

601. Defendants' unauthorized use and alteration of Johnson's image, likeness and identity as described herein violates 15 U.S.C. §1125(a) and was wrongful.

602. Defendants' wrongful conduct as described herein was willful.

603. As such, the present case is an exceptional case warranting an award of reasonable attorney's fees pursuant to 15 U.S.C. § 1117.

604. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to wrongfully portray Johnson as endorsing Defendants' business, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Johnson from such an endorsement.

605. Further, any failure, neglect or default by Defendants will reflect adversely on Johnson as the believed source of origin, sponsorship, approval or association thereof, hampering efforts by Johnson to continue to protect her reputation for high quality professional modeling, resulting in loss of sales thereof and the considerable expenditures to promote her personal modeling services to legitimate mainstream media, all to the irreparable harm of Johnson.

606. Due to Defendants' unauthorized use of Johnson's image, Johnson has been damaged in an amount to be determined at trial.

WHEREFORE, Johnson respectfully requests that the Court enter a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

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Plaintiff Cielo Jean Gibson's Causes of Action

GIBSON COUNT I
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Advertising against all Defendants)

607. Section 43 of the Lanham Act, 15 U.S.C. § 1125, *et seq.* applies to Defendants and protects Gibson from the conduct described herein. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from “misrepresent[ing] the nature, characteristics, qualities or geographic origin of his or her or another person’s goods, services or commercial activities . . .” 15 U.S.C. §1125(a)(1)(B).

608. Defendants used Gibson’s Image as described herein without authority in order to create the perception that Gibson worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants’ business and activities, and/or consented to or authorized Defendants to use her image in order to advertise, promote, and market Defendants’ business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities.

609. Gibson’s Image is recognizable in the photo identified in **Exhibit D**.

610. Defendants’ use of Gibson’s Image to advertise, promote and market Defendants’ business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities as described in this First Amended Complaint was false and misleading.

611. Defendants’ unauthorized use of Gibson’s Image as described in this First Amended Complaint constitutes false advertising by suggesting or implying, among other things, that Gibson worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants’ business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants’ usage of her image in order to advertise, promote, and market Defendants business or

Eyz Wide Shut events and activities and/or that Gibson would participate in or appear at the specific events promoted in the advertisement.

612. Defendants' false advertising described above has the capacity or tendency to confuse consumers, including actual and prospective patrons of Eyz Wide Shut, as to the general quality of attendees and participants of Eyz Wide Shut and in its events, as well as specifically whether Gibson worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities.

613. Upon information and belief, Defendants' false advertising described above did, in fact, deceive and/or cause consumer confusion as to whether Gibson worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events and activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities. Among other things, upon information and belief, such unauthorized use misled and served to entice consumers and prospective consumers to join Eyz Wide Shut, visit Eyz Wide Shut, and participate in events at Eyz Wide Shut and had a material effect and impact on the decision of members and prospective members and participants to join Eyz Wide Shut, visit Eyz Wide Shut and take part in the events at Eyz Wide Shut.

614. Defendants' advertisements, promotions and marketing of Eyz Wide Shut and events at Eyz Wide Shut occur in and are targeted to interstate commerce. Specifically, Defendants promote their business and events through interstate promotions and campaigns to target persons from different states throughout the United States. Defendants principally use the World Wide

Web, social media and other vehicles of interstate commerce to advertise, market, promote, and entice or lure membership and attendance at Eyz Wide Shut events.

615. Defendants' unauthorized use of Gibson's Image as described herein was designed to benefit Defendants' business interests by, among other things, promoting Eyz Wide Shut and its activities and attracting clientele to Eyz Wide Shut.

616. Defendants knew or should have known that their unauthorized use of Gibson's Image would cause consumer confusion as described in this First Amended Complaint.

617. Defendants' unauthorized use of Gibson's Image as described herein violates 15 U.S.C. §1125(a) and was wrongful.

618. Defendants' wrongful conduct as described herein was willful.

619. As such, the present case is an exceptional case warranting an award of reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

620. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Gibson of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Gibson.

621. The method and manner in which Defendants used the image of Gibson further evinces that Defendants were aware of or consciously disregarded the fact that Gibson did not consent to Defendants' use of the image to advertise Defendants' business.

622. Defendants have caused irreparable harm to Gibson, her reputation and brand by attributing to Gibson the swinger's lifestyle and activities at Eyz Wide Shut.

623. Defendants' unauthorized use of Gibson's Image directly and proximately caused and continue to cause damage to Gibson in an amount to be determined at trial.

WHEREFORE, Gibson respectfully requests that the Court issue a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

GIBSON COUNT II
**(Violation of Fla. Stat. § 540.08: Right of Publicity;
Unauthorized Misappropriation of Name/Likeness against all Defendants)**

624. Gibson has a statutory right of publicity under Section 540.08, Florida Statutes.

625. Section 540.08, Florida Statutes, provides that: "[n]o person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use."

626. Despite the clear language of Section 540.08, Defendants published Gibson's Image on social media outlets, among others, in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut event and activities.

627. Gibson's Image is recognizable in the photo identified in **Exhibit D**.

628. Defendants never sought permission or authority to use Gibson's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

629. Gibson never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

630. Defendants intentionally or, at a minimum, recklessly published, printed, displayed, or otherwise publicly disseminated or used Gibson's Image without her express written or oral

consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

631. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or with reckless disregard to deprive Gibson of a property interest during the entire time period in which the unauthorized use took place.

632. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Gibson's rights.

633. Alternatively, Defendants acted negligently towards Gibson in using and disseminating, without authority, her Image on social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

634. Defendants have caused irreparable harm to Gibson, her reputation and brand by attributing to Gibson the swinger's lifestyle and activities at Eyz Wide Shut.

635. Defendants have also damaged Gibson as a direct and proximate result of their unauthorized use of Gibson's Image without compensating Gibson. Defendants' conduct has been despicable and taken in conscious disregard of Gibson's rights.

WHEREFORE, Gibson respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. §540.08, including but not limited to, both actual loss and damages, costs, interest, royalties, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

GIBSON COUNT III
(Violation of Common Law Right of Publicity;
Unauthorized Misappropriation of Name or Likeness against all Defendants)

636. Gibson has a common law right of publicity.

637. Defendants may not publish, print, display or publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of Gibson without express written or oral consent to such use.

638. Defendants published, printed, displayed and/or publicly used Gibson's Image on their social media outlets, among others, for purposes of trade and/or commercial advertising including, but not limited to, promoting, advertising and marketing of Eyz Wide Shut and Eyz Wide Shut events and activities.

639. Gibson's Image is recognizable in the photo identified in **Exhibit D**.

640. Defendants took these actions without Gibson's permission, consent or authority. In fact, Defendants never sought permission nor authority to use Gibson's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

641. Gibson never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

642. Defendants intentionally or, at a minimum, recklessly, published, printed, displayed, or otherwise publicly disseminated or used Gibson's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

643. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or reckless disregard to deprive Gibson of a property interest during the entire time period in which the unauthorized use took place.

644. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Gibson's rights.

645. Alternatively, Defendants acted negligently towards Gibson in using and disseminating, without authority, her Image on Eyz Wide Shut social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

646. Defendants have caused irreparable harm to Gibson, her reputation and brand by attributing to Gibson the swinger's lifestyle and activities at Eyz Wide Shut.

647. Defendants have also damaged Gibson as a direct and proximate result of their unauthorized use of Gibson's Image without compensating Gibson.

WHEREFORE, Gibson respectfully requests that the Court issue a judgment against Defendants for all remedies available under a claim of misappropriation including, but not limited to, actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

GIBSON COUNT IV
(Violation of Fla. Stat. § 501.204:
Florida's Deceptive and Unfair Trade Practices Act against all Defendants)

648. Section 501.204(1), Florida Statutes ("FDUTPA") provides that "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

649. Defendants are direct and active participants in market dealings with Gibson by using her image to advertise and promote Eyz Wide Shut not only to patrons of Eyz Wide Shut, but to the general public in interstate commerce.

650. Gibson's Image is recognizable in the photo identified in **Exhibit D**.

651. Defendants at all material times were engaged in a trade or commerce, as defined within Section 501.203, Florida Statutes.

652. Defendants have engaged in deceptive acts and unfair practices in the course of their business activities by:

- a. failing to obtain consent from Gibson prior to promoting Defendants' business by and through the misappropriation and use of Gibson's Image;
- b. failing to obtain authorization from Gibson prior to the publication of Gibson's Image on Eyz Wide Shut social media outlets;
- c. failing to compensate Gibson for the misappropriation and use of her Image on Eyz Wide Shut social media outlets;
- d. falsely representing by implication to the public that Gibson endorsed the Defendants' business, or would be present at and participate in Eyz Wide Shut events; and
- e. falsely representing by implication that Gibson sanctioned the type of business, events, lifestyle, or other activities promoted by Defendants.

653. Defendants' conduct described herein was misleading.

654. Defendants knew their unauthorized use of Gibson's Image was misleading.

655. Defendants' unauthorized use of Gibson's Image as detailed herein violates Section 501.204(1), Florida Statutes, and was wrongful.

656. Defendants' wrongful conduct as detailed herein was willful and malicious.

657. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Gibson of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Gibson.

658. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Gibson's rights.

659. Alternatively, the method and manner in which Defendants used Gibson's Image further evinces that Defendants were aware or consciously disregarded that Gibson did not consent to Defendants' use to advertise Defendants' business.

660. Defendants have caused irreparable harm to Gibson, her reputation and brand by attributing to Gibson the swinger's lifestyle and activities at Eyz Wide Shut.

661. Defendants' unauthorized use of Gibson's Image directly and proximately caused damage to Gibson in an amount to be determined at trial.

WHEREFORE, Gibson respectfully requests that the Court issue a judgment against Defendants for actual damages, including loss of profit, attorneys' fees, interest, costs, compensatory damages, damage to professional reputation, consequential damages, statutory civil penalties under Fla. Stat. § 501.2075, and such other relief as this Court deems just and proper.

GIBSON COUNT V
(Violation of Fla. Stat. § 812.014 and Fla. Stat. § 772.11:
Civil Theft against all Defendants)

662. Section 772.11, Florida Statutes, creates a private right of action for victims of theft of tangible and intangible personal property, including rights, privileges, interests and claims.

663. Defendants knowingly appropriated, used and disseminated Gibson's Image without authorization or consent.

664. Gibson's Image is recognizable in the photo identified in **Exhibit D**.

665. Defendants' misappropriation of Gibson's Image was for Defendants' own use and benefit and to deprive Gibson of certain rights.

666. Defendants' misconduct detailed in this First Amended Complaint denied Gibson the right to engage in arms-length negotiations over the use and dissemination of her Image, the right to negotiate over reasonable bargained-for compensation, the right to say "no" to the

proposed use by Defendants and the right to otherwise protect her Image from harm at the hands of Defendants.

667. Defendants' appropriation of Gibson's Image as detailed herein without authority violates Sections 772.11 and 812.014, Florida Statutes, and was wrongful.

668. Defendants' wrongful conduct as detailed herein was willful and malicious.

669. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Gibson of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Gibson.

670. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Gibson's rights.

671. Alternatively, the method and manner in which Defendants used Gibson's Image further evinces that Defendants were aware or consciously disregarded the fact that Gibson did not consent to Defendants' use in order to advertise Defendants' business.

672. Defendants' appropriation and use of Gibson's Image without authority directly and proximately caused damage to Gibson in an amount to be determined at trial.

WHEREFORE, Gibson respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. § 772.11(1), including but not limited to, treble the amount of actual damages, costs, interest, and attorneys' fees and other relief deemed just and proper by this Court.

GIBSON COUNT VI
(Unjust Enrichment against all Defendants)

673. Gibson has conferred a benefit upon Defendants by virtue of Defendants' usage of her image without compensation.

674. Gibson's Image is recognizable in the photo identified in **Exhibit D**.

The Casas Law Firm, P.C.
Brickell Bayview Center 80 S.W. 8th Street, Suite 2000, Miami, FL 33130

675. Defendants were aware that Gibson's Image were valuable.

676. Defendants were aware of the resulting benefit from usage of Gibson's Image.

677. Defendants have retained profits and other benefits conferred upon them by using Gibson's Image to promote and advertise Defendants' business, Eyz Wide Shut or Eyz Wide Shut events.

678. It would be inequitable for Defendants to retain the benefits conferred upon them by using Gibson's Image without paying fair value for the image.

WHEREFORE, Gibson respectfully requests that the Court issue a judgment against Defendants for damages, including but not limited to actual damages, costs, interest, imposition of a constructive trust, restitution of unlawful proceeds, including Defendants' gross profits and such other and further relief in law or equity as this Court deems just and proper.

GIBSON COUNT VII
(Conversion against all Defendants)

679. Gibson is, and at relevant times was, the exclusive owner of all rights, title, and interest to her Image unlawfully converted by Defendants for Defendants' benefit.

680. Gibson's Image is recognizable in the photo identified in **Exhibit D**.

681. Gibson has, and for all times relevant herein had, an intangible property interest in her Image unlawfully converted by Defendants for Defendants' benefit.

682. By their acts and conduct alleged above, Defendants have converted Gibson's property rights, including without limitation, Gibson's Image for Defendants' use and wrongful disposition for financial gain.

683. Gibson is informed and believes and on such information alleges that Defendants have refused to return Gibson's property to her or pay for the deprivation of Gibson's property.

684. As a result, Gibson has suffered compensatory and exemplary damages to be determined according to proof at trial; but Gibson alleges that the same are within the jurisdiction of the Court.

685. Further, Gibson is informed and believes and thereon alleges that in engaging in the conduct described above, Defendants acted with oppression, fraud, and/or malice. Defendants' conduct has been despicable and taken in conscious disregard of Gibson's rights.

WHEREFORE, Gibson respectfully requests this Court to issue a judgment against Defendants and for all remedies available under the common law claim for conversion, including but not limited to actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits, and/or other relief deemed just and proper.

GIBSON COUNT VIII
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Endorsement against all Defendants)

686. Section 43 of the Lanham Act, 15 U.S.C. § 1125, et seq. applies to Defendants and protects Gibson from the conduct described herein.

687. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from committing any act that "is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person . . . or approval of his or her goods, services, or commercial activities by another person . . ." 15 U.S.C. §1125(a)(1)(A).

688. Gibson is a model, entertainer, and spokesperson who earns a living based solely on marketing, endorsing, and advertising products and services for her clients.

689. Gibson works diligently to build herself into a brand that becomes inseparable from her persona.

690. In fact, Gibson's personae is so associated her brand that the use of the same or similar images and likenesses by Defendants constitutes a false representation by Defendants that its goods and services, i.e. swinger club activities, come from the same source as Gibson's brand.

691. In other words, Defendants use of Gibson's personae is, on its face, a false statement that she has, in fact, endorsed Defendants' swingers club and activities.

692. Moreover, Gibson's images are inherently distinctive or, in the alternative, have through their use acquired a distinctiveness through secondary meaning.

693. Gibson's images either suggest the basic nature of her product or service, identify the characteristic of her product or service, or suggest characteristics of her product or service that requires an effort of the imagination by the consumer in order to be understood as descriptive.

694. Gibson's brand - the reason her clients seek to hire her - is unique in that it is encompassed in Gibson's identity, i.e., her persona.

695. Gibson's rights to her personae rises to the level of common law trademarks and is entitled to protection under Section 2 of the Lanham Act. Therefore, Defendants' use of Gibson's image constitutes a False Endorsement under section 2 of the Lanham Act.

696. Defendants used and altered Gibson's image, likeness and/or identity as described herein without authority in order to create the false perception that she worked at or was otherwise affiliated with Eyz Wide Shut, or endorsed Defendants, Eyz Wide Shut or Eyz Wide Shut's business activities, and/or consented to or authorized Defendants' or Eyz Wide Shut's usage of her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut's events and activities.

697. Gibson's Image is recognizable in the photo identified in **Exhibit D**.

698. Defendants use of Gibson's image was for Defendants' commercial benefit and was designed for the sole and express purpose of attracting clientele to Eyz Wide Shut thereby generating revenue for Defendants.

699. Most (if not all) of the Eyz Wide Shut patrons have undoubtedly viewed Gibson's images in magazines and online.

700. Defendants' unauthorized use and alteration of Gibson's image, likeness and/or identity to advertise, endorse, promote and market Defendants' business, Eyz Wide Shut and/or Eyz Wide Shut's events and activities as described in this Complaint has led to a competitive injury to Gibson.

701. Defendants' unauthorized use and alteration of Gibson's image, likeness and/or identity as described in this Complaint constitutes a false designation of the source or origin, sponsorship, approval, association, or endorsement, which has deceived Gibson's fans and present and prospective clients into believing that, among other things, Gibson works at or is otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut's events or activities, or consented to or authorized Defendants' or Eyz Wide Shut's usage or alteration of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut's events and activities and/or that Gibson would participate in or appear at the specific events promoted in the advertisement.

702. Despite the fact that Defendants were at all times aware that Gibson did not work at, nor endorse Eyz Wide Shut, Defendants nevertheless used Gibson's image to mislead potential customers as to Gibson's employment at Eyz Wide Shut.

703. Defendants knew that their use of Gibson's image would cause consumer confusion as to each Plaintiff's sponsorship, endorsement, and/or employment at Eyz Wide Shut.

704. Upon information and belief, Defendants' use of Gibson's image as described above did, in fact, deceive and/or cause consumer confusion as to whether Gibson worked at and/or endorsed Eyz Wide Shut, and endorsed Eyz Wide Shut's business.

705. As a direct and proximate results of Defendants' actions, Gibson has no control over the nature and quality of the services provided by Eyz Wide Shut, the nature of the advertisements depicting her image, likeness and/or identity, or how her image is being depicted by Eyz Wide Shut.

706. Defendants' unauthorized use and alteration of Gibson's image, likeness and identity as described herein violates 15 U.S.C. §1125(a) and was wrongful.

707. Defendants' wrongful conduct as described herein was willful.

708. As such, the present case is an exceptional case warranting an award of reasonable attorney's fees pursuant to 15 U.S.C. § 1117.

709. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to wrongfully portray Gibson as endorsing Defendants' business, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Gibson from such an endorsement.

710. Further, any failure, neglect or default by Defendants will reflect adversely on Gibson as the believed source of origin, sponsorship, approval or association thereof, hampering efforts by Gibson to continue to protect her reputation for high quality professional modeling, resulting in loss of sales thereof and the considerable expenditures to promote her personal modeling services to legitimate mainstream media, all to the irreparable harm of Gibson.

711. Due to Defendants' unauthorized use of Gibson's image, Gibson has been damaged in an amount to be determined at trial.

WHEREFORE, Gibson respectfully requests that the Court enter a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

Plaintiff Cora Skinner's Causes of Action

SKINNER COUNT I
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Advertising against all Defendants)

712. Section 43 of the Lanham Act, 15 U.S.C. § 1125, *et seq.* applies to Defendants and protects Skinner from the conduct described herein. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from “misrepresent[ing] the nature, characteristics, qualities or geographic origin of his or her or another person’s goods, services or commercial activities . . .” 15 U.S.C. §1125(a)(1)(B).

713. Defendants used Skinner’s Image as described herein without authority in order to create the perception that Skinner worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants’ business and activities, and/or consented to or authorized Defendants to use her image in order to advertise, promote, and market Defendants’ business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities.

714. Skinner’s Image is recognizable in the photo identified in **Exhibit E**.

715. Defendants’ use of Skinner’s Image to advertise, promote and market Defendants’ business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities as described in this First Amended Complaint was false and misleading.

716. Defendants' unauthorized use of Skinner's Image as described in this First Amended Complaint constitutes false advertising by suggesting or implying, among other things, that Skinner worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants business or Eyz Wide Shut events and activities and/or that Skinner would participate in or appear at the specific events promoted in the advertisement.

717. Defendants' false advertising described above has the capacity or tendency to confuse consumers, including actual and prospective patrons of Eyz Wide Shut, as to the general quality of attendees and participants of Eyz Wide Shut and in its events, as well as specifically whether Skinner worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities.

718. Upon information and belief, Defendants' false advertising described above did, in fact, deceive and/or cause consumer confusion as to whether Skinner worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events and activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities. Among other things, upon information and belief, such unauthorized use misled and served to entice consumers and prospective consumers to join Eyz Wide Shut, visit Eyz Wide Shut, and participate in events at Eyz Wide Shut and had a material effect and impact on the decision of

members and prospective members and participants to join Eyz Wide Shut, visit Eyz Wide Shut and take part in the events at Eyz Wide Shut.

719. Defendants' advertisements, promotions and marketing of Eyz Wide Shut and events at Eyz Wide Shut occur in and are targeted to interstate commerce. Specifically, Defendants promote their business and events through interstate promotions and campaigns to target persons from different states throughout the United States. Defendants principally use the World Wide Web, social media and other vehicles of interstate commerce to advertise, market, promote, and entice or lure membership and attendance at Eyz Wide Shut events.

720. Defendants' unauthorized use of Skinner's Image as described herein was designed to benefit Defendants' business interests by, among other things, promoting Eyz Wide Shut and its activities and attracting clientele to Eyz Wide Shut.

721. Defendants knew or should have known that their unauthorized use of Skinner's Image would cause consumer confusion as described in this First Amended Complaint.

722. Defendants' unauthorized use of Skinner's Image as described herein violates 15 U.S.C. §1125(a) and was wrongful.

723. Defendants' wrongful conduct as described herein was willful.

724. As such, the present case is an exceptional case warranting an award of reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

725. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Skinner of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Skinner.

726. The method and manner in which Defendants used the image of Skinner further evinces that Defendants were aware of or consciously disregarded the fact that Skinner did not consent to Defendants' use of the image to advertise Defendants' business.

727. Defendants have caused irreparable harm to Skinner, her reputation and brand by attributing to Skinner the swinger's lifestyle and activities at Eyz Wide Shut.

728. Defendants' unauthorized use of Skinner's Image directly and proximately caused and continue to cause damage to Skinner in an amount to be determined at trial.

WHEREFORE, Skinner respectfully requests that the Court issue a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, pre-judgment and post-judgment interest, and/or such further relief that is just and proper.

SKINNER COUNT II
(Violation of Fla. Stat. § 540.08: Right of Publicity;
Unauthorized Misappropriation of Name/Likeness against all Defendants)

729. Skinner has a statutory right of publicity under Section 540.08, Florida Statutes.

730. Section 540.08, Florida Statutes, provides that: "[n]o person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use."

731. Despite the clear language of Section 540.08, Defendants published Skinner's Image on social media outlets, among others, in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut event and activities.

732. Skinner's Image is recognizable in the photo identified in **Exhibit E**.

733. Defendants never sought permission or authority to use Skinner's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

734. Skinner never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

735. Defendants intentionally or, at a minimum, recklessly published, printed, displayed, or otherwise publicly disseminated or used Skinner's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

736. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or with reckless disregard to deprive Skinner of a property interest during the entire time period in which the unauthorized use took place.

737. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Skinner's rights.

738. Alternatively, Defendants acted negligently towards Skinner in using and disseminating, without authority, her Image on social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

739. Defendants have caused irreparable harm to Skinner, her reputation and brand by attributing to Skinner the swinger's lifestyle and activities at Eyz Wide Shut.

740. Defendants have also damaged Skinner as a direct and proximate result of their unauthorized use of Skinner's Image without compensating Skinner. Defendants' conduct has been despicable and taken in conscious disregard of Skinner's rights.

WHEREFORE, Skinner respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. §540.08, including but not limited to, both actual loss and damages, costs, interest, royalties, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

SKINNER COUNT III
(Violation of Common Law Right of Publicity;
Unauthorized Misappropriation of Name or Likeness against all Defendants)

741. Skinner has a common law right of publicity.

742. Defendants may not publish, print, display or publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of Skinner without express written or oral consent to such use.

743. Defendants published, printed, displayed and/or publicly used Skinner's Image on their social media outlets, among others, for purposes of trade and/or commercial advertising including, but not limited to, promoting, advertising and marketing of Eyz Wide Shut and Eyz Wide Shut events and activities.

744. Skinner's Image is recognizable in the photo identified in **Exhibit E**.

745. Defendants took these actions without Skinner's permission, consent or authority. In fact, Defendants never sought permission nor authority to use Skinner's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

746. Skinner never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

747. Defendants intentionally or, at a minimum, recklessly, published, printed, displayed, or otherwise publicly disseminated or used Skinner's Image without her express written

or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

748. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or reckless disregard to deprive Skinner of a property interest during the entire time period in which the unauthorized use took place.

749. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Skinner's rights.

750. Alternatively, Defendants acted negligently towards Skinner in using and disseminating, without authority, her Image on Eyz Wide Shut social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

751. Defendants have caused irreparable harm to Skinner, her reputation and brand by attributing to Skinner the swinger's lifestyle and activities at Eyz Wide Shut.

752. Defendants have also damaged Skinner as a direct and proximate result of their unauthorized use of Skinner's Image without compensating Skinner.

WHEREFORE, Skinner respectfully requests that the Court issue a judgment against Defendants for all remedies available under a claim of misappropriation including, but not limited to, actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

SKINNER COUNT IV
(Violation of Fla. Stat. § 501.204:
Florida's Deceptive and Unfair Trade Practices Act against all Defendants)

753. Section 501.204(1), Florida Statutes ("FDUTPA") provides that "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

754. Defendants are direct and active participants in market dealings with Skinner by using her image to advertise and promote Eyz Wide Shut not only to patrons of Eyz Wide Shut, but to the general public in interstate commerce.

755. Skinner's Image is recognizable in the photo identified in **Exhibit E**.

756. Defendants at all material times were engaged in a trade or commerce, as defined within Section 501.203, Florida Statutes.

757. Defendants have engaged in deceptive acts and unfair practices in the course of their business activities by:

a. failing to obtain consent from Skinner prior to promoting Defendants' business by and through the misappropriation and use of Skinner's Image;

b. failing to obtain authorization from Skinner prior to the publication of Skinner's Image on Eyz Wide Shut social media outlets;

c. failing to compensate Skinner for the misappropriation and use of her Image on Eyz Wide Shut social media outlets;

d. falsely representing by implication to the public that Skinner endorsed the Defendants' business, or would be present at and participate in Eyz Wide Shut events; and

e. falsely representing by implication that Skinner sanctioned the type of business, events, lifestyle, or other activities promoted by Defendants.

758. Defendants' conduct described herein was misleading.

759. Defendants knew their unauthorized use of Skinner's Image was misleading.

760. Defendants' unauthorized use of Skinner's Image as detailed herein violates Section 501.204(1), Florida Statutes, and was wrongful.

761. Defendants' wrongful conduct as detailed herein was willful and malicious.

762. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Skinner of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Skinner.

763. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Skinner's rights.

764. Alternatively, the method and manner in which Defendants used Skinner's Image further evinces that Defendants were aware or consciously disregarded that Skinner did not consent to Defendants' use to advertise Defendants' business.

765. Defendants have caused irreparable harm to Skinner, her reputation and brand by attributing to Skinner the swinger's lifestyle and activities at Eyz Wide Shut.

766. Defendants' unauthorized use of Skinner's Image directly and proximately caused damage to Skinner in an amount to be determined at trial.

WHEREFORE, Skinner respectfully requests that the Court issue a judgment against Defendants for actual damages, including loss of profit, attorneys' fees, interest, costs, compensatory damages, damage to professional reputation, consequential damages, statutory civil penalties under Fla. Stat. § 501.2075, and such other relief as this Court deems just and proper.

SKINNER COUNT V
**(Violation of Fla. Stat. § 812.014 and Fla. Stat. § 772.11:
Civil Theft against all Defendants)**

767. Section 772.11, Florida Statutes, creates a private right of action for victims of theft of tangible and intangible personal property, including rights, privileges, interests and claims.

768. Defendants knowingly appropriated, used and disseminated Skinner's Image without authorization or consent.

769. Skinner's Image is recognizable in the photo identified in **Exhibit E**.

770. Defendants' misappropriation of Skinner's Image was for Defendants' own use and benefit and to deprive Skinner of certain rights.

771. Defendants' misconduct detailed in this First Amended Complaint denied Skinner the right to engage in arms-length negotiations over the use and dissemination of her Image, the right to negotiate over reasonable bargained-for compensation, the right to say "no" to the proposed use by Defendants and the right to otherwise protect her Image from harm at the hands of Defendants.

772. Defendants' appropriation of Skinner's Image as detailed herein without authority violates Sections 772.11 and 812.014, Florida Statutes, and was wrongfult.

773. Defendants' wrongfult conduct as detailed herein was willful and malicious.

774. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Skinner of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Skinner.

775. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Skinner's rights.

776. Alternatively, the method and manner in which Defendants used Skinner's Image further evinces that Defendants were aware or consciously disregarded the fact that Skinner did not consent to Defendants' use in order to advertise Defendants' business.

777. Defendants' appropriation and use of Skinner's Image without authority directly and proximately caused damage to Skinner in an amount to be determined at trial.

WHEREFORE, Skinner respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. § 772.11(1), including but not limited to,

treble the amount of actual damages, costs, interest, and attorneys' fees and other relief deemed just and proper by this Court.

SKINNER COUNT VI
(Unjust Enrichment against all Defendants)

778. Skinner has conferred a benefit upon Defendants by virtue of Defendants' usage of her image without compensation.

779. Skinner's Image is recognizable in the photo identified in **Exhibit E**.

780. Defendants were aware that Skinner's Image were valuable.

781. Defendants were aware of the resulting benefit from usage of Skinner's Image.

782. Defendants have retained profits and other benefits conferred upon them by using Skinner's Image to promote and advertise Defendants' business, Eyz Wide Shut or Eyz Wide Shut events.

783. It would be inequitable for Defendants to retain the benefits conferred upon them by using Skinner's Image without paying fair value for the image.

WHEREFORE, Skinner respectfully requests that the Court issue a judgment against Defendants for damages, including but not limited to actual damages, costs, interest, imposition of a constructive trust, restitution of unlawful proceeds, including Defendants' gross profits and such other and further relief in law or equity as this Court deems just and proper.

SKINNER COUNT VII
(Conversion against all Defendants)

784. Skinner is, and at relevant times was, the exclusive owner of all rights, title, and interest to her Image unlawfully converted by Defendants for Defendants' benefit.

785. Skinner's Image is recognizable in the photo identified in **Exhibit E**.

786. Skinner has, and for all times relevant herein had, an intangible property interest in her Image unlawfully converted by Defendants for Defendants' benefit.

787. By their acts and conduct alleged above, Defendants have converted Skinner's property rights, including without limitation, Skinner's Image for Defendants' use and wrongful disposition for financial gain.

788. Skinner is informed and believes and on such information alleges that Defendants have refused to return Skinner's property to her or pay for the deprivation of Skinner's property.

789. As a result, Skinner has suffered compensatory and exemplary damages to be determined according to proof at trial; but Skinner alleges that the same are within the jurisdiction of the Court.

790. Further, Skinner is informed and believes and thereon alleges that in engaging in the conduct described above, Defendants acted with oppression, fraud, and/or malice. Defendants' conduct has been despicable and taken in conscious disregard of Skinner's rights.

WHEREFORE, Skinner respectfully requests this Court to issue a judgment against Defendants and for all remedies available under the common law claim for conversion, including but not limited to actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits, and/or other relief deemed just and proper.

SKINNER COUNT VIII
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Endorsement against all Defendants)

791. Section 43 of the Lanham Act, 15 U.S.C. § 1125, et seq. applies to Defendants and protects Skinner from the conduct described herein.

792. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from committing any act that "is likely to cause confusion, or to cause mistake, or to

deceive as to the affiliation, connection, or association of such person with another person . . . or approval of his or her goods, services, or commercial activities by another person . . .” 15 U.S.C. §1125(a)(1)(A).

793. Skinner is a model, entertainer, and spokesperson who earns a living based solely on marketing, endorsing, and advertising products and services for her clients.

794. Skinner works diligently to build herself into a brand that becomes inseparable from her persona.

795. In fact, Skinner’s personae is so associated with her brand that the use of the same or similar images and likenesses by Defendants constitutes a false representation by Defendants that its goods and services, i.e. swinger club activities, come from the same source as Skinner’s brand.

796. In other words, Defendants use of Skinner’s personae is, on its face, a false statement that she has, in fact, endorsed Defendants’ swingers club and activities.

797. Moreover, Skinner’s images are inherently distinctive or, in the alternative, have through their use acquired a distinctiveness through secondary meaning.

798. Skinner’s images either suggest the basic nature of her product or service, identify the characteristic of her product or service, or suggest characteristics of her product or service that requires an effort of the imagination by the consumer in order to be understood as descriptive.

799. Skinner’s brand - the reason her clients seek to hire her - is unique in that it is encompassed in Skinner’s identity, i.e., her persona.

800. Skinner’s rights to her personae rises to the level of common law trademarks and is entitled to protection under Section 2 of the Lanham Act. Therefore, Defendants’ use of Skinner’s image constitutes a False Endorsement under section 2 of the Lanham Act.

801. Defendants used and altered Skinner's image, likeness and/or identity as described herein without authority in order to create the false perception that she worked at or was otherwise affiliated with Eyz Wide Shut, or endorsed Defendants, Eyz Wide Shut or Eyz Wide Shut's business activities, and/or consented to or authorized Defendants' or Eyz Wide Shut's usage of her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut's events and activities.

802. Skinner's Image is recognizable in the photo identified in **Exhibit E**.

803. Defendants use of Skinner's image was for Defendants' commercial benefit and was designed for the sole and express purpose of attracting clientele to Eyz Wide Shut thereby generating revenue for Defendants.

804. Most (if not all) of the Eyz Wide Shut patrons have undoubtedly viewed Skinner's images in magazines and online.

805. Defendants' unauthorized use and alteration of Skinner's image, likeness and/or identity to advertise, endorse, promote and market Defendants' business, Eyz Wide Shut and/or Eyz Wide Shut's events and activities as described in this Complaint has led to a competitive injury to Skinner.

806. Defendants' unauthorized use and alteration of Skinner's image, likeness and/or identity as described in this Complaint constitutes a false designation of the source or origin, sponsorship, approval, association, or endorsement, which has deceived Skinner's fans and present and prospective clients into believing that, among other things, Skinner works at or is otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut's events or activities, or consented to or authorized Defendants' or Eyz Wide Shut's usage or alteration of her image in order to advertise, promote, and market Defendants' business or Eyz

Wide Shut's events and activities and/or that Skinner would participate in or appear at the specific events promoted in the advertisement.

807. Despite the fact that Defendants were at all times aware that Skinner did not work at, nor endorse Eyz Wide Shut, Defendants nevertheless used Skinner's image to mislead potential customers as to Skinner's employment at Eyz Wide Shut.

808. Defendants knew that their use of Skinner's image would cause consumer confusion as to each Plaintiff's sponsorship, endorsement, and/or employment at Eyz Wide Shut.

809. Upon information and belief, Defendants' use of Skinner's image as described above did, in fact, deceive and/or cause consumer confusion as to whether Skinner worked at and/or endorsed Eyz Wide Shut, and endorsed Eyz Wide Shut's business.

810. As a direct and proximate results of Defendants' actions, Skinner has no control over the nature and quality of the services provided by Eyz Wide Shut, the nature of the advertisements depicting her image, likeness and/or identity, or how her image is being depicted by Eyz Wide Shut.

811. Defendants' unauthorized use and alteration of Skinner's image, likeness and identity as described herein violates 15 U.S.C. §1125(a) and was wrongful.

812. Defendants' wrongful conduct as described herein was willful.

813. As such, the present case is an exceptional case warranting an award of reasonable attorney's fees pursuant to 15 U.S.C. § 1117.

814. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to wrongfully portray Skinner as endorsing Defendants' business, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Skinner from such an endorsement.

815. Further, any failure, neglect or default by Defendants will reflect adversely on Skinner as the believed source of origin, sponsorship, approval or association thereof, hampering efforts by Skinner to continue to protect her reputation for high quality professional modeling, resulting in loss of sales thereof and the considerable expenditures to promote her personal modeling services to legitimate mainstream media, all to the irreparable harm of Skinner.

816. Due to Defendants' unauthorized use of Skinner's image, Skinner has been damaged in an amount to be determined at trial.

WHEREFORE, Skinner respectfully requests that the Court enter a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

Plaintiff Gemma Lee Farrell's Causes of Action

FARRELL COUNT I
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Advertising against all Defendants)

817. Section 43 of the Lanham Act, 15 U.S.C. § 1125, *et seq.* applies to Defendants and protects Farrell from the conduct described herein. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from “misrepresent[ing] the nature, characteristics, qualities or geographic origin of his or her or another person’s goods, services or commercial activities . . .” 15 U.S.C. §1125(a)(1)(B).

818. Defendants used Farrell's Image as described herein without authority in order to create the perception that Farrell worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business and activities, and/or consented to or authorized Defendants to use

her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities.

819. Farrell's Image is recognizable in the photo identified in **Exhibit F**.

820. Defendants' use of Farrell's Image to advertise, promote and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities as described in this First Amended Complaint was false and misleading.

821. Defendants' unauthorized use of Farrell's Image as described in this First Amended Complaint constitutes false advertising by suggesting or implying, among other things, that Farrell worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants business or Eyz Wide Shut events and activities and/or that Farrell would participate in or appear at the specific events promoted in the advertisement.

822. Defendants' false advertising described above has the capacity or tendency to confuse consumers, including actual and prospective patrons of Eyz Wide Shut, as to the general quality of attendees and participants of Eyz Wide Shut and in its events, as well as specifically whether Farrell worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities.

823. Upon information and belief, Defendants' false advertising described above did, in fact, deceive and/or cause consumer confusion as to whether Farrell worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut

events and activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities. Among other things, upon information and belief, such unauthorized use misled and served to entice consumers and prospective consumers to join Eyz Wide Shut, visit Eyz Wide Shut, and participate in events at Eyz Wide Shut and had a material effect and impact on the decision of members and prospective members and participants to join Eyz Wide Shut, visit Eyz Wide Shut and take part in the events at Eyz Wide Shut.

824. Defendants' advertisements, promotions and marketing of Eyz Wide Shut and events at Eyz Wide Shut occur in and are targeted to interstate commerce. Specifically, Defendants promote their business and events through interstate promotions and campaigns to target persons from different states throughout the United States. Defendants principally use the World Wide Web, social media and other vehicles of interstate commerce to advertise, market, promote, and entice or lure membership and attendance at Eyz Wide Shut events.

825. Defendants' unauthorized use of Farrell's Image as described herein was designed to benefit Defendants' business interests by, among other things, promoting Eyz Wide Shut and its activities and attracting clientele to Eyz Wide Shut.

826. Defendants knew or should have known that their unauthorized use of Farrell's Image would cause consumer confusion as described in this First Amended Complaint.

827. Defendants' unauthorized use of Farrell's Image as described herein violates 15 U.S.C. §1125(a) and was wrongful.

828. Defendants' wrongful conduct as described herein was willful.

829. As such, the present case is an exceptional case warranting an award of reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

830. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Farrell of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Farrell.

831. The method and manner in which Defendants used the image of Farrell further evinces that Defendants were aware of or consciously disregarded the fact that Farrell did not consent to Defendants' use of the image to advertise Defendants' business.

832. Defendants have caused irreparable harm to Farrell, her reputation and brand by attributing to Farrell the swinger's lifestyle and activities at Eyz Wide Shut.

833. Defendants' unauthorized use of Farrell's Image directly and proximately caused and continue to cause damage to Farrell in an amount to be determined at trial.

WHEREFORE, Farrell respectfully requests that the Court issue a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

FARRELL COUNT II
(Violation of Fla. Stat. § 540.08: Right of Publicity;
Unauthorized Misappropriation of Name/Likeness against all Defendants)

834. Farrell has a statutory right of publicity under Section 540.08, Florida Statutes.

835. Section 540.08, Florida Statutes, provides that: "[n]o person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use."

836. Despite the clear language of Section 540.08, Defendants published Farrell's Image on social media outlets, among others, in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut event and activities.

837. Farrell's Image is recognizable in the photo identified in **Exhibit F**.

838. Defendants never sought permission or authority to use Farrell's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

839. Farrell never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

840. Defendants intentionally or, at a minimum, recklessly published, printed, displayed, or otherwise publicly disseminated or used Farrell's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

841. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or with reckless disregard to deprive Farrell of a property interest during the entire time period in which the unauthorized use took place.

842. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Farrell's rights.

843. Alternatively, Defendants acted negligently towards Farrell in using and disseminating, without authority, her Image on social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

844. Defendants have caused irreparable harm to Farrell, her reputation and brand by attributing to Farrell the swinger's lifestyle and activities at Eyz Wide Shut.

845. Defendants have also damaged Farrell as a direct and proximate result of their unauthorized use of Farrell's Image without compensating Farrell. Defendants' conduct has been despicable and taken in conscious disregard of Farrell's rights.

WHEREFORE, Farrell respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. §540.08, including but not limited to, both actual loss and damages, costs, interest, royalties, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

FARRELL COUNT III
(Violation of Common Law Right of Publicity;
Unauthorized Misappropriation of Name or Likeness against all Defendants)

846. Farrell has a common law right of publicity.

847. Defendants may not publish, print, display or publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of Farrell without express written or oral consent to such use.

848. Defendants published, printed, displayed and/or publicly used Farrell's Image on their social media outlets, among others, for purposes of trade and/or commercial advertising including, but not limited to, promoting, advertising and marketing of Eyz Wide Shut and Eyz Wide Shut events and activities.

849. Farrell's Image is recognizable in the photo identified in **Exhibit F**.

850. Defendants took these actions without Farrell's permission, consent or authority.

In fact, Defendants never sought permission nor authority to use Farrell's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

851. Farrell never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

852. Defendants intentionally or, at a minimum, recklessly, published, printed, displayed, or otherwise publicly disseminated or used Farrell's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

853. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or reckless disregard to deprive Farrell of a property interest during the entire time period in which the unauthorized use took place.

854. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Farrell's rights.

855. Alternatively, Defendants acted negligently towards Farrell in using and disseminating, without authority, her Image on Eyz Wide Shut social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

856. Defendants have caused irreparable harm to Farrell, her reputation and brand by attributing to Farrell the swinger's lifestyle and activities at Eyz Wide Shut.

857. Defendants have also damaged Farrell as a direct and proximate result of their unauthorized use of Farrell's Image without compensating Farrell.

WHEREFORE, Farrell respectfully requests that the Court issue a judgment against Defendants for all remedies available under a claim of misappropriation including, but not limited to, actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

FARRELL COUNT IV
**(Violation of Fla. Stat. § 501.204:
Florida's Deceptive and Unfair Trade Practices Act against all Defendants)**

858. Section 501.204(1), Florida Statutes ("FDUTPA") provides that "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

859. Defendants are direct and active participants in market dealings with Farrell by using her image to advertise and promote Eyz Wide Shut not only to patrons of Eyz Wide Shut, but to the general public in interstate commerce.

860. Farrell's Image is recognizable in the photo identified in **Exhibit F**.

861. Defendants at all material times were engaged in a trade or commerce, as defined within Section 501.203, Florida Statutes.

862. Defendants have engaged in deceptive acts and unfair practices in the course of their business activities by:

- a. failing to obtain consent from Farrell prior to promoting Defendants' business by and through the misappropriation and use of Farrell's Image;
- b. failing to obtain authorization from Farrell prior to the publication of Farrell's Image on Eyz Wide Shut social media outlets;
- c. failing to compensate Farrell for the misappropriation and use of her Image on Eyz Wide Shut social media outlets;
- d. falsely representing by implication to the public that Farrell endorsed the Defendants' business, or would be present at and participate in Eyz Wide Shut events; and
- e. falsely representing by implication that Farrell sanctioned the type of business, events, lifestyle, or other activities promoted by Defendants.

863. Defendants' conduct described herein was misleading.

864. Defendants knew their unauthorized use of Farrell's Image was misleading.

865. Defendants' unauthorized use of Farrell's Image as detailed herein violates Section 501.204(1), Florida Statutes, and was wrongful.

866. Defendants' wrongful conduct as detailed herein was willful and malicious.

867. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Farrell of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Farrell.

868. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Farrell's rights.

869. Alternatively, the method and manner in which Defendants used Farrell's Image further evinces that Defendants were aware or consciously disregarded that Farrell did not consent to Defendants' use to advertise Defendants' business.

870. Defendants have caused irreparable harm to Farrell, her reputation and brand by attributing to Farrell the swinger's lifestyle and activities at Eyz Wide Shut.

871. Defendants' unauthorized use of Farrell's Image directly and proximately caused damage to Farrell in an amount to be determined at trial.

WHEREFORE, Farrell respectfully requests that the Court issue a judgment against Defendants for actual damages, including loss of profit, attorneys' fees, interest, costs, compensatory damages, damage to professional reputation, consequential damages, statutory civil penalties under Fla. Stat. § 501.2075, and such other relief as this Court deems just and proper.

FARRELL COUNT V
(Violation of Fla. Stat. § 812.014 and Fla. Stat. § 772.11:
Civil Theft against all Defendants)

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872. Section 772.11, Florida Statutes, creates a private right of action for victims of theft of tangible and intangible personal property, including rights, privileges, interests and claims.

873. Defendants knowingly appropriated, used and disseminated Farrell's Image without authorization or consent.

874. Farrell's Image is recognizable in the photo identified in **Exhibit F**.

875. Defendants' misappropriation of Farrell's Image was for Defendants' own use and benefit and to deprive Farrell of certain rights.

876. Defendants' misconduct detailed in this First Amended Complaint denied Farrell the right to engage in arms-length negotiations over the use and dissemination of her Image, the right to negotiate over reasonable bargained-for compensation, the right to say "no" to the proposed use by Defendants and the right to otherwise protect her Image from harm at the hands of Defendants.

877. Defendants' appropriation of Farrell's Image as detailed herein without authority violates Sections 772.11 and 812.014, Florida Statutes, and was wrongful.

878. Defendants' wrongful conduct as detailed herein was willful and malicious.

879. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Farrell of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Farrell.

880. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Farrell's rights.

881. Alternatively, the method and manner in which Defendants used Farrell's Image further evinces that Defendants were aware or consciously disregarded the fact that Farrell did not consent to Defendants' use in order to advertise Defendants' business.

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882. Defendants' appropriation and use of Farrell's Image without authority directly and proximately caused damage to Farrell in an amount to be determined at trial.

WHEREFORE, Farrell respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. § 772.11(1), including but not limited to, treble the amount of actual damages, costs, interest, and attorneys' fees and other relief deemed just and proper by this Court.

FARRELL COUNT VI
(Unjust Enrichment against all Defendants)

883. Farrell has conferred a benefit upon Defendants by virtue of Defendants' usage of her image without compensation.

884. Farrell's Image is recognizable in the photo identified in **Exhibit F**.

885. Defendants were aware that Farrell's Image were valuable.

886. Defendants were aware of the resulting benefit from usage of Farrell's Image.

887. Defendants have retained profits and other benefits conferred upon them by using Farrell's Image to promote and advertise Defendants' business, Eyz Wide Shut or Eyz Wide Shut events.

888. It would be inequitable for Defendants to retain the benefits conferred upon them by using Farrell's Image without paying fair value for the image.

WHEREFORE, Farrell respectfully requests that the Court issue a judgment against Defendants for damages, including but not limited to actual damages, costs, interest, imposition of a constructive trust, restitution of unlawful proceeds, including Defendants' gross profits and such other and further relief in law or equity as this Court deems just and proper.

FARRELL COUNT VII
(Conversion against all Defendants)

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889. Farrell is, and at relevant times was, the exclusive owner of all rights, title, and interest to her Image unlawfully converted by Defendants for Defendants' benefit.

890. Farrell's Image is recognizable in the photo identified in **Exhibit F**.

891. Farrell has, and for all times relevant herein had, an intangible property interest in her Image unlawfully converted by Defendants for Defendants' benefit.

892. By their acts and conduct alleged above, Defendants have converted Farrell's property rights, including without limitation, Farrell's Image for Defendants' use and wrongful disposition for financial gain.

893. Farrell is informed and believes and on such information alleges that Defendants have refused to return Farrell's property to her or pay for the deprivation of Farrell's property.

894. As a result, Farrell has suffered compensatory and exemplary damages to be determined according to proof at trial; but Farrell alleges that the same are within the jurisdiction of the Court.

895. Further, Farrell is informed and believes and thereon alleges that in engaging in the conduct described above, Defendants acted with oppression, fraud, and/or malice. Defendants' conduct has been despicable and taken in conscious disregard of Farrell's rights.

WHEREFORE, Farrell respectfully requests this Court to issue a judgment against Defendants and for all remedies available under the common law claim for conversion, including but not limited to actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits, and/or other relief deemed just and proper.

FARRELL COUNT VIII
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Endorsement against all Defendants)

896. Section 43 of the Lanham Act, 15 U.S.C. § 1125, et seq. applies to Defendants and protects Farell from the conduct described herein.

897. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from committing any act that “is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person . . . or approval of his or her goods, services, or commercial activities by another person . . .” 15 U.S.C. §1125(a)(1)(A).

898. Farell is a model, entertainer, and spokesperson who earns a living based solely on marketing, endorsing, and advertising products and services for her clients.

899. Farell works diligently to build herself into a brand that becomes inseparable from her persona.

900. In fact, Farell’s personae is so associated her brand that the use of the same or similar images and likenesses by Defendants constitutes a false representation by Defendants that its goods and services, i.e. swinger club activities, come from the same source as Farell’s brand.

901. In other words, Defendants use of Farell’s personae is, on its face, a false statement that she has, in fact, endorsed Defendants’ swingers club and activities.

902. Moreover, Farell’s images are inherently distinctive or, in the alternative, have through their use acquired a distinctiveness through secondary meaning.

903. Farell’s images either suggest the basic nature of her product or service, identify the characteristic of her product or service, or suggest characteristics of her product or service that requires an effort of the imagination by the consumer in order to be understood as descriptive.

904. Farell’s brand - the reason her clients seek to hire her - is unique in that it is encompassed in Farell’s identity, i.e., her persona.

905. Farell's rights to her personae rises to the level of common law trademarks and is entitled to protection under Section 2 of the Lanham Act. Therefore, Defendants' use of Farell's image constitutes a False Endorsement under section 2 of the Lanham Act.

906. Defendants used and altered Farell's image, likeness and/or identity as described herein without authority in order to create the false perception that she worked at or was otherwise affiliated with Eyz Wide Shut, or endorsed Defendants, Eyz Wide Shut or Eyz Wide Shut's business activities, and/or consented to or authorized Defendants' or Eyz Wide Shut's usage of her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut's events and activities.

907. Farell's Image is recognizable in the photo identified in **Exhibit F**.

908. Defendants use of Farell's image was for Defendants' commercial benefit and was designed for the sole and express purpose of attracting clientele to Eyz Wide Shut thereby generating revenue for Defendants.

909. Most (if not all) of the Eyz Wide Shut patrons have undoubtedly viewed Farell's images in magazines and online.

910. Defendants' unauthorized use and alteration of Farell's image, likeness and/or identity to advertise, endorse, promote and market Defendants' business, Eyz Wide Shut and/or Eyz Wide Shut's events and activities as described in this Complaint has led to a competitive injury to Farell.

911. Defendants' unauthorized use and alteration of Farell's image, likeness and/or identity as described in this Complaint constitutes a false designation of the source or origin, sponsorship, approval, association, or endorsement, which has deceived Farell's fans and present and prospective clients into believing that, among other things, Farell works at or is otherwise

affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut's events or activities, or consented to or authorized Defendants' or Eyz Wide Shut's usage or alteration of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut's events and activities and/or that Farell would participate in or appear at the specific events promoted in the advertisement.

912. Despite the fact that Defendants were at all times aware that Farell did not work at, nor endorse Eyz Wide Shut, Defendants nevertheless used Farell's image to mislead potential customers as to Farell's employment at Eyz Wide Shut.

913. Defendants knew that their use of Farell's image would cause consumer confusion as to each Plaintiff's sponsorship, endorsement, and/or employment at Eyz Wide Shut.

914. Upon information and belief, Defendants' use of Farell's image as described above did, in fact, deceive and/or cause consumer confusion as to whether Farell worked at and/or endorsed Eyz Wide Shut, and endorsed Eyz Wide Shut's business.

915. As a direct and proximate results of Defendants' actions, Farell has no control over the nature and quality of the services provided by Eyz Wide Shut, the nature of the advertisements depicting her image, likeness and/or identity, or how her image is being depicted by Eyz Wide Shut.

916. Defendants' unauthorized use and alteration of Farell's image, likeness and identity as described herein violates 15 U.S.C. §1125(a) and was wrongful.

917. Defendants' wrongful conduct as described herein was willful.

918. As such, the present case is an exceptional case warranting an award of reasonable attorney's fees pursuant to 15 U.S.C. § 1117.

919. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to wrongfully portray Farell as endorsing Defendants' business, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Farell from such an endorsement.

920. Further, any failure, neglect or default by Defendants will reflect adversely on Farell as the believed source of origin, sponsorship, approval or association thereof, hampering efforts by Farell to continue to protect her reputation for high quality professional modeling, resulting in loss of sales thereof and the considerable expenditures to promote her personal modeling services to legitimate mainstream media, all to the irreparable harm of Farell.

921. Due to Defendants' unauthorized use of Farell's image, Farell has been damaged in an amount to be determined at trial.

WHEREFORE, Farell respectfully requests that the Court enter a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

Plaintiff Heather Rae Young's Causes of Action

YOUNG COUNT I
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Advertising against all Defendants)

922. Section 43 of the Lanham Act, 15 U.S.C. § 1125, *et seq.* applies to Defendants and protects Young from the conduct described herein. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from "misrepresent[ing] the nature, characteristics,

qualities or geographic origin of his or her or another person's goods, services or commercial activities" 15 U.S.C. §1125(a)(1)(B).

923. Defendants used Young's Image as described herein without authority in order to create the perception that Young worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business and activities, and/or consented to or authorized Defendants to use her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities.

924. Young's Image is recognizable in the photo identified in **Exhibit G**.

925. Defendants' use of Young's Image to advertise, promote and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities as described in this First Amended Complaint was false and misleading.

926. Defendants' unauthorized use of Young's Image as described in this First Amended Complaint constitutes false advertising by suggesting or implying, among other things, that Young worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants business or Eyz Wide Shut events and activities and/or that Young would participate in or appear at the specific events promoted in the advertisement.

927. Defendants' false advertising described above has the capacity or tendency to confuse consumers, including actual and prospective patrons of Eyz Wide Shut, as to the general quality of attendees and participants of Eyz Wide Shut and in its events, as well as specifically whether Young worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized

Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities.

928. Upon information and belief, Defendants' false advertising described above did, in fact, deceive and/or cause consumer confusion as to whether Young worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events and activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities. Among other things, upon information and belief, such unauthorized use misled and served to entice consumers and prospective consumers to join Eyz Wide Shut, visit Eyz Wide Shut, and participate in events at Eyz Wide Shut and had a material effect and impact on the decision of members and prospective members and participants to join Eyz Wide Shut, visit Eyz Wide Shut and take part in the events at Eyz Wide Shut.

929. Defendants' advertisements, promotions and marketing of Eyz Wide Shut and events at Eyz Wide Shut occur in and are targeted to interstate commerce. Specifically, Defendants promote their business and events through interstate promotions and campaigns to target persons from different states throughout the United States. Defendants principally use the World Wide Web, social media and other vehicles of interstate commerce to advertise, market, promote, and entice or lure membership and attendance at Eyz Wide Shut events.

930. Defendants' unauthorized use of Young's Image as described herein was designed to benefit Defendants' business interests by, among other things, promoting Eyz Wide Shut and its activities and attracting clientele to Eyz Wide Shut.

931. Defendants knew or should have known that their unauthorized use of Young's Image would cause consumer confusion as described in this First Amended Complaint.

932. Defendants' unauthorized use of Young's Image as described herein violates 15 U.S.C. §1125(a) and was wrongful.

933. Defendants' wrongful conduct as described herein was willful.

934. As such, the present case is an exceptional case warranting an award of reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

935. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Young of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Young.

936. The method and manner in which Defendants used the image of Young further evinces that Defendants were aware of or consciously disregarded the fact that Young did not consent to Defendants' use of the image to advertise Defendants' business.

937. Defendants have caused irreparable harm to Young, her reputation and brand by attributing to Young the swinger's lifestyle and activities at Eyz Wide Shut.

938. Defendants' unauthorized use of Young's Image directly and proximately caused and continue to cause damage to Young in an amount to be determined at trial.

WHEREFORE, Young respectfully requests that the Court issue a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

YOUNG COUNT II
(Violation of Fla. Stat. § 540.08: Right of Publicity;
Unauthorized Misappropriation of Name/Likeness against all Defendants)

939. Young has a statutory right of publicity under Section 540.08, Florida Statutes.

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940. Section 540.08, Florida Statutes, provides that: “[n]o person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use.”

941. Despite the clear language of Section 540.08, Defendants published Young’s Image on social media outlets, among others, in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut event and activities.

942. Young’s Image is recognizable in the photo identified in **Exhibit G**.

943. Defendants never sought permission or authority to use Young’s Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

944. Young never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants’ use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

945. Defendants intentionally or, at a minimum, recklessly published, printed, displayed, or otherwise publicly disseminated or used Young’s Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

946. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or with reckless disregard to deprive Young of a property interest during the entire time period in which the unauthorized use took place.

947. At a minimum, Defendants’ conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Young’s rights.

948. Alternatively, Defendants acted negligently towards Young in using and disseminating, without authority, her Image on social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

949. Defendants have caused irreparable harm to Young, her reputation and brand by attributing to Young the swinger's lifestyle and activities at Eyz Wide Shut.

950. Defendants have also damaged Young as a direct and proximate result of their unauthorized use of Young's Image without compensating Young. Defendants' conduct has been despicable and taken in conscious disregard of Young's rights.

WHEREFORE, Young respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. §540.08, including but not limited to, both actual loss and damages, costs, interest, royalties, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

YOUNG COUNT III
(Violation of Common Law Right of Publicity;
Unauthorized Misappropriation of Name or Likeness against all Defendants)

951. Young has a common law right of publicity.

952. Defendants may not publish, print, display or publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of Young without express written or oral consent to such use.

953. Defendants published, printed, displayed and/or publicly used Young's Image on their social media outlets, among others, for purposes of trade and/or commercial advertising including, but not limited to, promoting, advertising and marketing of Eyz Wide Shut and Eyz Wide Shut events and activities.

954. Young's Image is recognizable in the photo identified in **Exhibit G**.

955. Defendants took these actions without Young's permission, consent or authority. In fact, Defendants never sought permission nor authority to use Young's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

956. Young never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

957. Defendants intentionally or, at a minimum, recklessly, published, printed, displayed, or otherwise publicly disseminated or used Young's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

958. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or reckless disregard to deprive Young of a property interest during the entire time period in which the unauthorized use took place.

959. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Young's rights.

960. Alternatively, Defendants acted negligently towards Young in using and disseminating, without authority, her Image on Eyz Wide Shut social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

961. Defendants have caused irreparable harm to Young, her reputation and brand by attributing to Young the swinger's lifestyle and activities at Eyz Wide Shut.

962. Defendants have also damaged Young as a direct and proximate result of their unauthorized use of Young's Image without compensating Young.

WHEREFORE, Young respectfully requests that the Court issue a judgment against Defendants for all remedies available under a claim of misappropriation including, but not limited to, actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

YOUNG COUNT IV
**(Violation of Fla. Stat. § 501.204:
Florida's Deceptive and Unfair Trade Practices Act against all Defendants)**

963. Section 501.204(1), Florida Statutes ("FDUTPA") provides that "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

964. Defendants are direct and active participants in market dealings with Young by using her image to advertise and promote Eyz Wide Shut not only to patrons of Eyz Wide Shut, but to the general public in interstate commerce.

965. Young's Image is recognizable in the photo identified in **Exhibit G**.

966. Defendants at all material times were engaged in a trade or commerce, as defined within Section 501.203, Florida Statutes.

967. Defendants have engaged in deceptive acts and unfair practices in the course of their business activities by:

- a. failing to obtain consent from Young prior to promoting Defendants' business by and through the misappropriation and use of Young's Image;
- b. failing to obtain authorization from Young prior to the publication of Young's Image on Eyz Wide Shut social media outlets;
- c. failing to compensate Young for the misappropriation and use of her Image on Eyz Wide Shut social media outlets;

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d. falsely representing by implication to the public that Young endorsed the Defendants' business, or would be present at and participate in Eyz Wide Shut events; and

e. falsely representing by implication that Young sanctioned the type of business, events, lifestyle, or other activities promoted by Defendants.

968. Defendants' conduct described herein was misleading.

969. Defendants knew their unauthorized use of Young's Image was misleading.

970. Defendants' unauthorized use of Young's Image as detailed herein violates Section 501.204(1), Florida Statutes, and was wrongful.

971. Defendants' wrongful conduct as detailed herein was willful and malicious.

972. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Young of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Young.

973. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Young's rights.

974. Alternatively, the method and manner in which Defendants used Young's Image further evinces that Defendants were aware or consciously disregarded that Young did not consent to Defendants' use to advertise Defendants' business.

975. Defendants have caused irreparable harm to Young, her reputation and brand by attributing to Young the swinger's lifestyle and activities at Eyz Wide Shut.

976. Defendants' unauthorized use of Young's Image directly and proximately caused damage to Young in an amount to be determined at trial.

WHEREFORE, Young respectfully requests that the Court issue a judgment against Defendants for actual damages, including loss of profit, attorneys' fees, interest, costs,

compensatory damages, damage to professional reputation, consequential damages, statutory civil penalties under Fla. Stat. § 501.2075, and such other relief as this Court deems just and proper.

YOUNG COUNT V
**(Violation of Fla. Stat. § 812.014 and Fla. Stat. § 772.11:
Civil Theft against all Defendants)**

977. Section 772.11, Florida Statutes, creates a private right of action for victims of theft of tangible and intangible personal property, including rights, privileges, interests and claims.

978. Defendants knowingly appropriated, used and disseminated Young's Image without authorization or consent.

979. Young's Image is recognizable in the photo identified in **Exhibit G**.

980. Defendants' misappropriation of Young's Image was for Defendants' own use and benefit and to deprive Young of certain rights.

981. Defendants' misconduct detailed in this First Amended Complaint denied Young the right to engage in arms-length negotiations over the use and dissemination of her Image, the right to negotiate over reasonable bargained-for compensation, the right to say "no" to the proposed use by Defendants and the right to otherwise protect her Image from harm at the hands of Defendants.

982. Defendants' appropriation of Young's Image as detailed herein without authority violates Sections 772.11 and 812.014, Florida Statutes, and was wrongful.

983. Defendants' wrongful conduct as detailed herein was willful and malicious.

984. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Young of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Young.

985. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Young's rights.

986. Alternatively, the method and manner in which Defendants used Young's Image further evinces that Defendants were aware or consciously disregarded the fact that Young did not consent to Defendants' use in order to advertise Defendants' business.

987. Defendants' appropriation and use of Young's Image without authority directly and proximately caused damage to Young in an amount to be determined at trial.

WHEREFORE, Young respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. § 772.11(1), including but not limited to, treble the amount of actual damages, costs, interest, and attorneys' fees and other relief deemed just and proper by this Court.

YOUNG COUNT VI
(Unjust Enrichment against all Defendants)

988. Young has conferred a benefit upon Defendants by virtue of Defendants' usage of her image without compensation.

989. Young's Image is recognizable in the photo identified in **Exhibit G**.

990. Defendants were aware that Young's Image were valuable.

991. Defendants were aware of the resulting benefit from usage of Young's Image.

992. Defendants have retained profits and other benefits conferred upon them by using Young's Image to promote and advertise Defendants' business, Eyz Wide Shut or Eyz Wide Shut events.

993. It would be inequitable for Defendants to retain the benefits conferred upon them by using Young's Image without paying fair value for the image.

WHEREFORE, Young respectfully requests that the Court issue a judgment against Defendants for damages, including but not limited to actual damages, costs, interest, imposition of a constructive trust, restitution of unlawful proceeds, including Defendants' gross profits and such other and further relief in law or equity as this Court deems just and proper.

YOUNG COUNT VII
(Conversion against all Defendants)

994. Young is, and at relevant times was, the exclusive owner of all rights, title, and interest to her Image unlawfully converted by Defendants for Defendants' benefit.

995. Young's Image is recognizable in the photo identified in **Exhibit G**.

996. Young has, and for all times relevant herein had, an intangible property interest in her Image unlawfully converted by Defendants for Defendants' benefit.

997. By their acts and conduct alleged above, Defendants have converted Young's property rights, including without limitation, Young's Image for Defendants' use and wrongful disposition for financial gain.

998. Young is informed and believes and on such information alleges that Defendants have refused to return Young's property to her or pay for the deprivation of Young's property.

999. As a result, Young has suffered compensatory and exemplary damages to be determined according to proof at trial; but Young alleges that the same are within the jurisdiction of the Court.

1000. Further, Young is informed and believes and thereon alleges that in engaging in the conduct described above, Defendants acted with oppression, fraud, and/or malice. Defendants' conduct has been despicable and taken in conscious disregard of Young's rights.

WHEREFORE, Young respectfully requests this Court to issue a judgment against Defendants and for all remedies available under the common law claim for conversion, including

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but not limited to actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits, and/or other relief deemed just and proper.

YOUNG COUNT VIII
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Endorsement against all Defendants)

1001. Section 43 of the Lanham Act, 15 U.S.C. § 1125, et seq. applies to Defendants and protects Young from the conduct described herein.

1002. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from committing any act that "is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person . . . or approval of his or her goods, services, or commercial activities by another person . . ." 15 U.S.C. §1125(a)(1)(A).

1003. Young is a model, entertainer, and spokesperson who earns a living based solely on marketing, endorsing, and advertising products and services for her clients.

1004. Young works diligently to build herself into a brand that becomes inseparable from her persona.

1005. In fact, Young's personae is so associated with her brand that the use of the same or similar images and likenesses by Defendants constitutes a false representation by Defendants that its goods and services, i.e. swinger club activities, come from the same source as Young's brand.

1006. In other words, Defendants use of Young's personae is, on its face, a false statement that she has, in fact, endorsed Defendants' swingers club and activities.

1007. Moreover, Young's images are inherently distinctive or, in the alternative, have through their use acquired a distinctiveness through secondary meaning.

1008. Young's images either suggest the basic nature of her product or service, identify the characteristic of her product or service, or suggest characteristics of her product or service that requires an effort of the imagination by the consumer in order to be understood as descriptive.

1009. Young's brand - the reason her clients seek to hire her - is unique in that it is encompassed in Young's identity, i.e., her persona.

1010. Young's rights to her personae rises to the level of common law trademarks and is entitled to protection under Section 2 of the Lanham Act. Therefore, Defendants' use of Young's image constitutes a False Endorsement under section 2 of the Lanham Act.

1011. Defendants used and altered Young's image, likeness and/or identity as described herein without authority in order to create the false perception that she worked at or was otherwise affiliated with Eyz Wide Shut, or endorsed Defendants, Eyz Wide Shut or Eyz Wide Shut's business activities, and/or consented to or authorized Defendants' or Eyz Wide Shut's usage of her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut's events and activities.

1012. Young's Image is recognizable in the photo identified in **Exhibit G**.

1013. Defendants use of Young's image was for Defendants' commercial benefit and was designed for the sole and express purpose of attracting clientele to Eyz Wide Shut thereby generating revenue for Defendants.

1014. Most (if not all) of the Eyz Wide Shut patrons have undoubtedly viewed Young's images in magazines and online.

1015. Defendants' unauthorized use and alteration of Young's image, likeness and/or identity to advertise, endorse, promote and market Defendants' business, Eyz Wide Shut and/or

Eyz Wide Shut's events and activities as described in this Complaint has led to a competitive injury to Young.

1016. Defendants' unauthorized use and alteration of Young's image, likeness and/or identity as described in this Complaint constitutes a false designation of the source or origin, sponsorship, approval, association, or endorsement, which has deceived Young's fans and present and prospective clients into believing that, among other things, Young works at or is otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut's events or activities, or consented to or authorized Defendants' or Eyz Wide Shut's usage or alteration of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut's events and activities and/or that Young would participate in or appear at the specific events promoted in the advertisement.

1017. Despite the fact that Defendants were at all times aware that Young did not work at, nor endorse Eyz Wide Shut, Defendants nevertheless used Young's image to mislead potential customers as to Young's employment at Eyz Wide Shut.

1018. Defendants knew that their use of Young's image would cause consumer confusion as to each Plaintiff's sponsorship, endorsement, and/or employment at Eyz Wide Shut.

1019. Upon information and belief, Defendants' use of Young's image as described above did, in fact, deceive and/or cause consumer confusion as to whether Young worked at and/or endorsed Eyz Wide Shut, and endorsed Eyz Wide Shut's business.

1020. As a direct and proximate results of Defendants' actions, Young has no control over the nature and quality of the services provided by Eyz Wide Shut, the nature of the advertisements depicting her image, likeness and/or identity, or how her image is being depicted by Eyz Wide Shut.

1021. Defendants' unauthorized use and alteration of Young's image, likeness and identity as described herein violates 15 U.S.C. §1125(a) and was wrongful.

1022. Defendants' wrongful conduct as described herein was willful.

1023. As such, the present case is an exceptional case warranting an award of reasonable attorney's fees pursuant to 15 U.S.C. § 1117.

1024. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to wrongfully portray Young as endorsing Defendants' business, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Young from such an endorsement.

1025. Further, any failure, neglect or default by Defendants will reflect adversely on Young as the believed source of origin, sponsorship, approval or association thereof, hampering efforts by Young to continue to protect her reputation for high quality professional modeling, resulting in loss of sales thereof and the considerable expenditures to promote her personal modeling services to legitimate mainstream media, all to the irreparable harm of Young.

1026. Due to Defendants' unauthorized use of Young's image, Young has been damaged in an amount to be determined at trial.

WHEREFORE, Young respectfully requests that the Court enter a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

Plaintiff Irina Voronina's Causes of Action

VORONINA COUNT I

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**(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Advertising against all Defendants)**

1027. Section 43 of the Lanham Act, 15 U.S.C. § 1125, *et seq.* applies to Defendants and protects Voronina from the conduct described herein. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from “misrepresent[ing] the nature, characteristics, qualities or geographic origin of his or her or another person’s goods, services or commercial activities . . .” 15 U.S.C. §1125(a)(1)(B).

1028. Defendants used Voronina’s Image as described herein without authority in order to create the perception that Voronina worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants’ business and activities, and/or consented to or authorized Defendants to use her image in order to advertise, promote, and market Defendants’ business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities.

1029. Voronina’s Image is recognizable in the photo identified in **Exhibit H**.

1030. Defendants’ use of Voronina’s Image to advertise, promote and market Defendants’ business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities as described in this First Amended Complaint was false and misleading.

1031. Defendants’ unauthorized use of Voronina’s Image as described in this First Amended Complaint constitutes false advertising by suggesting or implying, among other things, that Voronina worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants’ business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants’ usage of her image in order to advertise, promote, and market Defendants business or Eyz Wide Shut events and activities and/or that Voronina would participate in or appear at the specific events promoted in the advertisement.

1032. Defendants' false advertising described above has the capacity or tendency to confuse consumers, including actual and prospective patrons of Eyz Wide Shut, as to the general quality of attendees and participants of Eyz Wide Shut and in its events, as well as specifically whether Voronina worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities.

1033. Upon information and belief, Defendants' false advertising described above did, in fact, deceive and/or cause consumer confusion as to whether Voronina worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events and activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities. Among other things, upon information and belief, such unauthorized use misled and served to entice consumers and prospective consumers to join Eyz Wide Shut, visit Eyz Wide Shut, and participate in events at Eyz Wide Shut and had a material effect and impact on the decision of members and prospective members and participants to join Eyz Wide Shut, visit Eyz Wide Shut and take part in the events at Eyz Wide Shut.

1034. Defendants' advertisements, promotions and marketing of Eyz Wide Shut and events at Eyz Wide Shut occur in and are targeted to interstate commerce. Specifically, Defendants promote their business and events through interstate promotions and campaigns to target persons from different states throughout the United States. Defendants principally use the World Wide Web, social media and other vehicles of interstate commerce to advertise, market, promote, and entice or lure membership and attendance at Eyz Wide Shut events.

1035. Defendants' unauthorized use of Voronina's Image as described herein was designed to benefit Defendants' business interests by, among other things, promoting Eyz Wide Shut and its activities and attracting clientele to Eyz Wide Shut.

1036. Defendants knew or should have known that their unauthorized use of Voronina's Image would cause consumer confusion as described in this First Amended Complaint.

1037. Defendants' unauthorized use of Voronina's Image as described herein violates 15 U.S.C. §1125(a) and was wrongful.

1038. Defendants' wrongful conduct as described herein was willful.

1039. As such, the present case is an exceptional case warranting an award of reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

1040. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Voronina of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Voronina.

1041. The method and manner in which Defendants used the image of Voronina further evinces that Defendants were aware of or consciously disregarded the fact that Voronina did not consent to Defendants' use of the image to advertise Defendants' business.

1042. Defendants have caused irreparable harm to Voronina, her reputation and brand by attributing to Voronina the swinger's lifestyle and activities at Eyz Wide Shut.

1043. Defendants' unauthorized use of Voronina's Image directly and proximately caused and continue to cause damage to Voronina in an amount to be determined at trial.

WHEREFORE, Voronina respectfully requests that the Court issue a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use,

attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

VORONINA COUNT II

**(Violation of Fla. Stat. § 540.08: Right of Publicity;
Unauthorized Misappropriation of Name/Likeness against all Defendants)**

1044. Voronina has a statutory right of publicity under Section 540.08, Florida Statutes.

1045. Section 540.08, Florida Statutes, provides that: “[n]o person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use.”

1046. Despite the clear language of Section 540.08, Defendants published Voronina's Image on social media outlets, among others, in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut event and activities.

1047. Voronina's Image is recognizable in the photo identified in **Exhibit H**.

1048. Defendants never sought permission or authority to use Voronina's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1049. Voronina never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1050. Defendants intentionally or, at a minimum, recklessly published, printed, displayed, or otherwise publicly disseminated or used Voronina's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

1051. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or with reckless disregard to deprive Voronina of a property interest during the entire time period in which the unauthorized use took place.

1052. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Voronina's rights.

1053. Alternatively, Defendants acted negligently towards Voronina in using and disseminating, without authority, her Image on social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

1054. Defendants have caused irreparable harm to Voronina, her reputation and brand by attributing to Voronina the swinger's lifestyle and activities at Eyz Wide Shut.

1055. Defendants have also damaged Voronina as a direct and proximate result of their unauthorized use of Voronina's Image without compensating Voronina. Defendants' conduct has been despicable and taken in conscious disregard of Voronina's rights.

WHEREFORE, Voronina respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. §540.08, including but not limited to, both actual loss and damages, costs, interest, royalties, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

VORONINA COUNT III
(Violation of Common Law Right of Publicity;
Unauthorized Misappropriation of Name or Likeness against all Defendants)

1056. Voronina has a common law right of publicity.

1057. Defendants may not publish, print, display or publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of Voronina without express written or oral consent to such use.

1058. Defendants published, printed, displayed and/or publicly used Voronina's Image on their social media outlets, among others, for purposes of trade and/or commercial advertising including, but not limited to, promoting, advertising and marketing of Eyz Wide Shut and Eyz Wide Shut events and activities.

1059. Voronina's Image is recognizable in the photo identified in **Exhibit H**.

1060. Defendants took these actions without Voronina's permission, consent or authority. In fact, Defendants never sought permission nor authority to use Voronina's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1061. Voronina never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1062. Defendants intentionally or, at a minimum, recklessly, published, printed, displayed, or otherwise publicly disseminated or used Voronina's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

1063. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or reckless disregard to deprive Voronina of a property interest during the entire time period in which the unauthorized use took place.

1064. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Voronina's rights.

1065. Alternatively, Defendants acted negligently towards Voronina in using and disseminating, without authority, her Image on Eyz Wide Shut social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

1066. Defendants have caused irreparable harm to Voronina, her reputation and brand by attributing to Voronina the swinger's lifestyle and activities at Eyz Wide Shut.

1067. Defendants have also damaged Voronina as a direct and proximate result of their unauthorized use of Voronina's Image without compensating Voronina.

WHEREFORE, Voronina respectfully requests that the Court issue a judgment against Defendants for all remedies available under a claim of misappropriation including, but not limited to, actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

VORONINA COUNT IV
(Violation of Fla. Stat. § 501.204:
Florida's Deceptive and Unfair Trade Practices Act against all Defendants)

1068. Section 501.204(1), Florida Statutes ("FDUTPA") provides that "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

1069. Defendants are direct and active participants in market dealings with Voronina by using her image to advertise and promote Eyz Wide Shut not only to patrons of Eyz Wide Shut, but to the general public in interstate commerce.

1070. Voronina's Image is recognizable in the photo identified in **Exhibit H**.

1071. Defendants at all material times were engaged in a trade or commerce, as defined within Section 501.203, Florida Statutes.

1072. Defendants have engaged in deceptive acts and unfair practices in the course of their business activities by:

a. failing to obtain consent from Voronina prior to promoting Defendants' business by and through the misappropriation and use of Voronina's Image;

b. failing to obtain authorization from Voronina prior to the publication of Voronina's Image on Eyz Wide Shut social media outlets;

c. failing to compensate Voronina for the misappropriation and use of her Image on Eyz Wide Shut social media outlets;

d. falsely representing by implication to the public that Voronina endorsed the Defendants' business, or would be present at and participate in Eyz Wide Shut events; and

e. falsely representing by implication that Voronina sanctioned the type of business, events, lifestyle, or other activities promoted by Defendants.

1073. Defendants' conduct described herein was misleading.

1074. Defendants knew their unauthorized use of Voronina's Image was misleading.

1075. Defendants' unauthorized use of Voronina's Image as detailed herein violates Section 501.204(1), Florida Statutes, and was wrongfult.

1076. Defendants' wrongfult conduct as detailed herein was willful and malicious.

1077. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Voronina of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Voronina.

1078. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Voronina's rights.

1079. Alternatively, the method and manner in which Defendants used Voronina's Image further evinces that Defendants were aware or consciously disregarded that Voronina did not consent to Defendants' use to advertise Defendants' business.

1080. Defendants have caused irreparable harm to Voronina, her reputation and brand by attributing to Voronina the swinger's lifestyle and activities at Eyz Wide Shut.

1081. Defendants' unauthorized use of Voronina's Image directly and proximately caused damage to Voronina in an amount to be determined at trial.

WHEREFORE, Voronina respectfully requests that the Court issue a judgment against Defendants for actual damages, including loss of profit, attorneys' fees, interest, costs, compensatory damages, damage to professional reputation, consequential damages, statutory civil penalties under Fla. Stat. § 501.2075, and such other relief as this Court deems just and proper.

VORONINA COUNT V
**(Violation of Fla. Stat. § 812.014 and Fla. Stat. § 772.11:
Civil Theft against all Defendants)**

1082. Section 772.11, Florida Statutes, creates a private right of action for victims of theft of tangible and intangible personal property, including rights, privileges, interests and claims.

1083. Defendants knowingly appropriated, used and disseminated Voronina's Image without authorization or consent.

1084. Voronina's Image is recognizable in the photo identified in **Exhibit H**.

1085. Defendants' misappropriation of Voronina's Image was for Defendants' own use and benefit and to deprive Voronina of certain rights.

1086. Defendants' misconduct detailed in this First Amended Complaint denied Voronina the right to engage in arms-length negotiations over the use and dissemination of her Image, the right to negotiate over reasonable bargained-for compensation, the right to say "no" to the proposed use by Defendants and the right to otherwise protect her Image from harm at the hands of Defendants.

1087. Defendants' appropriation of Voronina's Image as detailed herein without authority violates Sections 772.11 and 812.014, Florida Statutes, and was wrongful.

1088. Defendants' wrongful conduct as detailed herein was willful and malicious.

1089. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Voronina of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Voronina.

1090. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Voronina's rights.

1091. Alternatively, the method and manner in which Defendants used Voronina's Image further evinces that Defendants were aware or consciously disregarded the fact that Voronina did not consent to Defendants' use in order to advertise Defendants' business.

1092. Defendants' appropriation and use of Voronina's Image without authority directly and proximately caused damage to Voronina in an amount to be determined at trial.

WHEREFORE, Voronina respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. § 772.11(1), including but not limited to, treble the amount of actual damages, costs, interest, and attorneys' fees and other relief deemed just and proper by this Court.

VORONINA COUNT VI
(Unjust Enrichment against all Defendants)

1093. Voronina has conferred a benefit upon Defendants by virtue of Defendants' usage of her image without compensation.

1094. Voronina's Image is recognizable in the photo identified in **Exhibit H**.

1095. Defendants were aware that Voronina's Image were valuable.

1096. Defendants were aware of the resulting benefit from usage of Voronina's Image.

1097. Defendants have retained profits and other benefits conferred upon them by using Voronina's Image to promote and advertise Defendants' business, Eyz Wide Shut or Eyz Wide Shut events.

1098. It would be inequitable for Defendants to retain the benefits conferred upon them by using Voronina's Image without paying fair value for the image.

WHEREFORE, Voronina respectfully requests that the Court issue a judgment against Defendants for damages, including but not limited to actual damages, costs, interest, imposition of a constructive trust, restitution of unlawful proceeds, including Defendants' gross profits and such other and further relief in law or equity as this Court deems just and proper.

VORONINA COUNT VII
(Conversion against all Defendants)

1099. Voronina is, and at relevant times was, the exclusive owner of all rights, title, and interest to her Image unlawfully converted by Defendants for Defendants' benefit.

1100. Voronina's Image is recognizable in the photo identified in **Exhibit H**.

1101. Voronina has, and for all times relevant herein had, an intangible property interest in her Image unlawfully converted by Defendants for Defendants' benefit.

1102. By their acts and conduct alleged above, Defendants have converted Voronina's property rights, including without limitation, Voronina's Image for Defendants' use and wrongful disposition for financial gain.

1103. Voronina is informed and believes and on such information alleges that Defendants have refused to return Voronina's property to her or pay for the deprivation of Voronina's property.

1104. As a result, Voronina has suffered compensatory and exemplary damages to be determined according to proof at trial; but Voronina alleges that the same are within the jurisdiction of the Court.

1105. Further, Voronina is informed and believes and thereon alleges that in engaging in the conduct described above, Defendants acted with oppression, fraud, and/or malice. Defendants' conduct has been despicable and taken in conscious disregard of Voronina's rights.

WHEREFORE, Voronina respectfully requests this Court to issue a judgment against Defendants and for all remedies available under the common law claim for conversion, including but not limited to actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits, and/or other relief deemed just and proper.

VORONINA COUNT VIII
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Endorsement against all Defendants)

1106. Section 43 of the Lanham Act, 15 U.S.C. § 1125, et seq. applies to Defendants and protects Voronina from the conduct described herein.

1107. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from committing any act that "is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person . . . or approval of his or her goods, services, or commercial activities by another person . . ." 15 U.S.C. §1125(a)(1)(A).

1108. Voronina is a model, entertainer, and spokesperson who earns a living based solely on marketing, endorsing, and advertising products and services for her clients.

1109. Voronina works diligently to build herself into a brand that becomes inseparable from her persona.

1110. In fact, Voronina's personae is so associated her brand that the use of the same or similar images and likenesses by Defendants constitutes a false representation by Defendants that its goods and services, i.e. swinger club activities, come from the same source as Voronina's brand.

1111. In other words, Defendants use of Voronina's personae is, on its face, a false statement that she has, in fact, endorsed Defendants' swingers club and activities.

1112. Moreover, Voronina's images are inherently distinctive or, in the alternative, have through their use acquired a distinctiveness through secondary meaning.

1113. Voronina's images either suggest the basic nature of her product or service, identify the characteristic of her product or service, or suggest characteristics of her product or service that requires an effort of the imagination by the consumer in order to be understood as descriptive.

1114. Voronina's brand - the reason her clients seek to hire her - is unique in that it is encompassed in Voronina's identity, i.e., her persona.

1115. Voronina's rights to her personae rises to the level of common law trademarks and is entitled to protection under Section 2 of the Lanham Act. Therefore, Defendants' use of Voronina's image constitutes a False Endorsement under section 2 of the Lanham Act.

1116. Defendants used and altered Voronina's image, likeness and/or identity as described herein without authority in order to create the false perception that she worked at or was otherwise affiliated with Eyz Wide Shut, or endorsed Defendants, Eyz Wide Shut or Eyz Wide Shut's business activities, and/or consented to or authorized Defendants' or Eyz Wide Shut's usage of her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut's events and activities.

1117. Voronina's Image is recognizable in the photo identified in **Exhibit H**.

1118. Defendants use of Voronina's image was for Defendants' commercial benefit and was designed for the sole and express purpose of attracting clientele to Eyz Wide Shut thereby generating revenue for Defendants.

1119. Most (if not all) of the Eyz Wide Shut patrons have undoubtedly viewed Voronina's images in magazines and online.

1120. Defendants' unauthorized use and alteration of Voronina's image, likeness and/or identity to advertise, endorse, promote and market Defendants' business, Eyz Wide Shut and/or Eyz Wide Shut's events and activities as described in this Complaint has led to a competitive injury to Voronina.

1121. Defendants' unauthorized use and alteration of Voronina's image, likeness and/or identity as described in this Complaint constitutes a false designation of the source or origin, sponsorship, approval, association, or endorsement, which has deceived Voronina's fans and present and prospective clients into believing that, among other things, Voronina works at or is otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut's events or activities, or consented to or authorized Defendants' or Eyz Wide Shut's usage or alteration of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut's events and activities and/or that Voronina would participate in or appear at the specific events promoted in the advertisement.

1122. Despite the fact that Defendants were at all times aware that Voronina did not work at, nor endorse Eyz Wide Shut, Defendants nevertheless used Voronina's image to mislead potential customers as to Voronina's employment at Eyz Wide Shut.

1123. Defendants knew that their use of Voronina's image would cause consumer confusion as to each Plaintiff's sponsorship, endorsement, and/or employment at Eyz Wide Shut.

1124. Upon information and belief, Defendants' use of Voronina's image as described above did, in fact, deceive and/or cause consumer confusion as to whether Voronina worked at and/or endorsed Eyz Wide Shut, and endorsed Eyz Wide Shut's business.

1125. As a direct and proximate results of Defendants' actions, Voronina has no control over the nature and quality of the services provided by Eyz Wide Shut, the nature of the

advertisements depicting her image, likeness and/or identity, or how her image is being depicted by Eyz Wide Shut.

1126. Defendants' unauthorized use and alteration of Voronina's image, likeness and identity as described herein violates 15 U.S.C. §1125(a) and was wrongful.

1127. Defendants' wrongful conduct as described herein was willful.

1128. As such, the present case is an exceptional case warranting an award of reasonable attorney's fees pursuant to 15 U.S.C. § 1117.

1129. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to wrongfully portray Voronina as endorsing Defendants' business, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Voronina from such an endorsement.

1130. Further, any failure, neglect or default by Defendants will reflect adversely on Voronina as the believed source of origin, sponsorship, approval or association thereof, hampering efforts by Voronina to continue to protect her reputation for high quality professional modeling, resulting in loss of sales thereof and the considerable expenditures to promote her personal modeling services to legitimate mainstream media, all to the irreparable harm of Voronina.

1131. Due to Defendants' unauthorized use of Voronina's image, Voronina has been damaged in an amount to be determined at trial.

WHEREFORE, Voronina respectfully requests that the Court enter a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

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Plaintiff Jesse Golden's Causes of Action

GOLDEN COUNT I
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Advertising against all Defendants)

1132. Section 43 of the Lanham Act, 15 U.S.C. § 1125, *et seq.* applies to Defendants and protects Golden from the conduct described herein. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from “misrepresent[ing] the nature, characteristics, qualities or geographic origin of his or her or another person’s goods, services or commercial activities . . .” 15 U.S.C. §1125(a)(1)(B).

1133. Defendants used Golden’s Image as described herein without authority in order to create the perception that Golden worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants’ business and activities, and/or consented to or authorized Defendants to use her image in order to advertise, promote, and market Defendants’ business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities.

1134. Golden’s Image is recognizable in the photo identified in **Exhibit I.**

1135. Defendants’ use of Golden’s Image to advertise, promote and market Defendants’ business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities as described in this First Amended Complaint was false and misleading.

1136. Defendants’ unauthorized use of Golden’s Image as described in this First Amended Complaint constitutes false advertising by suggesting or implying, among other things, that Golden worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants’ business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants’ usage of her image in order to advertise, promote, and market Defendants business or

Eyz Wide Shut events and activities and/or that Golden would participate in or appear at the specific events promoted in the advertisement.

1137. Defendants' false advertising described above has the capacity or tendency to confuse consumers, including actual and prospective patrons of Eyz Wide Shut, as to the general quality of attendees and participants of Eyz Wide Shut and in its events, as well as specifically whether Golden worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities.

1138. Upon information and belief, Defendants' false advertising described above did, in fact, deceive and/or cause consumer confusion as to whether Golden worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events and activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities. Among other things, upon information and belief, such unauthorized use misled and served to entice consumers and prospective consumers to join Eyz Wide Shut, visit Eyz Wide Shut, and participate in events at Eyz Wide Shut and had a material effect and impact on the decision of members and prospective members and participants to join Eyz Wide Shut, visit Eyz Wide Shut and take part in the events at Eyz Wide Shut.

1139. Defendants' advertisements, promotions and marketing of Eyz Wide Shut and events at Eyz Wide Shut occur in and are targeted to interstate commerce. Specifically, Defendants promote their business and events through interstate promotions and campaigns to target persons from different states throughout the United States. Defendants principally use the World Wide

Web, social media and other vehicles of interstate commerce to advertise, market, promote, and entice or lure membership and attendance at Eyz Wide Shut events.

1140. Defendants' unauthorized use of Golden's Image as described herein was designed to benefit Defendants' business interests by, among other things, promoting Eyz Wide Shut and its activities and attracting clientele to Eyz Wide Shut.

1141. Defendants knew or should have known that their unauthorized use of Golden's Image would cause consumer confusion as described in this First Amended Complaint.

1142. Defendants' unauthorized use of Golden's Image as described herein violates 15 U.S.C. §1125(a) and was wrongful.

1143. Defendants' wrongful conduct as described herein was willful.

1144. As such, the present case is an exceptional case warranting an award of reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

1145. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Golden of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Golden.

1146. The method and manner in which Defendants used the image of Golden further evinces that Defendants were aware of or consciously disregarded the fact that Golden did not consent to Defendants' use of the image to advertise Defendants' business.

1147. Defendants have caused irreparable harm to Golden, her reputation and brand by attributing to Golden the swinger's lifestyle and activities at Eyz Wide Shut.

1148. Defendants' unauthorized use of Golden's Image directly and proximately caused and continue to cause damage to Golden in an amount to be determined at trial.

WHEREFORE, Golden respectfully requests that the Court issue a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

GOLDEN COUNT II

**(Violation of Fla. Stat. § 540.08: Right of Publicity;
Unauthorized Misappropriation of Name/Likeness against all Defendants)**

1149. Golden has a statutory right of publicity under Section 540.08, Florida Statutes.

1150. Section 540.08, Florida Statutes, provides that: "[n]o person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use."

1151. Despite the clear language of Section 540.08, Defendants published Golden's Image on social media outlets, among others, in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut event and activities.

1152. Golden's Image is recognizable in the photo identified in **Exhibit I**.

1153. Defendants never sought permission or authority to use Golden's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1154. Golden never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1155. Defendants intentionally or, at a minimum, recklessly published, printed, displayed, or otherwise publicly disseminated or used Golden's Image without her express written or oral

consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

1156. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or with reckless disregard to deprive Golden of a property interest during the entire time period in which the unauthorized use took place.

1157. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Golden's rights.

1158. Alternatively, Defendants acted negligently towards Golden in using and disseminating, without authority, her Image on social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

1159. Defendants have caused irreparable harm to Golden, her reputation and brand by attributing to Golden the swinger's lifestyle and activities at Eyz Wide Shut.

1160. Defendants have also damaged Golden as a direct and proximate result of their unauthorized use of Golden's Image without compensating Golden. Defendants' conduct has been despicable and taken in conscious disregard of Golden's rights.

WHEREFORE, Golden respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. §540.08, including but not limited to, both actual loss and damages, costs, interest, royalties, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

GOLDEN COUNT III
(Violation of Common Law Right of Publicity;
Unauthorized Misappropriation of Name or Likeness against all Defendants)

1161. Golden has a common law right of publicity.

1162. Defendants may not publish, print, display or publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of Golden without express written or oral consent to such use.

1163. Defendants published, printed, displayed and/or publicly used Golden's Image on their social media outlets, among others, for purposes of trade and/or commercial advertising including, but not limited to, promoting, advertising and marketing of Eyz Wide Shut and Eyz Wide Shut events and activities.

1164. Golden's Image is recognizable in the photo identified in **Exhibit I**.

1165. Defendants took these actions without Golden's permission, consent or authority. In fact, Defendants never sought permission nor authority to use Golden's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1166. Golden never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1167. Defendants intentionally or, at a minimum, recklessly, published, printed, displayed, or otherwise publicly disseminated or used Golden's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

1168. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or reckless disregard to deprive Golden of a property interest during the entire time period in which the unauthorized use took place.

1169. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Golden's rights.

1170. Alternatively, Defendants acted negligently towards Golden in using and disseminating, without authority, her Image on Eyz Wide Shut social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

1171. Defendants have caused irreparable harm to Golden, her reputation and brand by attributing to Golden the swinger's lifestyle and activities at Eyz Wide Shut.

1172. Defendants have also damaged Golden as a direct and proximate result of their unauthorized use of Golden's Image without compensating Golden.

WHEREFORE, Golden respectfully requests that the Court issue a judgment against Defendants for all remedies available under a claim of misappropriation including, but not limited to, actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

GOLDEN COUNT IV
(Violation of Fla. Stat. § 501.204:
Florida's Deceptive and Unfair Trade Practices Act against all Defendants)

1173. Section 501.204(1), Florida Statutes ("FDUTPA") provides that "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

1174. Defendants are direct and active participants in market dealings with Golden by using her image to advertise and promote Eyz Wide Shut not only to patrons of Eyz Wide Shut, but to the general public in interstate commerce.

1175. Golden's Image is recognizable in the photo identified in **Exhibit I**.

1176. Defendants at all material times were engaged in a trade or commerce, as defined within Section 501.203, Florida Statutes.

1177. Defendants have engaged in deceptive acts and unfair practices in the course of their business activities by:

- a. failing to obtain consent from Golden prior to promoting Defendants' business by and through the misappropriation and use of Golden's Image;
- b. failing to obtain authorization from Golden prior to the publication of Golden's Image on Eyz Wide Shut social media outlets;
- c. failing to compensate Golden for the misappropriation and use of her Image on Eyz Wide Shut social media outlets;
- d. falsely representing by implication to the public that Golden endorsed the Defendants' business, or would be present at and participate in Eyz Wide Shut events; and
- e. falsely representing by implication that Golden sanctioned the type of business, events, lifestyle, or other activities promoted by Defendants.

1178. Defendants' conduct described herein was misleading.

1179. Defendants knew their unauthorized use of Golden's Image was misleading.

1180. Defendants' unauthorized use of Golden's Image as detailed herein violates Section 501.204(1), Florida Statutes, and was wrongful.

1181. Defendants' wrongful conduct as detailed herein was willful and malicious.

1182. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Golden of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Golden.

1183. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Golden's rights.

1184. Alternatively, the method and manner in which Defendants used Golden's Image further evinces that Defendants were aware or consciously disregarded that Golden did not consent to Defendants' use to advertise Defendants' business.

1185. Defendants have caused irreparable harm to Golden, her reputation and brand by attributing to Golden the swinger's lifestyle and activities at Eyz Wide Shut.

1186. Defendants' unauthorized use of Golden's Image directly and proximately caused damage to Golden in an amount to be determined at trial.

WHEREFORE, Golden respectfully requests that the Court issue a judgment against Defendants for actual damages, including loss of profit, attorneys' fees, interest, costs, compensatory damages, damage to professional reputation, consequential damages, statutory civil penalties under Fla. Stat. § 501.2075, and such other relief as this Court deems just and proper.

GOLDEN COUNT V
(Violation of Fla. Stat. § 812.014 and Fla. Stat. § 772.11:
Civil Theft against all Defendants)

1187. Section 772.11, Florida Statutes, creates a private right of action for victims of theft of tangible and intangible personal property, including rights, privileges, interests and claims.

1188. Defendants knowingly appropriated, used and disseminated Golden's Image without authorization or consent.

1189. Golden's Image is recognizable in the photo identified in **Exhibit I**.

1190. Defendants' misappropriation of Golden's Image was for Defendants' own use and benefit and to deprive Golden of certain rights.

1191. Defendants' misconduct detailed in this First Amended Complaint denied Golden the right to engage in arms-length negotiations over the use and dissemination of her Image, the right to negotiate over reasonable bargained-for compensation, the right to say "no" to the

proposed use by Defendants and the right to otherwise protect her Image from harm at the hands of Defendants.

1192. Defendants' appropriation of Golden's Image as detailed herein without authority violates Sections 772.11 and 812.014, Florida Statutes, and was wrongful.

1193. Defendants' wrongful conduct as detailed herein was willful and malicious.

1194. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Golden of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Golden.

1195. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Golden's rights.

1196. Alternatively, the method and manner in which Defendants used Golden's Image further evinces that Defendants were aware or consciously disregarded the fact that Golden did not consent to Defendants' use in order to advertise Defendants' business.

1197. Defendants' appropriation and use of Golden's Image without authority directly and proximately caused damage to Golden in an amount to be determined at trial.

WHEREFORE, Golden respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. § 772.11(1), including but not limited to, treble the amount of actual damages, costs, interest, and attorneys' fees and other relief deemed just and proper by this Court.

GOLDEN COUNT VI
(Unjust Enrichment against all Defendants)

1198. Golden has conferred a benefit upon Defendants by virtue of Defendants' usage of her image without compensation.

1199. Golden's Image is recognizable in the photo identified in **Exhibit I**.

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1200. Defendants were aware that Golden's Image were valuable.

1201. Defendants were aware of the resulting benefit from usage of Golden's Image.

1202. Defendants have retained profits and other benefits conferred upon them by using Golden's Image to promote and advertise Defendants' business, Eyz Wide Shut or Eyz Wide Shut events.

1203. It would be inequitable for Defendants to retain the benefits conferred upon them by using Golden's Image without paying fair value for the image.

WHEREFORE, Golden respectfully requests that the Court issue a judgment against Defendants for damages, including but not limited to actual damages, costs, interest, imposition of a constructive trust, restitution of unlawful proceeds, including Defendants' gross profits and such other and further relief in law or equity as this Court deems just and proper.

GOLDEN COUNT VII
(Conversion against all Defendants)

1204. Golden is, and at relevant times was, the exclusive owner of all rights, title, and interest to her Image unlawfully converted by Defendants for Defendants' benefit.

1205. Golden's Image is recognizable in the photo identified in **Exhibit I.**

1206. Golden has, and for all times relevant herein had, an intangible property interest in her Image unlawfully converted by Defendants for Defendants' benefit.

1207. By their acts and conduct alleged above, Defendants have converted Golden's property rights, including without limitation, Golden's Image for Defendants' use and wrongful disposition for financial gain.

1208. Golden is informed and believes and on such information alleges that Defendants have refused to return Golden's property to her or pay for the deprivation of Golden's property.

1209. As a result, Golden has suffered compensatory and exemplary damages to be determined according to proof at trial; but Golden alleges that the same are within the jurisdiction of the Court.

1210. Further, Golden is informed and believes and thereon alleges that in engaging in the conduct described above, Defendants acted with oppression, fraud, and/or malice. Defendants' conduct has been despicable and taken in conscious disregard of Golden's rights.

WHEREFORE, Golden respectfully requests this Court to issue a judgment against Defendants and for all remedies available under the common law claim for conversion, including but not limited to actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits, and/or other relief deemed just and proper.

GOLDEN COUNT VIII
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Endorsement against all Defendants)

1211. Section 43 of the Lanham Act, 15 U.S.C. § 1125, et seq. applies to Defendants and protects Golden from the conduct described herein.

1212. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from committing any act that "is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person . . . or approval of his or her goods, services, or commercial activities by another person . . ." 15 U.S.C. §1125(a)(1)(A).

1213. Golden is a model, entertainer, and spokesperson who earns a living based solely on marketing, endorsing, and advertising products and services for her clients.

1214. Golden works diligently to build herself into a brand that becomes inseparable from her persona.

1215. In fact, Golden's personae is so associated her brand that the use of the same or similar images and likenesses by Defendants constitutes a false representation by Defendants that its goods and services, i.e. swinger club activities, come from the same source as Golden's brand.

1216. In other words, Defendants use of Golden's personae is, on its face, a false statement that she has, in fact, endorsed Defendants' swingers club and activities.

1217. Moreover, Golden's images are inherently distinctive or, in the alternative, have through their use acquired a distinctiveness through secondary meaning.

1218. Golden's images either suggest the basic nature of her product or service, identify the characteristic of her product or service, or suggest characteristics of her product or service that requires an effort of the imagination by the consumer in order to be understood as descriptive.

1219. Golden's brand - the reason her clients seek to hire her - is unique in that it is encompassed in Golden's identity, i.e., her persona.

1220. Golden's rights to her personae rises to the level of common law trademarks and is entitled to protection under Section 2 of the Lanham Act. Therefore, Defendants' use of Golden's image constitutes a False Endorsement under section 2 of the Lanham Act.

1221. Defendants used and altered Golden's image, likeness and/or identity as described herein without authority in order to create the false perception that she worked at or was otherwise affiliated with Eyz Wide Shut, or endorsed Defendants, Eyz Wide Shut or Eyz Wide Shut's business activities, and/or consented to or authorized Defendants' or Eyz Wide Shut's usage of her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut's events and activities.

1222. Golden's Image is recognizable in the photo identified in **Exhibit I.**

1223. Defendants use of Golden's image was for Defendants' commercial benefit and was designed for the sole and express purpose of attracting clientele to Eyz Wide Shut thereby generating revenue for Defendants.

1224. Most (if not all) of the Eyz Wide Shut patrons have undoubtedly viewed Golden's images in magazines and online.

1225. Defendants' unauthorized use and alteration of Golden's image, likeness and/or identity to advertise, endorse, promote and market Defendants' business, Eyz Wide Shut and/or Eyz Wide Shut's events and activities as described in this Complaint has led to a competitive injury to Golden.

1226. Defendants' unauthorized use and alteration of Golden's image, likeness and/or identity as described in this Complaint constitutes a false designation of the source or origin, sponsorship, approval, association, or endorsement, which has deceived Golden's fans and present and prospective clients into believing that, among other things, Golden works at or is otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut's events or activities, or consented to or authorized Defendants' or Eyz Wide Shut's usage or alteration of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut's events and activities and/or that Golden would participate in or appear at the specific events promoted in the advertisement.

1227. Despite the fact that Defendants were at all times aware that Golden did not work at, nor endorse Eyz Wide Shut, Defendants nevertheless used Golden's image to mislead potential customers as to Golden's employment at Eyz Wide Shut.

1228. Defendants knew that their use of Golden's image would cause consumer confusion as to each Plaintiff's sponsorship, endorsement, and/or employment at Eyz Wide Shut.

1229. Upon information and belief, Defendants' use of Golden's image as described above did, in fact, deceive and/or cause consumer confusion as to whether Golden worked at and/or endorsed Eyz Wide Shut, and endorsed Eyz Wide Shut's business.

1230. As a direct and proximate results of Defendants' actions, Golden has no control over the nature and quality of the services provided by Eyz Wide Shut, the nature of the advertisements depicting her image, likeness and/or identity, or how her image is being depicted by Eyz Wide Shut.

1231. Defendants' unauthorized use and alteration of Golden's image, likeness and identity as described herein violates 15 U.S.C. §1125(a) and was wrongful.

1232. Defendants' wrongful conduct as described herein was willful.

1233. As such, the present case is an exceptional case warranting an award of reasonable attorney's fees pursuant to 15 U.S.C. § 1117.

1234. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to wrongfully portray Golden as endorsing Defendants' business, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Golden from such an endorsement.

1235. Further, any failure, neglect or default by Defendants will reflect adversely on Golden as the believed source of origin, sponsorship, approval or association thereof, hampering efforts by Golden to continue to protect her reputation for high quality professional modeling, resulting in loss of sales thereof and the considerable expenditures to promote her personal modeling services to legitimate mainstream media, all to the irreparable harm of Golden.

1236. Due to Defendants' unauthorized use of Golden's image, Golden has been damaged in an amount to be determined at trial.

WHEREFORE, Golden respectfully requests that the Court enter a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

Plaintiff Jessa Hinton's Causes of Action

HINTON COUNT I
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Advertising against all Defendants)

1237. Section 43 of the Lanham Act, 15 U.S.C. § 1125, *et seq.* applies to Defendants and protects Hinton from the conduct described herein. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from “misrepresent[ing] the nature, characteristics, qualities or geographic origin of his or her or another person’s goods, services or commercial activities . . .” 15 U.S.C. §1125(a)(1)(B).

1238. Defendants used Hinton’s Image as described herein without authority in order to create the perception that Hinton worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants’ business and activities, and/or consented to or authorized Defendants to use her image in order to advertise, promote, and market Defendants’ business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities.

1239. Hinton’s Image is recognizable in the photo identified in **Exhibit J**.

1240. Defendants’ use of Hinton’s Image to advertise, promote and market Defendants’ business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities as described in this First Amended Complaint was false and misleading.

1241. Defendants' unauthorized use of Hinton's Image as described in this First Amended Complaint constitutes false advertising by suggesting or implying, among other things, that Hinton worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants business or Eyz Wide Shut events and activities and/or that Hinton would participate in or appear at the specific events promoted in the advertisement.

1242. Defendants' false advertising described above has the capacity or tendency to confuse consumers, including actual and prospective patrons of Eyz Wide Shut, as to the general quality of attendees and participants of Eyz Wide Shut and in its events, as well as specifically whether Hinton worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities.

1243. Upon information and belief, Defendants' false advertising described above did, in fact, deceive and/or cause consumer confusion as to whether Hinton worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events and activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities. Among other things, upon information and belief, such unauthorized use misled and served to entice consumers and prospective consumers to join Eyz Wide Shut, visit Eyz Wide Shut, and participate in events at Eyz Wide Shut and had a material effect and impact on the decision of

members and prospective members and participants to join Eyz Wide Shut, visit Eyz Wide Shut and take part in the events at Eyz Wide Shut.

1244. Defendants' advertisements, promotions and marketing of Eyz Wide Shut and events at Eyz Wide Shut occur in and are targeted to interstate commerce. Specifically, Defendants promote their business and events through interstate promotions and campaigns to target persons from different states throughout the United States. Defendants principally use the World Wide Web, social media and other vehicles of interstate commerce to advertise, market, promote, and entice or lure membership and attendance at Eyz Wide Shut events.

1245. Defendants' unauthorized use of Hinton's Image as described herein was designed to benefit Defendants' business interests by, among other things, promoting Eyz Wide Shut and its activities and attracting clientele to Eyz Wide Shut.

1246. Defendants knew or should have known that their unauthorized use of Hinton's Image would cause consumer confusion as described in this First Amended Complaint.

1247. Defendants' unauthorized use of Hinton's Image as described herein violates 15 U.S.C. §1125(a) and was wrongful.

1248. Defendants' wrongful conduct as described herein was willful.

1249. As such, the present case is an exceptional case warranting an award of reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

1250. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Hinton of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Hinton.

1251. The method and manner in which Defendants used the image of Hinton further evinces that Defendants were aware of or consciously disregarded the fact that Hinton did not consent to Defendants' use of the image to advertise Defendants' business.

1252. Defendants have caused irreparable harm to Hinton, her reputation and brand by attributing to Hinton the swinger's lifestyle and activities at Eyz Wide Shut.

1253. Defendants' unauthorized use of Hinton's Image directly and proximately caused and continue to cause damage to Hinton in an amount to be determined at trial.

WHEREFORE, Hinton respectfully requests that the Court issue a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, pre-judgment and post-judgment interest, and/or such further relief that is just and proper.

HINTON COUNT II

**(Violation of Fla. Stat. § 540.08: Right of Publicity;
Unauthorized Misappropriation of Name/Likeness against all Defendants)**

1254. Hinton has a statutory right of publicity under Section 540.08, Florida Statutes.

1255. Section 540.08, Florida Statutes, provides that: "[n]o person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use."

1256. Despite the clear language of Section 540.08, Defendants published Hinton's Image on social media outlets, among others, in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut event and activities.

1257. Hinton's Image is recognizable in the photo identified in **Exhibit J**.

1258. Defendants never sought permission or authority to use Hinton's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1259. Hinton never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1260. Defendants intentionally or, at a minimum, recklessly published, printed, displayed, or otherwise publicly disseminated or used Hinton's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

1261. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or with reckless disregard to deprive Hinton of a property interest during the entire time period in which the unauthorized use took place.

1262. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Hinton's rights.

1263. Alternatively, Defendants acted negligently towards Hinton in using and disseminating, without authority, her Image on social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

1264. Defendants have caused irreparable harm to Hinton, her reputation and brand by attributing to Hinton the swinger's lifestyle and activities at Eyz Wide Shut.

1265. Defendants have also damaged Hinton as a direct and proximate result of their unauthorized use of Hinton's Image without compensating Hinton. Defendants' conduct has been despicable and taken in conscious disregard of Hinton's rights.

WHEREFORE, Hinton respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. §540.08, including but not limited to, both actual loss and damages, costs, interest, royalties, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

HINTON COUNT III

**(Violation of Common Law Right of Publicity;
Unauthorized Misappropriation of Name or Likeness against all Defendants)**

1266. Hinton has a common law right of publicity.

1267. Defendants may not publish, print, display or publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of Hinton without express written or oral consent to such use.

1268. Defendants published, printed, displayed and/or publicly used Hinton's Image on their social media outlets, among others, for purposes of trade and/or commercial advertising including, but not limited to, promoting, advertising and marketing of Eyz Wide Shut and Eyz Wide Shut events and activities.

1269. Hinton's Image is recognizable in the photo identified in **Exhibit J**.

1270. Defendants took these actions without Hinton's permission, consent or authority. In fact, Defendants never sought permission nor authority to use Hinton's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1271. Hinton never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1272. Defendants intentionally or, at a minimum, recklessly, published, printed, displayed, or otherwise publicly disseminated or used Hinton's Image without her express written

or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

1273. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or reckless disregard to deprive Hinton of a property interest during the entire time period in which the unauthorized use took place.

1274. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Hinton's rights.

1275. Alternatively, Defendants acted negligently towards Hinton in using and disseminating, without authority, her Image on Eyz Wide Shut social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

1276. Defendants have caused irreparable harm to Hinton, her reputation and brand by attributing to Hinton the swinger's lifestyle and activities at Eyz Wide Shut.

1277. Defendants have also damaged Hinton as a direct and proximate result of their unauthorized use of Hinton's Image without compensating Hinton.

WHEREFORE, Hinton respectfully requests that the Court issue a judgment against Defendants for all remedies available under a claim of misappropriation including, but not limited to, actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

HINTON COUNT IV
(Violation of Fla. Stat. § 501.204:
Florida's Deceptive and Unfair Trade Practices Act against all Defendants)

1278. Section 501.204(1), Florida Statutes ("FDUTPA") provides that "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

1279. Defendants are direct and active participants in market dealings with Hinton by using her image to advertise and promote Eyz Wide Shut not only to patrons of Eyz Wide Shut, but to the general public in interstate commerce.

1280. Hinton's Image is recognizable in the photo identified in **Exhibit J**.

1281. Defendants at all material times were engaged in a trade or commerce, as defined within Section 501.203, Florida Statutes.

1282. Defendants have engaged in deceptive acts and unfair practices in the course of their business activities by:

- a. failing to obtain consent from Hinton prior to promoting Defendants' business by and through the misappropriation and use of Hinton's Image;
- b. failing to obtain authorization from Hinton prior to the publication of Hinton's Image on Eyz Wide Shut social media outlets;
- c. failing to compensate Hinton for the misappropriation and use of her Image on Eyz Wide Shut social media outlets;
- d. falsely representing by implication to the public that Hinton endorsed the Defendants' business, or would be present at and participate in Eyz Wide Shut events; and
- e. falsely representing by implication that Hinton sanctioned the type of business, events, lifestyle, or other activities promoted by Defendants.

1283. Defendants' conduct described herein was misleading.

1284. Defendants knew their unauthorized use of Hinton's Image was misleading.

1285. Defendants' unauthorized use of Hinton's Image as detailed herein violates Section 501.204(1), Florida Statutes, and was wrongful.

1286. Defendants' wrongful conduct as detailed herein was willful and malicious.

1287. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Hinton of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Hinton.

1288. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Hinton's rights.

1289. Alternatively, the method and manner in which Defendants used Hinton's Image further evinces that Defendants were aware or consciously disregarded that Hinton did not consent to Defendants' use to advertise Defendants' business.

1290. Defendants have caused irreparable harm to Hinton, her reputation and brand by attributing to Hinton the swinger's lifestyle and activities at Eyz Wide Shut.

1291. Defendants' unauthorized use of Hinton's Image directly and proximately caused damage to Hinton in an amount to be determined at trial.

WHEREFORE, Hinton respectfully requests that the Court issue a judgment against Defendants for actual damages, including loss of profit, attorneys' fees, interest, costs, compensatory damages, damage to professional reputation, consequential damages, statutory civil penalties under Fla. Stat. § 501.2075, and such other relief as this Court deems just and proper.

HINTON COUNT V
(Violation of Fla. Stat. § 812.014 and Fla. Stat. § 772.11:
Civil Theft against all Defendants)

1292. Section 772.11, Florida Statutes, creates a private right of action for victims of theft of tangible and intangible personal property, including rights, privileges, interests and claims.

1293. Defendants knowingly appropriated, used and disseminated Hinton's Image without authorization or consent.

1294. Hinton's Image is recognizable in the photo identified in **Exhibit J**.

1295. Defendants' misappropriation of Hinton's Image was for Defendants' own use and benefit and to deprive Hinton of certain rights.

1296. Defendants' misconduct detailed in this First Amended Complaint denied Hinton the right to engage in arms-length negotiations over the use and dissemination of her Image, the right to negotiate over reasonable bargained-for compensation, the right to say "no" to the proposed use by Defendants and the right to otherwise protect her Image from harm at the hands of Defendants.

1297. Defendants' appropriation of Hinton's Image as detailed herein without authority violates Sections 772.11 and 812.014, Florida Statutes, and was wrongfult.

1298. Defendants' wrongful conduct as detailed herein was willful and malicious.

1299. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Hinton of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Hinton.

1300. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Hinton's rights.

1301. Alternatively, the method and manner in which Defendants used Hinton's Image further evinces that Defendants were aware or consciously disregarded the fact that Hinton did not consent to Defendants' use in order to advertise Defendants' business.

1302. Defendants' appropriation and use of Hinton's Image without authority directly and proximately caused damage to Hinton in an amount to be determined at trial.

WHEREFORE, Hinton respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. § 772.11(1), including but not limited to,

treble the amount of actual damages, costs, interest, and attorneys' fees and other relief deemed just and proper by this Court.

HINTON COUNT VI
(Unjust Enrichment against all Defendants)

1303. Hinton has conferred a benefit upon Defendants by virtue of Defendants' usage of her image without compensation.

1304. Hinton's Image is recognizable in the photo identified in **Exhibit J**.

1305. Defendants were aware that Hinton's Image were valuable.

1306. Defendants were aware of the resulting benefit from usage of Hinton's Image.

1307. Defendants have retained profits and other benefits conferred upon them by using Hinton's Image to promote and advertise Defendants' business, Eyz Wide Shut or Eyz Wide Shut events.

1308. It would be inequitable for Defendants to retain the benefits conferred upon them by using Hinton's Image without paying fair value for the image.

WHEREFORE, Hinton respectfully requests that the Court issue a judgment against Defendants for damages, including but not limited to actual damages, costs, interest, imposition of a constructive trust, restitution of unlawful proceeds, including Defendants' gross profits and such other and further relief in law or equity as this Court deems just and proper.

HINTON COUNT VII
(Conversion against all Defendants)

1309. Hinton is, and at relevant times was, the exclusive owner of all rights, title, and interest to her Image unlawfully converted by Defendants for Defendants' benefit.

1310. Hinton's Image is recognizable in the photo identified in **Exhibit J**.

1311. Hinton has, and for all times relevant herein had, an intangible property interest in her Image unlawfully converted by Defendants for Defendants' benefit.

1312. By their acts and conduct alleged above, Defendants have converted Hinton's property rights, including without limitation, Hinton's Image for Defendants' use and wrongful disposition for financial gain.

1313. Hinton is informed and believes and on such information alleges that Defendants have refused to return Hinton's property to her or pay for the deprivation of Hinton's property.

1314. As a result, Hinton has suffered compensatory and exemplary damages to be determined according to proof at trial; but Hinton alleges that the same are within the jurisdiction of the Court.

1315. Further, Hinton is informed and believes and thereon alleges that in engaging in the conduct described above, Defendants acted with oppression, fraud, and/or malice. Defendants' conduct has been despicable and taken in conscious disregard of Hinton's rights.

WHEREFORE, Hinton respectfully requests this Court to issue a judgment against Defendants and for all remedies available under the common law claim for conversion, including but not limited to actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits, and/or other relief deemed just and proper.

HINTON COUNT VIII
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Endorsement against all Defendants)

1316. Section 43 of the Lanham Act, 15 U.S.C. § 1125, et seq. applies to Defendants and protects Hinton from the conduct described herein.

1317. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from committing any act that "is likely to cause confusion, or to cause mistake, or to

deceive as to the affiliation, connection, or association of such person with another person . . . or approval of his or her goods, services, or commercial activities by another person” 15 U.S.C. §1125(a)(1)(A).

1318. Hinton is a model, entertainer, and spokesperson who earns a living based solely on marketing, endorsing, and advertising products and services for her clients.

1319. Hinton works diligently to build herself into a brand that becomes inseparable from her persona.

1320. In fact, Hinton’s personae is so associated with her brand that the use of the same or similar images and likenesses by Defendants constitutes a false representation by Defendants that its goods and services, i.e. swinger club activities, come from the same source as Hinton’s brand.

1321. In other words, Defendants use of Hinton’s personae is, on its face, a false statement that she has, in fact, endorsed Defendants’ swingers club and activities.

1322. Moreover, Hinton’s images are inherently distinctive or, in the alternative, have through their use acquired a distinctiveness through secondary meaning.

1323. Hinton’s images either suggest the basic nature of her product or service, identify the characteristic of her product or service, or suggest characteristics of her product or service that requires an effort of the imagination by the consumer in order to be understood as descriptive.

1324. Hinton’s brand - the reason her clients seek to hire her - is unique in that it is encompassed in Hinton’s identity, i.e., her persona.

1325. Hinton’s rights to her personae rises to the level of common law trademarks and is entitled to protection under Section 2 of the Lanham Act. Therefore, Defendants’ use of Hinton’s image constitutes a False Endorsement under section 2 of the Lanham Act.

1326. Defendants used and altered Hinton's image, likeness and/or identity as described herein without authority in order to create the false perception that she worked at or was otherwise affiliated with Eyz Wide Shut, or endorsed Defendants, Eyz Wide Shut or Eyz Wide Shut's business activities, and/or consented to or authorized Defendants' or Eyz Wide Shut's usage of her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut's events and activities.

1327. Hinton's Image is recognizable in the photo identified in **Exhibit J**.

1328. Defendants use of Hinton's image was for Defendants' commercial benefit and was designed for the sole and express purpose of attracting clientele to Eyz Wide Shut thereby generating revenue for Defendants.

1329. Most (if not all) of the Eyz Wide Shut patrons have undoubtedly viewed Hinton's images in magazines and online.

1330. Defendants' unauthorized use and alteration of Hinton's image, likeness and/or identity to advertise, endorse, promote and market Defendants' business, Eyz Wide Shut and/or Eyz Wide Shut's events and activities as described in this Complaint has led to a competitive injury to Hinton.

1331. Defendants' unauthorized use and alteration of Hinton's image, likeness and/or identity as described in this Complaint constitutes a false designation of the source or origin, sponsorship, approval, association, or endorsement, which has deceived Hinton's fans and present and prospective clients into believing that, among other things, Hinton works at or is otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut's events or activities, or consented to or authorized Defendants' or Eyz Wide Shut's usage or alteration of her image in order to advertise, promote, and market Defendants' business or Eyz

Wide Shut's events and activities and/or that Hinton would participate in or appear at the specific events promoted in the advertisement.

1332. Despite the fact that Defendants were at all times aware that Hinton did not work at, nor endorse Eyz Wide Shut, Defendants nevertheless used Hinton's image to mislead potential customers as to Hinton's employment at Eyz Wide Shut.

1333. Defendants knew that their use of Hinton's image would cause consumer confusion as to each Plaintiff's sponsorship, endorsement, and/or employment at Eyz Wide Shut.

1334. Upon information and belief, Defendants' use of Hinton's image as described above did, in fact, deceive and/or cause consumer confusion as to whether Hinton worked at and/or endorsed Eyz Wide Shut, and endorsed Eyz Wide Shut's business.

1335. As a direct and proximate results of Defendants' actions, Hinton has no control over the nature and quality of the services provided by Eyz Wide Shut, the nature of the advertisements depicting her image, likeness and/or identity, or how her image is being depicted by Eyz Wide Shut.

1336. Defendants' unauthorized use and alteration of Hinton's image, likeness and identity as described herein violates 15 U.S.C. §1125(a) and was wrongful.

1337. Defendants' wrongful conduct as described herein was willful.

1338. As such, the present case is an exceptional case warranting an award of reasonable attorney's fees pursuant to 15 U.S.C. § 1117.

1339. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to wrongfully portray Hinton as endorsing Defendants' business, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Hinton from such an endorsement.

1340. Further, any failure, neglect or default by Defendants will reflect adversely on Hinton as the believed source of origin, sponsorship, approval or association thereof, hampering efforts by Hinton to continue to protect her reputation for high quality professional modeling, resulting in loss of sales thereof and the considerable expenditures to promote her personal modeling services to legitimate mainstream media, all to the irreparable harm of Hinton.

1341. Due to Defendants' unauthorized use of Hinton's image, Hinton has been damaged in an amount to be determined at trial.

WHEREFORE, Hinton respectfully requests that the Court enter a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

Plaintiff Joanna Krupa's Causes of Action

KRUPA COUNT I
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Advertising against all Defendants)

1342. Section 43 of the Lanham Act, 15 U.S.C. § 1125, *et seq.* applies to Defendants and protects Krupa from the conduct described herein. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from “misrepresent[ing] the nature, characteristics, qualities or geographic origin of his or her or another person’s goods, services or commercial activities . . .” 15 U.S.C. §1125(a)(1)(B).

1343. Defendants used Krupa's Image as described herein without authority in order to create the perception that Krupa worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business and activities, and/or consented to or authorized Defendants to use

her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities.

1344. Krupa's Image is recognizable in the photo identified in **Exhibit K**.

1345. Defendants' use of Krupa's Image to advertise, promote and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities as described in this First Amended Complaint was false and misleading.

1346. Defendants' unauthorized use of Krupa's Image as described in this First Amended Complaint constitutes false advertising by suggesting or implying, among other things, that Krupa worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants business or Eyz Wide Shut events and activities and/or that Krupa would participate in or appear at the specific events promoted in the advertisement.

1347. Defendants' false advertising described above has the capacity or tendency to confuse consumers, including actual and prospective patrons of Eyz Wide Shut, as to the general quality of attendees and participants of Eyz Wide Shut and in its events, as well as specifically whether Krupa worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities.

1348. Upon information and belief, Defendants' false advertising described above did, in fact, deceive and/or cause consumer confusion as to whether Krupa worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut

events and activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities. Among other things, upon information and belief, such unauthorized use misled and served to entice consumers and prospective consumers to join Eyz Wide Shut, visit Eyz Wide Shut, and participate in events at Eyz Wide Shut and had a material effect and impact on the decision of members and prospective members and participants to join Eyz Wide Shut, visit Eyz Wide Shut and take part in the events at Eyz Wide Shut.

1349. Defendants' advertisements, promotions and marketing of Eyz Wide Shut and events at Eyz Wide Shut occur in and are targeted to interstate commerce. Specifically, Defendants promote their business and events through interstate promotions and campaigns to target persons from different states throughout the United States. Defendants principally use the World Wide Web, social media and other vehicles of interstate commerce to advertise, market, promote, and entice or lure membership and attendance at Eyz Wide Shut events.

1350. Defendants' unauthorized use of Krupa's Image as described herein was designed to benefit Defendants' business interests by, among other things, promoting Eyz Wide Shut and its activities and attracting clientele to Eyz Wide Shut.

1351. Defendants knew or should have known that their unauthorized use of Krupa's Image would cause consumer confusion as described in this First Amended Complaint.

1352. Defendants' unauthorized use of Krupa's Image as described herein violates 15 U.S.C. §1125(a) and was wrongful.

1353. Defendants' wrongful conduct as described herein was willful.

1354. As such, the present case is an exceptional case warranting an award of reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

1355. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Krupa of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Krupa.

1356. The method and manner in which Defendants used the image of Krupa further evinces that Defendants were aware of or consciously disregarded the fact that Krupa did not consent to Defendants' use of the image to advertise Defendants' business.

1357. Defendants have caused irreparable harm to Krupa, her reputation and brand by attributing to Krupa the swinger's lifestyle and activities at Eyz Wide Shut.

1358. Defendants' unauthorized use of Krupa's Image directly and proximately caused and continue to cause damage to Krupa in an amount to be determined at trial.

WHEREFORE, Krupa respectfully requests that the Court issue a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

KRUPA COUNT II

**(Violation of Fla. Stat. § 540.08: Right of Publicity;
Unauthorized Misappropriation of Name/Likeness against all Defendants)**

1359. Krupa has a statutory right of publicity under Section 540.08, Florida Statutes.

1360. Section 540.08, Florida Statutes, provides that: "[n]o person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use."

1361. Despite the clear language of Section 540.08, Defendants published Krupa's Image on social media outlets, among others, in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut event and activities.

1362. Krupa's Image is recognizable in the photo identified in **Exhibit K**.

1363. Defendants never sought permission or authority to use Krupa's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1364. Krupa never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1365. Defendants intentionally or, at a minimum, recklessly published, printed, displayed, or otherwise publicly disseminated or used Krupa's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

1366. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or with reckless disregard to deprive Krupa of a property interest during the entire time period in which the unauthorized use took place.

1367. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Krupa's rights.

1368. Alternatively, Defendants acted negligently towards Krupa in using and disseminating, without authority, her Image on social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

1369. Defendants have caused irreparable harm to Krupa, her reputation and brand by attributing to Krupa the swinger's lifestyle and activities at Eyz Wide Shut.

1370. Defendants have also damaged Krupa as a direct and proximate result of their unauthorized use of Krupa's Image without compensating Krupa. Defendants' conduct has been despicable and taken in conscious disregard of Krupa's rights.

WHEREFORE, Krupa respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. §540.08, including but not limited to, both actual loss and damages, costs, interest, royalties, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

KRUPA COUNT III

**(Violation of Common Law Right of Publicity;
Unauthorized Misappropriation of Name or Likeness against all Defendants)**

1371. Krupa has a common law right of publicity.

1372. Defendants may not publish, print, display or publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of Krupa without express written or oral consent to such use.

1373. Defendants published, printed, displayed and/or publicly used Krupa's Image on their social media outlets, among others, for purposes of trade and/or commercial advertising including, but not limited to, promoting, advertising and marketing of Eyz Wide Shut and Eyz Wide Shut events and activities.

1374. Krupa's Image is recognizable in the photo identified in **Exhibit K**.

1375. Defendants took these actions without Krupa's permission, consent or authority. In fact, Defendants never sought permission nor authority to use Krupa's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1376. Krupa never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1377. Defendants intentionally or, at a minimum, recklessly, published, printed, displayed, or otherwise publicly disseminated or used Krupa's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

1378. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or reckless disregard to deprive Krupa of a property interest during the entire time period in which the unauthorized use took place.

1379. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Krupa's rights.

1380. Alternatively, Defendants acted negligently towards Krupa in using and disseminating, without authority, her Image on Eyz Wide Shut social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

1381. Defendants have caused irreparable harm to Krupa, her reputation and brand by attributing to Krupa the swinger's lifestyle and activities at Eyz Wide Shut.

1382. Defendants have also damaged Krupa as a direct and proximate result of their unauthorized use of Krupa's Image without compensating Krupa.

WHEREFORE, Krupa respectfully requests that the Court issue a judgment against Defendants for all remedies available under a claim of misappropriation including, but not limited to, actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

KRUPA COUNT IV
(Violation of Fla. Stat. § 501.204:
Florida's Deceptive and Unfair Trade Practices Act against all Defendants)

1383. Section 501.204(1), Florida Statutes ("FDUTPA") provides that "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

1384. Defendants are direct and active participants in market dealings with Krupa by using her image to advertise and promote Eyz Wide Shut not only to patrons of Eyz Wide Shut, but to the general public in interstate commerce.

1385. Krupa's Image is recognizable in the photo identified in **Exhibit K**.

1386. Defendants at all material times were engaged in a trade or commerce, as defined within Section 501.203, Florida Statutes.

1387. Defendants have engaged in deceptive acts and unfair practices in the course of their business activities by:

- a. failing to obtain consent from Krupa prior to promoting Defendants' business by and through the misappropriation and use of Krupa's Image;
- b. failing to obtain authorization from Krupa prior to the publication of Krupa's Image on Eyz Wide Shut social media outlets;
- c. failing to compensate Krupa for the misappropriation and use of her Image on Eyz Wide Shut social media outlets;
- d. falsely representing by implication to the public that Krupa endorsed the Defendants' business, or would be present at and participate in Eyz Wide Shut events; and
- e. falsely representing by implication that Krupa sanctioned the type of business, events, lifestyle, or other activities promoted by Defendants.

1388. Defendants' conduct described herein was misleading.

1389. Defendants knew their unauthorized use of Krupa's Image was misleading.

1390. Defendants' unauthorized use of Krupa's Image as detailed herein violates Section 501.204(1), Florida Statutes, and was wrongful.

1391. Defendants' wrongful conduct as detailed herein was willful and malicious.

1392. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Krupa of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Krupa.

1393. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Krupa's rights.

1394. Alternatively, the method and manner in which Defendants used Krupa's Image further evinces that Defendants were aware or consciously disregarded that Krupa did not consent to Defendants' use to advertise Defendants' business.

1395. Defendants have caused irreparable harm to Krupa, her reputation and brand by attributing to Krupa the swinger's lifestyle and activities at Eyz Wide Shut.

1396. Defendants' unauthorized use of Krupa's Image directly and proximately caused damage to Krupa in an amount to be determined at trial.

WHEREFORE, Krupa respectfully requests that the Court issue a judgment against Defendants for actual damages, including loss of profit, attorneys' fees, interest, costs, compensatory damages, damage to professional reputation, consequential damages, statutory civil penalties under Fla. Stat. § 501.2075, and such other relief as this Court deems just and proper.

KRUPA COUNT V
(Violation of Fla. Stat. § 812.014 and Fla. Stat. § 772.11:
Civil Theft against all Defendants)

The Casas Law Firm, P.C.
Brickell Bayview Center 80 S.W. 8th Street, Suite 2000, Miami, FL 33130

1397. Section 772.11, Florida Statutes, creates a private right of action for victims of theft of tangible and intangible personal property, including rights, privileges, interests and claims.

1398. Defendants knowingly appropriated, used and disseminated Krupa's Image without authorization or consent.

1399. Krupa's Image is recognizable in the photo identified in **Exhibit K**.

1400. Defendants' misappropriation of Krupa's Image was for Defendants' own use and benefit and to deprive Krupa of certain rights.

1401. Defendants' misconduct detailed in this First Amended Complaint denied Krupa the right to engage in arms-length negotiations over the use and dissemination of her Image, the right to negotiate over reasonable bargained-for compensation, the right to say "no" to the proposed use by Defendants and the right to otherwise protect her Image from harm at the hands of Defendants.

1402. Defendants' appropriation of Krupa's Image as detailed herein without authority violates Sections 772.11 and 812.014, Florida Statutes, and was wrongful.

1403. Defendants' wrongful conduct as detailed herein was willful and malicious.

1404. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Krupa of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Krupa.

1405. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Krupa's rights.

1406. Alternatively, the method and manner in which Defendants used Krupa's Image further evinces that Defendants were aware or consciously disregarded the fact that Krupa did not consent to Defendants' use in order to advertise Defendants' business.

1407. Defendants' appropriation and use of Krupa's Image without authority directly and proximately caused damage to Krupa in an amount to be determined at trial.

WHEREFORE, Krupa respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. § 772.11(1), including but not limited to, treble the amount of actual damages, costs, interest, and attorneys' fees and other relief deemed just and proper by this Court.

KRUPA COUNT VI
(Unjust Enrichment against all Defendants)

1408. Krupa has conferred a benefit upon Defendants by virtue of Defendants' usage of her image without compensation.

1409. Krupa's Image is recognizable in the photo identified in **Exhibit K**.

1410. Defendants were aware that Krupa's Image were valuable.

1411. Defendants were aware of the resulting benefit from usage of Krupa's Image.

1412. Defendants have retained profits and other benefits conferred upon them by using Krupa's Image to promote and advertise Defendants' business, Eyz Wide Shut or Eyz Wide Shut events.

1413. It would be inequitable for Defendants to retain the benefits conferred upon them by using Krupa's Image without paying fair value for the image.

WHEREFORE, Krupa respectfully requests that the Court issue a judgment against Defendants for damages, including but not limited to actual damages, costs, interest, imposition of a constructive trust, restitution of unlawful proceeds, including Defendants' gross profits and such other and further relief in law or equity as this Court deems just and proper.

KRUPA COUNT VII
(Conversion against all Defendants)

The Casas Law Firm, P.C.
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1414. Krupa is, and at relevant times was, the exclusive owner of all rights, title, and interest to her Image unlawfully converted by Defendants for Defendants' benefit.

1415. Krupa's Image is recognizable in the photo identified in **Exhibit K**.

1416. Krupa has, and for all times relevant herein had, an intangible property interest in her Image unlawfully converted by Defendants for Defendants' benefit.

1417. By their acts and conduct alleged above, Defendants have converted Krupa's property rights, including without limitation, Krupa's Image for Defendants' use and wrongful disposition for financial gain.

1418. Krupa is informed and believes and on such information alleges that Defendants have refused to return Krupa's property to her or pay for the deprivation of Krupa's property.

1419. As a result, Krupa has suffered compensatory and exemplary damages to be determined according to proof at trial; but Krupa alleges that the same are within the jurisdiction of the Court.

1420. Further, Krupa is informed and believes and thereon alleges that in engaging in the conduct described above, Defendants acted with oppression, fraud, and/or malice. Defendants' conduct has been despicable and taken in conscious disregard of Krupa's rights.

WHEREFORE, Krupa respectfully requests this Court to issue a judgment against Defendants and for all remedies available under the common law claim for conversion, including but not limited to actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits, and/or other relief deemed just and proper.

KRUPA COUNT VIII
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Endorsement against all Defendants)

1421. Section 43 of the Lanham Act, 15 U.S.C. § 1125, et seq. applies to Defendants and protects Krupa from the conduct described herein.

1422. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from committing any act that “is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person . . . or approval of his or her goods, services, or commercial activities by another person . . .” 15 U.S.C. §1125(a)(1)(A).

1423. Krupa is a model, entertainer, and spokesperson who earns a living based solely on marketing, endorsing, and advertising products and services for her clients.

1424. Krupa works diligently to build herself into a brand that becomes inseparable from her persona.

1425. In fact, Krupa’s personae is so associated her brand that the use of the same or similar images and likenesses by Defendants constitutes a false representation by Defendants that its goods and services, i.e. swinger club activities, come from the same source as Krupa’s brand.

1426. In other words, Defendants use of Krupa’s personae is, on its face, a false statement that she has, in fact, endorsed Defendants’ swingers club and activities.

1427. Moreover, Krupa’s images are inherently distinctive or, in the alternative, have through their use acquired a distinctiveness through secondary meaning.

1428. Krupa’s images either suggest the basic nature of her product or service, identify the characteristic of her product or service, or suggest characteristics of her product or service that requires an effort of the imagination by the consumer in order to be understood as descriptive.

1429. Krupa’s brand - the reason her clients seek to hire her - is unique in that it is encompassed in Krupa’s identity, i.e., her persona.

1430. Krupa's rights to her personae rises to the level of common law trademarks and is entitled to protection under Section 2 of the Lanham Act. Therefore, Defendants' use of Krupa's image constitutes a False Endorsement under section 2 of the Lanham Act.

1431. Defendants used and altered Krupa's image, likeness and/or identity as described herein without authority in order to create the false perception that she worked at or was otherwise affiliated with Eyz Wide Shut, or endorsed Defendants, Eyz Wide Shut or Eyz Wide Shut's business activities, and/or consented to or authorized Defendants' or Eyz Wide Shut's usage of her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut's events and activities.

1432. Krupa's Image is recognizable in the photo identified in **Exhibit K**.

1433. Defendants use of Krupa's image was for Defendants' commercial benefit and was designed for the sole and express purpose of attracting clientele to Eyz Wide Shut thereby generating revenue for Defendants.

1434. Most (if not all) of the Eyz Wide Shut patrons have undoubtedly viewed Krupa's images in magazines and online.

1435. Defendants' unauthorized use and alteration of Krupa's image, likeness and/or identity to advertise, endorse, promote and market Defendants' business, Eyz Wide Shut and/or Eyz Wide Shut's events and activities as described in this Complaint has led to a competitive injury to Krupa.

1436. Defendants' unauthorized use and alteration of Krupa's image, likeness and/or identity as described in this Complaint constitutes a false designation of the source or origin, sponsorship, approval, association, or endorsement, which has deceived Krupa's fans and present and prospective clients into believing that, among other things, Krupa works at or is otherwise

affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut's events or activities, or consented to or authorized Defendants' or Eyz Wide Shut's usage or alteration of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut's events and activities and/or that Krupa would participate in or appear at the specific events promoted in the advertisement.

1437. Despite the fact that Defendants were at all times aware that Krupa did not work at, nor endorse Eyz Wide Shut, Defendants nevertheless used Krupa's image to mislead potential customers as to Krupa's employment at Eyz Wide Shut.

1438. Defendants knew that their use of Krupa's image would cause consumer confusion as to each Plaintiff's sponsorship, endorsement, and/or employment at Eyz Wide Shut.

1439. Upon information and belief, Defendants' use of Krupa's image as described above did, in fact, deceive and/or cause consumer confusion as to whether Krupa worked at and/or endorsed Eyz Wide Shut, and endorsed Eyz Wide Shut's business.

1440. As a direct and proximate results of Defendants' actions, Krupa has no control over the nature and quality of the services provided by Eyz Wide Shut, the nature of the advertisements depicting her image, likeness and/or identity, or how her image is being depicted by Eyz Wide Shut.

1441. Defendants' unauthorized use and alteration of Krupa's image, likeness and identity as described herein violates 15 U.S.C. §1125(a) and was wrongful.

1442. Defendants' wrongful conduct as described herein was willful.

1443. As such, the present case is an exceptional case warranting an award of reasonable attorney's fees pursuant to 15 U.S.C. § 1117.

1444. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to wrongfully portray Krupa as endorsing Defendants' business, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Krupa from such an endorsement.

1445. Further, any failure, neglect or default by Defendants will reflect adversely on Krupa as the believed source of origin, sponsorship, approval or association thereof, hampering efforts by Krupa to continue to protect her reputation for high quality professional modeling, resulting in loss of sales thereof and the considerable expenditures to promote her personal modeling services to legitimate mainstream media, all to the irreparable harm of Krupa.

1446. Due to Defendants' unauthorized use of Krupa's image, Krupa has been damaged in an amount to be determined at trial.

WHEREFORE, Krupa respectfully requests that the Court enter a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

Plaintiff Katarina Van Derham's Causes of Action

VAN DERHAM COUNT I
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Advertising against all Defendants)

1447. Section 43 of the Lanham Act, 15 U.S.C. § 1125, *et seq.* applies to Defendants and protects Van Derham from the conduct described herein. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from "misrepresent[ing] the nature, characteristics,

qualities or geographic origin of his or her or another person's goods, services or commercial activities" 15 U.S.C. §1125(a)(1)(B).

1448. Defendants used Van Derham's Image as described herein without authority in order to create the perception that Van Derham worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business and activities, and/or consented to or authorized Defendants to use her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities.

1449. Van Derham's Image is recognizable in the photo identified in **Exhibit L**.

1450. Defendants' use of Van Derham's Image to advertise, promote and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities as described in this First Amended Complaint was false and misleading.

1451. Defendants' unauthorized use of Van Derham's Image as described in this First Amended Complaint constitutes false advertising by suggesting or implying, among other things, that Van Derham worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants business or Eyz Wide Shut events and activities and/or that Van Derham would participate in or appear at the specific events promoted in the advertisement.

1452. Defendants' false advertising described above has the capacity or tendency to confuse consumers, including actual and prospective patrons of Eyz Wide Shut, as to the general quality of attendees and participants of Eyz Wide Shut and in its events, as well as specifically whether Van Derham worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or

authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities.

1453. Upon information and belief, Defendants' false advertising described above did, in fact, deceive and/or cause consumer confusion as to whether Van Derham worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events and activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities. Among other things, upon information and belief, such unauthorized use misled and served to entice consumers and prospective consumers to join Eyz Wide Shut, visit Eyz Wide Shut, and participate in events at Eyz Wide Shut and had a material effect and impact on the decision of members and prospective members and participants to join Eyz Wide Shut, visit Eyz Wide Shut and take part in the events at Eyz Wide Shut.

1454. Defendants' advertisements, promotions and marketing of Eyz Wide Shut and events at Eyz Wide Shut occur in and are targeted to interstate commerce. Specifically, Defendants promote their business and events through interstate promotions and campaigns to target persons from different states throughout the United States. Defendants principally use the World Wide Web, social media and other vehicles of interstate commerce to advertise, market, promote, and entice or lure membership and attendance at Eyz Wide Shut events.

1455. Defendants' unauthorized use of Van Derham's Image as described herein was designed to benefit Defendants' business interests by, among other things, promoting Eyz Wide Shut and its activities and attracting clientele to Eyz Wide Shut.

1456. Defendants knew or should have known that their unauthorized use of Van Derham's Image would cause consumer confusion as described in this First Amended Complaint.

1457. Defendants' unauthorized use of Van Derham's Image as described herein violates 15 U.S.C. §1125(a) and was wrongful.

1458. Defendants' wrongful conduct as described herein was willful.

1459. As such, the present case is an exceptional case warranting an award of reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

1460. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Van Derham of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Van Derham.

1461. The method and manner in which Defendants used the image of Van Derham further evinces that Defendants were aware of or consciously disregarded the fact that Van Derham did not consent to Defendants' use of the image to advertise Defendants' business.

1462. Defendants have caused irreparable harm to Van Derham, her reputation and brand by attributing to Van Derham the swinger's lifestyle and activities at Eyz Wide Shut.

1463. Defendants' unauthorized use of Van Derham's Image directly and proximately caused and continue to cause damage to Van Derham in an amount to be determined at trial.

WHEREFORE, Van Derham respectfully requests that the Court issue a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

VAN DERHAM COUNT II
(Violation of Fla. Stat. § 540.08: Right of Publicity;
Unauthorized Misappropriation of Name/Likeness against all Defendants)

1464. Van Derham has a statutory right of publicity under Section 540.08, Florida Statutes.

1465. Section 540.08, Florida Statutes, provides that: “[n]o person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use.”

1466. Despite the clear language of Section 540.08, Defendants published Van Derham’s Image on social media outlets, among others, in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut event and activities.

1467. Van Derham’s Image is recognizable in the photo identified in **Exhibit L**.

1468. Defendants never sought permission or authority to use Van Derham’s Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1469. Van Derham never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants’ use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1470. Defendants intentionally or, at a minimum, recklessly published, printed, displayed, or otherwise publicly disseminated or used Van Derham’s Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

1471. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or with reckless disregard to deprive Van Derham of a property interest during the entire time period in which the unauthorized use took place.

1472. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Van Derham's rights.

1473. Alternatively, Defendants acted negligently towards Van Derham in using and disseminating, without authority, her Image on social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

1474. Defendants have caused irreparable harm to Van Derham, her reputation and brand by attributing to Van Derham the swinger's lifestyle and activities at Eyz Wide Shut.

1475. Defendants have also damaged Van Derham as a direct and proximate result of their unauthorized use of Van Derham's Image without compensating Van Derham. Defendants' conduct has been despicable and taken in conscious disregard of Van Derham's rights.

WHEREFORE, Van Derham respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. §540.08, including but not limited to, both actual loss and damages, costs, interest, royalties, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

VAN DERHAM COUNT III
(Violation of Common Law Right of Publicity;
Unauthorized Misappropriation of Name or Likeness against all Defendants)

1476. Van Derham has a common law right of publicity.

1477. Defendants may not publish, print, display or publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of Van Derham without express written or oral consent to such use.

1478. Defendants published, printed, displayed and/or publicly used Van Derham's Image on their social media outlets, among others, for purposes of trade and/or commercial advertising including, but not limited to, promoting, advertising and marketing of Eyz Wide Shut and Eyz Wide Shut events and activities.

1479. Van Derham's Image is recognizable in the photo identified in **Exhibit L**.

1480. Defendants took these actions without Van Derham's permission, consent or authority. In fact, Defendants never sought permission nor authority to use Van Derham's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1481. Van Derham never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1482. Defendants intentionally or, at a minimum, recklessly, published, printed, displayed, or otherwise publicly disseminated or used Van Derham's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

1483. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or reckless disregard to deprive Van Derham of a property interest during the entire time period in which the unauthorized use took place.

1484. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Van Derham's rights.

1485. Alternatively, Defendants acted negligently towards Van Derham in using and disseminating, without authority, her Image on Eyz Wide Shut social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

1486. Defendants have caused irreparable harm to Van Derham, her reputation and brand by attributing to Van Derham the swinger's lifestyle and activities at Eyz Wide Shut.

1487. Defendants have also damaged Van Derham as a direct and proximate result of their unauthorized use of Van Derham's Image without compensating Van Derham.

WHEREFORE, Van Derham respectfully requests that the Court issue a judgment against Defendants for all remedies available under a claim of misappropriation including, but not limited to, actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

VAN DERHAM COUNT IV
(Violation of Fla. Stat. § 501.204:
Florida's Deceptive and Unfair Trade Practices Act against all Defendants)

1488. Section 501.204(1), Florida Statutes ("FDUTPA") provides that "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

1489. Defendants are direct and active participants in market dealings with Van Derham by using her image to advertise and promote Eyz Wide Shut not only to patrons of Eyz Wide Shut, but to the general public in interstate commerce.

1490. Van Derham's Image is recognizable in the photo identified in **Exhibit L**.

1491. Defendants at all material times were engaged in a trade or commerce, as defined within Section 501.203, Florida Statutes.

1492. Defendants have engaged in deceptive acts and unfair practices in the course of their business activities by:

a. failing to obtain consent from Van Derham prior to promoting Defendants' business by and through the misappropriation and use of Van Derham's Image;

b. failing to obtain authorization from Van Derham prior to the publication of Van Derham's Image on Eyz Wide Shut social media outlets;

c. failing to compensate Van Derham for the misappropriation and use of her Image on Eyz Wide Shut social media outlets;

d. falsely representing by implication to the public that Van Derham endorsed the Defendants' business, or would be present at and participate in Eyz Wide Shut events; and

e. falsely representing by implication that Van Derham sanctioned the type of business, events, lifestyle, or other activities promoted by Defendants.

1493. Defendants' conduct described herein was misleading.

1494. Defendants knew their unauthorized use of Van Derham's Image was misleading.

1495. Defendants' unauthorized use of Van Derham's Image as detailed herein violates Section 501.204(1), Florida Statutes, and was wrongfult.

1496. Defendants' wrongfult conduct as detailed herein was willful and malicious.

1497. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Van Derham of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Van Derham.

1498. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Van Derham's rights.

1499. Alternatively, the method and manner in which Defendants used Van Derham's Image further evinces that Defendants were aware or consciously disregarded that Van Derham did not consent to Defendants' use to advertise Defendants' business.

1500. Defendants have caused irreparable harm to Van Derham, her reputation and brand by attributing to Van Derham the swinger's lifestyle and activities at Eyz Wide Shut.

1501. Defendants' unauthorized use of Van Derham's Image directly and proximately caused damage to Van Derham in an amount to be determined at trial.

WHEREFORE, Van Derham respectfully requests that the Court issue a judgment against Defendants for actual damages, including loss of profit, attorneys' fees, interest, costs, compensatory damages, damage to professional reputation, consequential damages, statutory civil penalties under Fla. Stat. § 501.2075, and such other relief as this Court deems just and proper.

VAN DERHAM COUNT V
(Violation of Fla. Stat. § 812.014 and Fla. Stat. § 772.11:
Civil Theft against all Defendants)

1502. Section 772.11, Florida Statutes, creates a private right of action for victims of theft of tangible and intangible personal property, including rights, privileges, interests and claims.

1503. Defendants knowingly appropriated, used and disseminated Van Derham's Image without authorization or consent.

1504. Van Derham's Image is recognizable in the photo identified in **Exhibit L**.

1505. Defendants' misappropriation of Van Derham's Image was for Defendants' own use and benefit and to deprive Van Derham of certain rights.

1506. Defendants' misconduct detailed in this First Amended Complaint denied Van Derham the right to engage in arms-length negotiations over the use and dissemination of her Image, the right to negotiate over reasonable bargained-for compensation, the right to say "no" to the proposed use by Defendants and the right to otherwise protect her Image from harm at the hands of Defendants.

1507. Defendants' appropriation of Van Derham's Image as detailed herein without authority violates Sections 772.11 and 812.014, Florida Statutes, and was wrongful.

1508. Defendants' wrongful conduct as detailed herein was willful and malicious.

1509. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Van Derham of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Van Derham.

1510. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Van Derham's rights.

1511. Alternatively, the method and manner in which Defendants used Van Derham's Image further evinces that Defendants were aware or consciously disregarded the fact that Van Derham did not consent to Defendants' use in order to advertise Defendants' business.

1512. Defendants' appropriation and use of Van Derham's Image without authority directly and proximately caused damage to Van Derham in an amount to be determined at trial.

WHEREFORE, Van Derham respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. § 772.11(1), including but not limited to, treble the amount of actual damages, costs, interest, and attorneys' fees and other relief deemed just and proper by this Court.

VAN DERHAM COUNT VI
(Unjust Enrichment against all Defendants)

1513. Van Derham has conferred a benefit upon Defendants by virtue of Defendants' usage of her image without compensation.

1514. Van Derham's Image is recognizable in the photo identified in **Exhibit L**.

1515. Defendants were aware that Van Derham's Image were valuable.

The Casas Law Firm, P.C.
Brickell Bayview Center 80 S.W. 8th Street, Suite 2000, Miami, FL 33130

1516. Defendants were aware of the resulting benefit from usage of Van Derham's Image.

1517. Defendants have retained profits and other benefits conferred upon them by using Van Derham's Image to promote and advertise Defendants' business, Eyz Wide Shut or Eyz Wide Shut events.

1518. It would be inequitable for Defendants to retain the benefits conferred upon them by using Van Derham's Image without paying fair value for the image.

WHEREFORE, Van Derham respectfully requests that the Court issue a judgment against Defendants for damages, including but not limited to actual damages, costs, interest, imposition of a constructive trust, restitution of unlawful proceeds, including Defendants' gross profits and such other and further relief in law or equity as this Court deems just and proper.

VAN DERHAM COUNT VII
(Conversion against all Defendants)

1519. Van Derham is, and at relevant times was, the exclusive owner of all rights, title, and interest to her Image unlawfully converted by Defendants for Defendants' benefit.

1520. Van Derham's Image is recognizable in the photo identified in **Exhibit L**.

1521. Van Derham has, and for all times relevant herein had, an intangible property interest in her Image unlawfully converted by Defendants for Defendants' benefit.

1522. By their acts and conduct alleged above, Defendants have converted Van Derham's property rights, including without limitation, Van Derham's Image for Defendants' use and wrongful disposition for financial gain.

1523. Van Derham is informed and believes and on such information alleges that Defendants have refused to return Van Derham's property to her or pay for the deprivation of Van Derham's property.

1524. As a result, Van Derham has suffered compensatory and exemplary damages to be determined according to proof at trial; but Van Derham alleges that the same are within the jurisdiction of the Court.

1525. Further, Van Derham is informed and believes and thereon alleges that in engaging in the conduct described above, Defendants acted with oppression, fraud, and/or malice. Defendants' conduct has been despicable and taken in conscious disregard of Van Derham's rights.

WHEREFORE, Van Derham respectfully requests this Court to issue a judgment against Defendants and for all remedies available under the common law claim for conversion, including but not limited to actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits, and/or other relief deemed just and proper.

VAN DERHAM COUNT VIII
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Endorsement against all Defendants)

1526. Section 43 of the Lanham Act, 15 U.S.C. § 1125, et seq. applies to Defendants and protects Van Derham from the conduct described herein.

1527. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from committing any act that "is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person . . . or approval of his or her goods, services, or commercial activities by another person . . ." 15 U.S.C. §1125(a)(1)(A).

1528. Van Derham is a model, entertainer, and spokesperson who earns a living based solely on marketing, endorsing, and advertising products and services for her clients.

1529. Van Derham works diligently to build herself into a brand that becomes inseparable from her persona.

1530. In fact, Van Derham's personae is so associated her brand that the use of the same or similar images and likenesses by Defendants constitutes a false representation by Defendants that its goods and services, i.e. swinger club activities, come from the same source as Van Derham's brand.

1531. In other words, Defendants use of Van Derham's personae is, on its face, a false statement that she has, in fact, endorsed Defendants' swingers club and activities.

1532. Moreover, Van Derham's images are inherently distinctive or, in the alternative, have through their use acquired a distinctiveness through secondary meaning.

1533. Van Derham's images either suggest the basic nature of her product or service, identify the characteristic of her product or service, or suggest characteristics of her product or service that requires an effort of the imagination by the consumer in order to be understood as descriptive.

1534. Van Derham's brand - the reason her clients seek to hire her - is unique in that it is encompassed in Van Derham's identity, i.e., her persona.

1535. Van Derham's rights to her personae rises to the level of common law trademarks and is entitled to protection under Section 2 of the Lanham Act. Therefore, Defendants' use of Van Derham's image constitutes a False Endorsement under section 2 of the Lanham Act.

1536. Defendants used and altered Van Derham's image, likeness and/or identity as described herein without authority in order to create the false perception that she worked at or was otherwise affiliated with Eyz Wide Shut, or endorsed Defendants, Eyz Wide Shut or Eyz Wide Shut's business activities, and/or consented to or authorized Defendants' or Eyz Wide Shut's usage of her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut's events and activities.

1537. Van Derham's Image is recognizable in the photo identified in **Exhibit L**.

1538. Defendants use of Van Derham's image was for Defendants' commercial benefit and was designed for the sole and express purpose of attracting clientele to Eyz Wide Shut thereby generating revenue for Defendants.

1539. Most (if not all) of the Eyz Wide Shut patrons have undoubtedly viewed Van Derham's images in magazines and online.

1540. Defendants' unauthorized use and alteration of Van Derham's image, likeness and/or identity to advertise, endorse, promote and market Defendants' business, Eyz Wide Shut and/or Eyz Wide Shut's events and activities as described in this Complaint has led to a competitive injury to Van Derham.

1541. Defendants' unauthorized use and alteration of Van Derham's image, likeness and/or identity as described in this Complaint constitutes a false designation of the source or origin, sponsorship, approval, association, or endorsement, which has deceived Van Derham's fans and present and prospective clients into believing that, among other things, Van Derham works at or is otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut's events or activities, or consented to or authorized Defendants' or Eyz Wide Shut's usage or alteration of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut's events and activities and/or that Van Derham would participate in or appear at the specific events promoted in the advertisement.

1542. Despite the fact that Defendants were at all times aware that Van Derham did not work at, nor endorse Eyz Wide Shut, Defendants nevertheless used Van Derham's image to mislead potential customers as to Van Derham's employment at Eyz Wide Shut.

1543. Defendants knew that their use of Van Derham's image would cause consumer confusion as to each Plaintiff's sponsorship, endorsement, and/or employment at Eyz Wide Shut.

1544. Upon information and belief, Defendants' use of Van Derham's image as described above did, in fact, deceive and/or cause consumer confusion as to whether Van Derham worked at and/or endorsed Eyz Wide Shut, and endorsed Eyz Wide Shut's business.

1545. As a direct and proximate results of Defendants' actions, Van Derham has no control over the nature and quality of the services provided by Eyz Wide Shut, the nature of the advertisements depicting her image, likeness and/or identity, or how her image is being depicted by Eyz Wide Shut.

1546. Defendants' unauthorized use and alteration of Van Derham's image, likeness and identity as described herein violates 15 U.S.C. §1125(a) and was wrongful.

1547. Defendants' wrongful conduct as described herein was willful.

1548. As such, the present case is an exceptional case warranting an award of reasonable attorney's fees pursuant to 15 U.S.C. § 1117.

1549. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to wrongfully portray Van Derham as endorsing Defendants' business, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Van Derham from such an endorsement.

1550. Further, any failure, neglect or default by Defendants will reflect adversely on Van Derham as the believed source of origin, sponsorship, approval or association thereof, hampering efforts by Van Derham to continue to protect her reputation for high quality professional modeling, resulting in loss of sales thereof and the considerable expenditures to promote her personal modeling services to legitimate mainstream media, all to the irreparable harm of Van Derham.

1551. Due to Defendants' unauthorized use of Van Derham's image, Van Derham has been damaged in an amount to be determined at trial.

WHEREFORE, Van Derham respectfully requests that the Court enter a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

Plaintiff Maysa Quy's Causes of Action

QUY COUNT I
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Advertising against all Defendants)

1552. Section 43 of the Lanham Act, 15 U.S.C. § 1125, *et seq.* applies to Defendants and protects Quy from the conduct described herein. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from “misrepresent[ing] the nature, characteristics, qualities or geographic origin of his or her or another person’s goods, services or commercial activities . . .” 15 U.S.C. §1125(a)(1)(B).

1553. Defendants used Quy's Image as described herein without authority in order to create the perception that Quy worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business and activities, and/or consented to or authorized Defendants to use her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities.

1554. Quy's Image is recognizable in the photo identified in **Exhibit M**.

1555. Defendants' use of Quy's Image to advertise, promote and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities as described in this First Amended Complaint was false and misleading.

1556. Defendants' unauthorized use of Quy's Image as described in this First Amended Complaint constitutes false advertising by suggesting or implying, among other things, that Quy worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants business or Eyz Wide Shut events and activities and/or that Quy would participate in or appear at the specific events promoted in the advertisement.

1557. Defendants' false advertising described above has the capacity or tendency to confuse consumers, including actual and prospective patrons of Eyz Wide Shut, as to the general quality of attendees and participants of Eyz Wide Shut and in its events, as well as specifically whether Quy worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities.

1558. Upon information and belief, Defendants' false advertising described above did, in fact, deceive and/or cause consumer confusion as to whether Quy worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events and activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities. Among other things, upon information and belief, such unauthorized use misled and served to

entice consumers and prospective consumers to join Eyz Wide Shut, visit Eyz Wide Shut, and participate in events at Eyz Wide Shut and had a material effect and impact on the decision of members and prospective members and participants to join Eyz Wide Shut, visit Eyz Wide Shut and take part in the events at Eyz Wide Shut.

1559. Defendants' advertisements, promotions and marketing of Eyz Wide Shut and events at Eyz Wide Shut occur in and are targeted to interstate commerce. Specifically, Defendants promote their business and events through interstate promotions and campaigns to target persons from different states throughout the United States. Defendants principally use the World Wide Web, social media and other vehicles of interstate commerce to advertise, market, promote, and entice or lure membership and attendance at Eyz Wide Shut events.

1560. Defendants' unauthorized use of Quy's Image as described herein was designed to benefit Defendants' business interests by, among other things, promoting Eyz Wide Shut and its activities and attracting clientele to Eyz Wide Shut.

1561. Defendants knew or should have known that their unauthorized use of Quy's Image would cause consumer confusion as described in this First Amended Complaint.

1562. Defendants' unauthorized use of Quy's Image as described herein violates 15 U.S.C. §1125(a) and was wrongful.

1563. Defendants' wrongful conduct as described herein was willful.

1564. As such, the present case is an exceptional case warranting an award of reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

1565. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Quy of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Quy.

1566. The method and manner in which Defendants used the image of Quy further evinces that Defendants were aware of or consciously disregarded the fact that Quy did not consent to Defendants' use of the image to advertise Defendants' business.

1567. Defendants have caused irreparable harm to Quy, her reputation and brand by attributing to Quy the swinger's lifestyle and activities at Eyz Wide Shut.

1568. Defendants' unauthorized use of Quy's Image directly and proximately caused and continue to cause damage to Quy in an amount to be determined at trial.

WHEREFORE, Quy respectfully requests that the Court issue a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

QUY COUNT II
(Violation of Fla. Stat. § 540.08: Right of Publicity;
Unauthorized Misappropriation of Name/Likeness against all Defendants)

1569. Quy has a statutory right of publicity under Section 540.08, Florida Statutes.

1570. Section 540.08, Florida Statutes, provides that: "[n]o person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use."

1571. Despite the clear language of Section 540.08, Defendants published Quy's Image on social media outlets, among others, in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut event and activities.

1572. Quy's Image is recognizable in the photo identified in **Exhibit M**.

1573. Defendants never sought permission or authority to use Quy's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1574. Quy never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1575. Defendants intentionally or, at a minimum, recklessly published, printed, displayed, or otherwise publicly disseminated or used Quy's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

1576. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or with reckless disregard to deprive Quy of a property interest during the entire time period in which the unauthorized use took place.

1577. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Quy's rights.

1578. Alternatively, Defendants acted negligently towards Quy in using and disseminating, without authority, her Image on social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

1579. Defendants have caused irreparable harm to Quy, her reputation and brand by attributing to Quy the swinger's lifestyle and activities at Eyz Wide Shut.

1580. Defendants have also damaged Quy as a direct and proximate result of their unauthorized use of Quy's Image without compensating Quy. Defendants' conduct has been despicable and taken in conscious disregard of Quy's rights.

WHEREFORE, Quy respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. §540.08, including but not limited to, both actual loss and damages, costs, interest, royalties, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

QUY COUNT III

**(Violation of Common Law Right of Publicity;
Unauthorized Misappropriation of Name or Likeness against all Defendants)**

1581. Quy has a common law right of publicity.

1582. Defendants may not publish, print, display or publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of Quy without express written or oral consent to such use.

1583. Defendants published, printed, displayed and/or publicly used Quy's Image on their social media outlets, among others, for purposes of trade and/or commercial advertising including, but not limited to, promoting, advertising and marketing of Eyz Wide Shut and Eyz Wide Shut events and activities.

1584. Quy's Image is recognizable in the photo identified in **Exhibit M**.

1585. Defendants took these actions without Quy's permission, consent or authority. In fact, Defendants never sought permission nor authority to use Quy's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1586. Quy never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1587. Defendants intentionally or, at a minimum, recklessly, published, printed, displayed, or otherwise publicly disseminated or used Quy's Image without her express written or

oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

1588. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or reckless disregard to deprive Quy of a property interest during the entire time period in which the unauthorized use took place.

1589. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Quy's rights.

1590. Alternatively, Defendants acted negligently towards Quy in using and disseminating, without authority, her Image on Eyz Wide Shut social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

1591. Defendants have caused irreparable harm to Quy, her reputation and brand by attributing to Quy the swinger's lifestyle and activities at Eyz Wide Shut.

1592. Defendants have also damaged Quy as a direct and proximate result of their unauthorized use of Quy's Image without compensating Quy.

WHEREFORE, Quy respectfully requests that the Court issue a judgment against Defendants for all remedies available under a claim of misappropriation including, but not limited to, actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

QUY COUNT IV
(Violation of Fla. Stat. § 501.204:
Florida's Deceptive and Unfair Trade Practices Act against all Defendants)

1593. Section 501.204(1), Florida Statutes ("FDUTPA") provides that "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

1594. Defendants are direct and active participants in market dealings with Quy by using her image to advertise and promote Eyz Wide Shut not only to patrons of Eyz Wide Shut, but to the general public in interstate commerce.

1595. Quy's Image is recognizable in the photo identified in **Exhibit M**.

1596. Defendants at all material times were engaged in a trade or commerce, as defined within Section 501.203, Florida Statutes.

1597. Defendants have engaged in deceptive acts and unfair practices in the course of their business activities by:

- a. failing to obtain consent from Quy prior to promoting Defendants' business by and through the misappropriation and use of Quy's Image;
- b. failing to obtain authorization from Quy prior to the publication of Quy's Image on Eyz Wide Shut social media outlets;
- c. failing to compensate Quy for the misappropriation and use of her Image on Eyz Wide Shut social media outlets;
- d. falsely representing by implication to the public that Quy endorsed the Defendants' business, or would be present at and participate in Eyz Wide Shut events; and
- e. falsely representing by implication that Quy sanctioned the type of business, events, lifestyle, or other activities promoted by Defendants.

1598. Defendants' conduct described herein was misleading.

1599. Defendants knew their unauthorized use of Quy's Image was misleading.

1600. Defendants' unauthorized use of Quy's Image as detailed herein violates Section 501.204(1), Florida Statutes, and was wrongful.

1601. Defendants' wrongful conduct as detailed herein was willful and malicious.

1602. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Quy of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Quy.

1603. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Quy's rights.

1604. Alternatively, the method and manner in which Defendants used Quy's Image further evinces that Defendants were aware or consciously disregarded that Quy did not consent to Defendants' use to advertise Defendants' business.

1605. Defendants have caused irreparable harm to Quy, her reputation and brand by attributing to Quy the swinger's lifestyle and activities at Eyz Wide Shut.

1606. Defendants' unauthorized use of Quy's Image directly and proximately caused damage to Quy in an amount to be determined at trial.

WHEREFORE, Quy respectfully requests that the Court issue a judgment against Defendants for actual damages, including loss of profit, attorneys' fees, interest, costs, compensatory damages, damage to professional reputation, consequential damages, statutory civil penalties under Fla. Stat. § 501.2075, and such other relief as this Court deems just and proper.

QUY COUNT V
**(Violation of Fla. Stat. § 812.014 and Fla. Stat. § 772.11:
Civil Theft against all Defendants)**

1607. Section 772.11, Florida Statutes, creates a private right of action for victims of theft of tangible and intangible personal property, including rights, privileges, interests and claims.

1608. Defendants knowingly appropriated, used and disseminated Quy's Image without authorization or consent.

1609. Quy's Image is recognizable in the photo identified in **Exhibit M**.

1610. Defendants' misappropriation of Quy's Image was for Defendants' own use and benefit and to deprive Quy of certain rights.

1611. Defendants' misconduct detailed in this First Amended Complaint denied Quy the right to engage in arms-length negotiations over the use and dissemination of her Image, the right to negotiate over reasonable bargained-for compensation, the right to say "no" to the proposed use by Defendants and the right to otherwise protect her Image from harm at the hands of Defendants.

1612. Defendants' appropriation of Quy's Image as detailed herein without authority violates Sections 772.11 and 812.014, Florida Statutes, and was wrongful.

1613. Defendants' wrongful conduct as detailed herein was willful and malicious.

1614. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Quy of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Quy.

1615. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Quy's rights.

1616. Alternatively, the method and manner in which Defendants used Quy's Image further evinces that Defendants were aware or consciously disregarded the fact that Quy did not consent to Defendants' use in order to advertise Defendants' business.

1617. Defendants' appropriation and use of Quy's Image without authority directly and proximately caused damage to Quy in an amount to be determined at trial.

WHEREFORE, Quy respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. § 772.11(1), including but not limited to, treble the amount of actual damages, costs, interest, and attorneys' fees and other relief deemed just and proper by this Court.

QUY COUNT VI
(Unjust Enrichment against all Defendants)

1618. Quy has conferred a benefit upon Defendants by virtue of Defendants' usage of her image without compensation.

1619. Quy's Image is recognizable in the photo identified in **Exhibit M**.

1620. Defendants were aware that Quy's Image were valuable.

1621. Defendants were aware of the resulting benefit from usage of Quy's Image.

1622. Defendants have retained profits and other benefits conferred upon them by using Quy's Image to promote and advertise Defendants' business, Eyz Wide Shut or Eyz Wide Shut events.

1623. It would be inequitable for Defendants to retain the benefits conferred upon them by using Quy's Image without paying fair value for the image.

WHEREFORE, Quy respectfully requests that the Court issue a judgment against Defendants for damages, including but not limited to actual damages, costs, interest, imposition of a constructive trust, restitution of unlawful proceeds, including Defendants' gross profits and such other and further relief in law or equity as this Court deems just and proper.

QUY COUNT VII
(Conversion against all Defendants)

1624. Quy is, and at relevant times was, the exclusive owner of all rights, title, and interest to her Image unlawfully converted by Defendants for Defendants' benefit.

1625. Quy's Image is recognizable in the photo identified in **Exhibit M**.

1626. Quy has, and for all times relevant herein had, an intangible property interest in her Image unlawfully converted by Defendants for Defendants' benefit.

1627. By their acts and conduct alleged above, Defendants have converted Quy's property rights, including without limitation, Quy's Image for Defendants' use and wrongful disposition for financial gain.

1628. Quy is informed and believes and on such information alleges that Defendants have refused to return Quy's property to her or pay for the deprivation of Quy's property.

1629. As a result, Quy has suffered compensatory and exemplary damages to be determined according to proof at trial; but Quy alleges that the same are within the jurisdiction of the Court.

1630. Further, Quy is informed and believes and thereon alleges that in engaging in the conduct described above, Defendants acted with oppression, fraud, and/or malice. Defendants' conduct has been despicable and taken in conscious disregard of Quy's rights.

WHEREFORE, Quy respectfully requests this Court to issue a judgment against Defendants and for all remedies available under the common law claim for conversion, including but not limited to actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits, and/or other relief deemed just and proper.

QUY COUNT VIII
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Endorsement against all Defendants)

1631. Section 43 of the Lanham Act, 15 U.S.C. § 1125, et seq. applies to Defendants and protects Quy from the conduct described herein.

1632. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from committing any act that "is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person . . . or

approval of his or her goods, services, or commercial activities by another person” 15 U.S.C. §1125(a)(1)(A).

1633. Quy is a model, entertainer, and spokesperson who earns a living based solely on marketing, endorsing, and advertising products and services for her clients.

1634. Quy works diligently to build herself into a brand that becomes inseparable from her persona.

1635. In fact, Quy’s personae is so associated with her brand that the use of the same or similar images and likenesses by Defendants constitutes a false representation by Defendants that its goods and services, i.e. swinger club activities, come from the same source as Quy’s brand.

1636. In other words, Defendants use of Quy’s personae is, on its face, a false statement that she has, in fact, endorsed Defendants’ swingers club and activities.

1637. Moreover, Quy’s images are inherently distinctive or, in the alternative, have through their use acquired a distinctiveness through secondary meaning.

1638. Quy’s images either suggest the basic nature of her product or service, identify the characteristic of her product or service, or suggest characteristics of her product or service that requires an effort of the imagination by the consumer in order to be understood as descriptive.

1639. Quy’s brand - the reason her clients seek to hire her - is unique in that it is encompassed in Quy’s identity, i.e., her persona.

1640. Quy’s rights to her personae rises to the level of common law trademarks and is entitled to protection under Section 2 of the Lanham Act. Therefore, Defendants’ use of Quy’s image constitutes a False Endorsement under section 2 of the Lanham Act.

1641. Defendants used and altered Quy’s image, likeness and/or identity as described herein without authority in order to create the false perception that she worked at or was otherwise

affiliated with Eyz Wide Shut, or endorsed Defendants, Eyz Wide Shut or Eyz Wide Shut's business activities, and/or consented to or authorized Defendants' or Eyz Wide Shut's usage of her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut's events and activities.

1642. Quy's Image is recognizable in the photo identified in **Exhibit M**.

1643. Defendants use of Quy's image was for Defendants' commercial benefit and was designed for the sole and express purpose of attracting clientele to Eyz Wide Shut thereby generating revenue for Defendants.

1644. Most (if not all) of the Eyz Wide Shut patrons have undoubtedly viewed Quy's images in magazines and online.

1645. Defendants' unauthorized use and alteration of Quy's image, likeness and/or identity to advertise, endorse, promote and market Defendants' business, Eyz Wide Shut and/or Eyz Wide Shut's events and activities as described in this Complaint has led to a competitive injury to Quy.

1646. Defendants' unauthorized use and alteration of Quy's image, likeness and/or identity as described in this Complaint constitutes a false designation of the source or origin, sponsorship, approval, association, or endorsement, which has deceived Quy's fans and present and prospective clients into believing that, among other things, Quy works at or is otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut's events or activities, or consented to or authorized Defendants' or Eyz Wide Shut's usage or alteration of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut's events and activities and/or that Quy would participate in or appear at the specific events promoted in the advertisement.

1647. Despite the fact that Defendants were at all times aware that Quy did not work at, nor endorse Eyz Wide Shut, Defendants nevertheless used Quy's image to mislead potential customers as to Quy's employment at Eyz Wide Shut.

1648. Defendants knew that their use of Quy's image would cause consumer confusion as to each Plaintiff's sponsorship, endorsement, and/or employment at Eyz Wide Shut.

1649. Upon information and belief, Defendants' use of Quy's image as described above did, in fact, deceive and/or cause consumer confusion as to whether Quy worked at and/or endorsed Eyz Wide Shut, and endorsed Eyz Wide Shut's business.

1650. As a direct and proximate results of Defendants' actions, Quy has no control over the nature and quality of the services provided by Eyz Wide Shut, the nature of the advertisements depicting her image, likeness and/or identity, or how her image is being depicted by Eyz Wide Shut.

1651. Defendants' unauthorized use and alteration of Quy's image, likeness and identity as described herein violates 15 U.S.C. §1125(a) and was wrongfult.

1652. Defendants' wrongfult conduct as described herein was willful.

1653. As such, the present case is an exceptional case warranting an award of reasonable attorney's fees pursuant to 15 U.S.C. § 1117.

1654. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to wrongfully portray Quy as endorsing Defendants' business, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Quy from such an endorsement.

1655. Further, any failure, neglect or default by Defendants will reflect adversely on Quy as the believed source of origin, sponsorship, approval or association thereof, hampering efforts

by Quy to continue to protect her reputation for high quality professional modeling, resulting in loss of sales thereof and the considerable expenditures to promote her personal modeling services to legitimate mainstream media, all to the irreparable harm of Quy.

1656. Due to Defendants' unauthorized use of Quy's image, Quy has been damaged in an amount to be determined at trial.

WHEREFORE, Quy respectfully requests that the Court enter a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

Plaintiff Paola Canas's Causes of Action

CANAS COUNT I
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Advertising against all Defendants)

1657. Section 43 of the Lanham Act, 15 U.S.C. § 1125, *et seq.* applies to Defendants and protects Canas from the conduct described herein. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from “misrepresent[ing] the nature, characteristics, qualities or geographic origin of his or her or another person’s goods, services or commercial activities . . .” 15 U.S.C. §1125(a)(1)(B).

1658. Defendants used Canas's Image as described herein without authority in order to create the perception that Canas worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business and activities, and/or consented to or authorized Defendants to use her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities.

1659. Canas's Image is recognizable in the photo identified in **Exhibit N**.

1660. Defendants' use of Canas's Image to advertise, promote and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities as described in this First Amended Complaint was false and misleading.

1661. Defendants' unauthorized use of Canas's Image as described in this First Amended Complaint constitutes false advertising by suggesting or implying, among other things, that Canas worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants business or Eyz Wide Shut events and activities and/or that Canas would participate in or appear at the specific events promoted in the advertisement.

1662. Defendants' false advertising described above has the capacity or tendency to confuse consumers, including actual and prospective patrons of Eyz Wide Shut, as to the general quality of attendees and participants of Eyz Wide Shut and in its events, as well as specifically whether Canas worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities.

1663. Upon information and belief, Defendants' false advertising described above did, in fact, deceive and/or cause consumer confusion as to whether Canas worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events and activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities.

Among other things, upon information and belief, such unauthorized use misled and served to entice consumers and prospective consumers to join Eyz Wide Shut, visit Eyz Wide Shut, and participate in events at Eyz Wide Shut and had a material effect and impact on the decision of members and prospective members and participants to join Eyz Wide Shut, visit Eyz Wide Shut and take part in the events at Eyz Wide Shut.

1664. Defendants' advertisements, promotions and marketing of Eyz Wide Shut and events at Eyz Wide Shut occur in and are targeted to interstate commerce. Specifically, Defendants promote their business and events through interstate promotions and campaigns to target persons from different states throughout the United States. Defendants principally use the World Wide Web, social media and other vehicles of interstate commerce to advertise, market, promote, and entice or lure membership and attendance at Eyz Wide Shut events.

1665. Defendants' unauthorized use of Canas's Image as described herein was designed to benefit Defendants' business interests by, among other things, promoting Eyz Wide Shut and its activities and attracting clientele to Eyz Wide Shut.

1666. Defendants knew or should have known that their unauthorized use of Canas's Image would cause consumer confusion as described in this First Amended Complaint.

1667. Defendants' unauthorized use of Canas's Image as described herein violates 15 U.S.C. §1125(a) and was wrongfult.

1668. Defendants' wrongfult conduct as described herein was willful.

1669. As such, the present case is an exceptional case warranting an award of reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

1670. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Canas of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Canas.

1671. The method and manner in which Defendants used the image of Canas further evinces that Defendants were aware of or consciously disregarded the fact that Canas did not consent to Defendants' use of the image to advertise Defendants' business.

1672. Defendants have caused irreparable harm to Canas, her reputation and brand by attributing to Canas the swinger's lifestyle and activities at Eyz Wide Shut.

1673. Defendants' unauthorized use of Canas's Image directly and proximately caused and continue to cause damage to Canas in an amount to be determined at trial.

WHEREFORE, Canas respectfully requests that the Court issue a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

CANAS COUNT II

**(Violation of Fla. Stat. § 540.08: Right of Publicity;
Unauthorized Misappropriation of Name/Likeness against all Defendants)**

1674. Canas has a statutory right of publicity under Section 540.08, Florida Statutes.

1675. Section 540.08, Florida Statutes, provides that: "[n]o person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use."

1676. Despite the clear language of Section 540.08, Defendants published Canas's Image on social media outlets, among others, in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut event and activities.

1677. Canas's Image is recognizable in the photo identified in **Exhibit N**.

1678. Defendants never sought permission or authority to use Canas's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1679. Canas never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1680. Defendants intentionally or, at a minimum, recklessly published, printed, displayed, or otherwise publicly disseminated or used Canas's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

1681. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or with reckless disregard to deprive Canas of a property interest during the entire time period in which the unauthorized use took place.

1682. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Canas's rights.

1683. Alternatively, Defendants acted negligently towards Canas in using and disseminating, without authority, her Image on social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

1684. Defendants have caused irreparable harm to Canas, her reputation and brand by attributing to Canas the swinger's lifestyle and activities at Eyz Wide Shut.

1685. Defendants have also damaged Canas as a direct and proximate result of their unauthorized use of Canas's Image without compensating Canas. Defendants' conduct has been despicable and taken in conscious disregard of Canas's rights.

WHEREFORE, Canas respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. §540.08, including but not limited to, both actual loss and damages, costs, interest, royalties, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

CANAS COUNT III
(Violation of Common Law Right of Publicity;
Unauthorized Misappropriation of Name or Likeness against all Defendants)

1686. Canas has a common law right of publicity.

1687. Defendants may not publish, print, display or publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of Canas without express written or oral consent to such use.

1688. Defendants published, printed, displayed and/or publicly used Canas's Image on their social media outlets, among others, for purposes of trade and/or commercial advertising including, but not limited to, promoting, advertising and marketing of Eyz Wide Shut and Eyz Wide Shut events and activities.

1689. Canas's Image is recognizable in the photo identified in **Exhibit N**.

1690. Defendants took these actions without Canas's permission, consent or authority. In fact, Defendants never sought permission nor authority to use Canas's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1691. Canas never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1692. Defendants intentionally or, at a minimum, recklessly, published, printed, displayed, or otherwise publicly disseminated or used Canas's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

1693. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or reckless disregard to deprive Canas of a property interest during the entire time period in which the unauthorized use took place.

1694. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Canas's rights.

1695. Alternatively, Defendants acted negligently towards Canas in using and disseminating, without authority, her Image on Eyz Wide Shut social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

1696. Defendants have caused irreparable harm to Canas, her reputation and brand by attributing to Canas the swinger's lifestyle and activities at Eyz Wide Shut.

1697. Defendants have also damaged Canas as a direct and proximate result of their unauthorized use of Canas's Image without compensating Canas.

WHEREFORE, Canas respectfully requests that the Court issue a judgment against Defendants for all remedies available under a claim of misappropriation including, but not limited to, actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

CANAS COUNT IV
**(Violation of Fla. Stat. § 501.204:
Florida's Deceptive and Unfair Trade Practices Act against all Defendants)**

1698. Section 501.204(1), Florida Statutes ("FDUTPA") provides that "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

1699. Defendants are direct and active participants in market dealings with Canas by using her image to advertise and promote Eyz Wide Shut not only to patrons of Eyz Wide Shut, but to the general public in interstate commerce.

1700. Canas's Image is recognizable in the photo identified in **Exhibit N**.

1701. Defendants at all material times were engaged in a trade or commerce, as defined within Section 501.203, Florida Statutes.

1702. Defendants have engaged in deceptive acts and unfair practices in the course of their business activities by:

- a. failing to obtain consent from Canas prior to promoting Defendants' business by and through the misappropriation and use of Canas's Image;
- b. failing to obtain authorization from Canas prior to the publication of Canas's Image on Eyz Wide Shut social media outlets;
- c. failing to compensate Canas for the misappropriation and use of her Image on Eyz Wide Shut social media outlets;
- d. falsely representing by implication to the public that Canas endorsed the Defendants' business, or would be present at and participate in Eyz Wide Shut events; and
- e. falsely representing by implication that Canas sanctioned the type of business, events, lifestyle, or other activities promoted by Defendants.

1703. Defendants' conduct described herein was misleading.

1704. Defendants knew their unauthorized use of Canas's Image was misleading.

1705. Defendants' unauthorized use of Canas's Image as detailed herein violates Section 501.204(1), Florida Statutes, and was wrongful.

1706. Defendants' wrongful conduct as detailed herein was willful and malicious.

1707. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Canas of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Canas.

1708. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Canas's rights.

1709. Alternatively, the method and manner in which Defendants used Canas's Image further evinces that Defendants were aware or consciously disregarded that Canas did not consent to Defendants' use to advertise Defendants' business.

1710. Defendants have caused irreparable harm to Canas, her reputation and brand by attributing to Canas the swinger's lifestyle and activities at Eyz Wide Shut.

1711. Defendants' unauthorized use of Canas's Image directly and proximately caused damage to Canas in an amount to be determined at trial.

WHEREFORE, Canas respectfully requests that the Court issue a judgment against Defendants for actual damages, including loss of profit, attorneys' fees, interest, costs, compensatory damages, damage to professional reputation, consequential damages, statutory civil penalties under Fla. Stat. § 501.2075, and such other relief as this Court deems just and proper.

CANAS COUNT V
(Violation of Fla. Stat. § 812.014 and Fla. Stat. § 772.11:
Civil Theft against all Defendants)

The Casas Law Firm, P.C.
Brickell Bayview Center 80 S.W. 8th Street, Suite 2000, Miami, FL 33130

1712. Section 772.11, Florida Statutes, creates a private right of action for victims of theft of tangible and intangible personal property, including rights, privileges, interests and claims.

1713. Defendants knowingly appropriated, used and disseminated Canas's Image without authorization or consent.

1714. Canas's Image is recognizable in the photo identified in **Exhibit N**.

1715. Defendants' misappropriation of Canas's Image was for Defendants' own use and benefit and to deprive Canas of certain rights.

1716. Defendants' misconduct detailed in this First Amended Complaint denied Canas the right to engage in arms-length negotiations over the use and dissemination of her Image, the right to negotiate over reasonable bargained-for compensation, the right to say "no" to the proposed use by Defendants and the right to otherwise protect her Image from harm at the hands of Defendants.

1717. Defendants' appropriation of Canas's Image as detailed herein without authority violates Sections 772.11 and 812.014, Florida Statutes, and was wrongful.

1718. Defendants' wrongful conduct as detailed herein was willful and malicious.

1719. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Canas of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Canas.

1720. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Canas's rights.

1721. Alternatively, the method and manner in which Defendants used Canas's Image further evinces that Defendants were aware or consciously disregarded the fact that Canas did not consent to Defendants' use in order to advertise Defendants' business.

1722. Defendants' appropriation and use of Canas's Image without authority directly and proximately caused damage to Canas in an amount to be determined at trial.

WHEREFORE, Canas respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. § 772.11(1), including but not limited to, treble the amount of actual damages, costs, interest, and attorneys' fees and other relief deemed just and proper by this Court.

CANAS COUNT VI
(Unjust Enrichment against all Defendants)

1723. Canas has conferred a benefit upon Defendants by virtue of Defendants' usage of her image without compensation.

1724. Canas's Image is recognizable in the photo identified in **Exhibit N**.

1725. Defendants were aware that Canas's Image were valuable.

1726. Defendants were aware of the resulting benefit from usage of Canas's Image.

1727. Defendants have retained profits and other benefits conferred upon them by using Canas's Image to promote and advertise Defendants' business, Eyz Wide Shut or Eyz Wide Shut events.

1728. It would be inequitable for Defendants to retain the benefits conferred upon them by using Canas's Image without paying fair value for the image.

WHEREFORE, Canas respectfully requests that the Court issue a judgment against Defendants for damages, including but not limited to actual damages, costs, interest, imposition of a constructive trust, restitution of unlawful proceeds, including Defendants' gross profits and such other and further relief in law or equity as this Court deems just and proper.

CANAS COUNT VII
(Conversion against all Defendants)

The Casas Law Firm, P.C.
Brickell Bayview Center 80 S.W. 8th Street, Suite 2000, Miami, FL 33130

1729. Canas is, and at relevant times was, the exclusive owner of all rights, title, and interest to her Image unlawfully converted by Defendants for Defendants' benefit.

1730. Canas's Image is recognizable in the photo identified in **Exhibit N**.

1731. Canas has, and for all times relevant herein had, an intangible property interest in her Image unlawfully converted by Defendants for Defendants' benefit.

1732. By their acts and conduct alleged above, Defendants have converted Canas's property rights, including without limitation, Canas's Image for Defendants' use and wrongful disposition for financial gain.

1733. Canas is informed and believes and on such information alleges that Defendants have refused to return Canas's property to her or pay for the deprivation of Canas's property.

1734. As a result, Canas has suffered compensatory and exemplary damages to be determined according to proof at trial; but Canas alleges that the same are within the jurisdiction of the Court.

1735. Further, Canas is informed and believes and thereon alleges that in engaging in the conduct described above, Defendants acted with oppression, fraud, and/or malice. Defendants' conduct has been despicable and taken in conscious disregard of Canas's rights.

WHEREFORE, Canas respectfully requests this Court to issue a judgment against Defendants and for all remedies available under the common law claim for conversion, including but not limited to actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits, and/or other relief deemed just and proper.

CANAS COUNT VIII
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Endorsement against all Defendants)

1736. Section 43 of the Lanham Act, 15 U.S.C. § 1125, et seq. applies to Defendants and protects Canas from the conduct described herein.

1737. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from committing any act that “is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person . . . or approval of his or her goods, services, or commercial activities by another person . . .” 15 U.S.C. §1125(a)(1)(A).

1738. Canas is a model, entertainer, and spokesperson who earns a living based solely on marketing, endorsing, and advertising products and services for her clients.

1739. Canas works diligently to build herself into a brand that becomes inseparable from her persona.

1740. In fact, Canas’ personae is so associated her brand that the use of the same or similar images and likenesses by Defendants constitutes a false representation by Defendants that its goods and services, i.e. swinger club activities, come from the same source as Canas’ brand.

1741. In other words, Defendants use of Canas’ personae is, on its face, a false statement that she has, in fact, endorsed Defendants’ swingers club and activities.

1742. Moreover, Canas’ images are inherently distinctive or, in the alternative, have through their use acquired a distinctiveness through secondary meaning.

1743. Canas’ images either suggest the basic nature of her product or service, identify the characteristic of her product or service, or suggest characteristics of her product or service that requires an effort of the imagination by the consumer in order to be understood as descriptive.

1744. Canas’ brand - the reason her clients seek to hire her - is unique in that it is encompassed in Canas’ identity, i.e., her persona.

1745. Canas' rights to her personae rises to the level of common law trademarks and is entitled to protection under Section 2 of the Lanham Act. Therefore, Defendants' use of Canas' image constitutes a False Endorsement under section 2 of the Lanham Act.

1746. Defendants used and altered Canas' image, likeness and/or identity as described herein without authority in order to create the false perception that she worked at or was otherwise affiliated with Eyz Wide Shut, or endorsed Defendants, Eyz Wide Shut or Eyz Wide Shut's business activities, and/or consented to or authorized Defendants' or Eyz Wide Shut's usage of her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut's events and activities.

1747. Canas' Image is recognizable in the photo identified in **Exhibit N**.

1748. Defendants use of Canas' image was for Defendants' commercial benefit and was designed for the sole and express purpose of attracting clientele to Eyz Wide Shut thereby generating revenue for Defendants.

1749. Most (if not all) of the Eyz Wide Shut patrons have undoubtedly viewed Canas' images in magazines and online.

1750. Defendants' unauthorized use and alteration of Canas' image, likeness and/or identity to advertise, endorse, promote and market Defendants' business, Eyz Wide Shut and/or Eyz Wide Shut's events and activities as described in this Complaint has led to a competitive injury to Canas.

1751. Defendants' unauthorized use and alteration of Canas' image, likeness and/or identity as described in this Complaint constitutes a false designation of the source or origin, sponsorship, approval, association, or endorsement, which has deceived Canas' fans and present and prospective clients into believing that, among other things, Canas works at or is otherwise

affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut's events or activities, or consented to or authorized Defendants' or Eyz Wide Shut's usage or alteration of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut's events and activities and/or that Canas would participate in or appear at the specific events promoted in the advertisement.

1752. Despite the fact that Defendants were at all times aware that Canas did not work at, nor endorse Eyz Wide Shut, Defendants nevertheless used Canas' image to mislead potential customers as to Canas' employment at Eyz Wide Shut.

1753. Defendants knew that their use of Canas' image would cause consumer confusion as to each Plaintiff's sponsorship, endorsement, and/or employment at Eyz Wide Shut.

1754. Upon information and belief, Defendants' use of Canas' image as described above did, in fact, deceive and/or cause consumer confusion as to whether Canas worked at and/or endorsed Eyz Wide Shut, and endorsed Eyz Wide Shut's business.

1755. As a direct and proximate results of Defendants' actions, Canas has no control over the nature and quality of the services provided by Eyz Wide Shut, the nature of the advertisements depicting her image, likeness and/or identity, or how her image is being depicted by Eyz Wide Shut.

1756. Defendants' unauthorized use and alteration of Canas' image, likeness and identity as described herein violates 15 U.S.C. §1125(a) and was wrongful.

1757. Defendants' wrongful conduct as described herein was willful.

1758. As such, the present case is an exceptional case warranting an award of reasonable attorney's fees pursuant to 15 U.S.C. § 1117.

1759. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to wrongfully portray Canas as endorsing Defendants' business, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Canas from such an endorsement.

1760. Further, any failure, neglect or default by Defendants will reflect adversely on Canas as the believed source of origin, sponsorship, approval or association thereof, hampering efforts by Canas to continue to protect her reputation for high quality professional modeling, resulting in loss of sales thereof and the considerable expenditures to promote her personal modeling services to legitimate mainstream media, all to the irreparable harm of Canas.

1761. Due to Defendants' unauthorized use of Canas' image, Canas has been damaged in an amount to be determined at trial.

WHEREFORE, Canas respectfully requests that the Court enter a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

Plaintiff Sandra Valencia's Causes of Action

VALENCIA COUNT I
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Advertising against all Defendants)

1762. Section 43 of the Lanham Act, 15 U.S.C. § 1125, *et seq.* applies to Defendants and protects Valencia from the conduct described herein. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from "misrepresent[ing] the nature, characteristics,

qualities or geographic origin of his or her or another person's goods, services or commercial activities" 15 U.S.C. §1125(a)(1)(B).

1763. Defendants used Valencia's Image as described herein without authority in order to create the perception that Valencia worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business and activities, and/or consented to or authorized Defendants to use her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities.

1764. Valencia's Image is recognizable in the photo identified in **Exhibit O**.

1765. Defendants' use of Valencia's Image to advertise, promote and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities as described in this First Amended Complaint was false and misleading.

1766. Defendants' unauthorized use of Valencia's Image as described in this First Amended Complaint constitutes false advertising by suggesting or implying, among other things, that Valencia worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants business or Eyz Wide Shut events and activities and/or that Valencia would participate in or appear at the specific events promoted in the advertisement.

1767. Defendants' false advertising described above has the capacity or tendency to confuse consumers, including actual and prospective patrons of Eyz Wide Shut, as to the general quality of attendees and participants of Eyz Wide Shut and in its events, as well as specifically whether Valencia worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized

Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities.

1768. Upon information and belief, Defendants' false advertising described above did, in fact, deceive and/or cause consumer confusion as to whether Valencia worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events and activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities. Among other things, upon information and belief, such unauthorized use misled and served to entice consumers and prospective consumers to join Eyz Wide Shut, visit Eyz Wide Shut, and participate in events at Eyz Wide Shut and had a material effect and impact on the decision of members and prospective members and participants to join Eyz Wide Shut, visit Eyz Wide Shut and take part in the events at Eyz Wide Shut.

1769. Defendants' advertisements, promotions and marketing of Eyz Wide Shut and events at Eyz Wide Shut occur in and are targeted to interstate commerce. Specifically, Defendants promote their business and events through interstate promotions and campaigns to target persons from different states throughout the United States. Defendants principally use the World Wide Web, social media and other vehicles of interstate commerce to advertise, market, promote, and entice or lure membership and attendance at Eyz Wide Shut events.

1770. Defendants' unauthorized use of Valencia's Image as described herein was designed to benefit Defendants' business interests by, among other things, promoting Eyz Wide Shut and its activities and attracting clientele to Eyz Wide Shut.

1771. Defendants knew or should have known that their unauthorized use of Valencia's Image would cause consumer confusion as described in this First Amended Complaint.

1772. Defendants' unauthorized use of Valencia's Image as described herein violates 15 U.S.C. §1125(a) and was wrongful.

1773. Defendants' wrongful conduct as described herein was willful.

1774. As such, the present case is an exceptional case warranting an award of reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

1775. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Valencia of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Valencia.

1776. The method and manner in which Defendants used the image of Valencia further evinces that Defendants were aware of or consciously disregarded the fact that Valencia did not consent to Defendants' use of the image to advertise Defendants' business.

1777. Defendants have caused irreparable harm to Valencia, her reputation and brand by attributing to Valencia the swinger's lifestyle and activities at Eyz Wide Shut.

1778. Defendants' unauthorized use of Valencia's Image directly and proximately caused and continue to cause damage to Valencia in an amount to be determined at trial.

WHEREFORE, Valencia respectfully requests that the Court issue a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

VALENCIA COUNT II
(Violation of Fla. Stat. § 540.08: Right of Publicity;
Unauthorized Misappropriation of Name/Likeness against all Defendants)

1779. Valencia has a statutory right of publicity under Section 540.08, Florida Statutes.

1780. Section 540.08, Florida Statutes, provides that: “[n]o person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use.”

1781. Despite the clear language of Section 540.08, Defendants published Valencia’s Image on social media outlets, among others, in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut event and activities.

1782. Valencia’s Image is recognizable in the photo identified in **Exhibit O**.

1783. Defendants never sought permission or authority to use Valencia’s Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1784. Valencia never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants’ use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1785. Defendants intentionally or, at a minimum, recklessly published, printed, displayed, or otherwise publicly disseminated or used Valencia’s Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

1786. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or with reckless disregard to deprive Valencia of a property interest during the entire time period in which the unauthorized use took place.

1787. At a minimum, Defendants’ conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Valencia’s rights.

1788. Alternatively, Defendants acted negligently towards Valencia in using and disseminating, without authority, her Image on social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

1789. Defendants have caused irreparable harm to Valencia, her reputation and brand by attributing to Valencia the swinger's lifestyle and activities at Eyz Wide Shut.

1790. Defendants have also damaged Valencia as a direct and proximate result of their unauthorized use of Valencia's Image without compensating Valencia. Defendants' conduct has been despicable and taken in conscious disregard of Valencia's rights.

WHEREFORE, Valencia respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. §540.08, including but not limited to, both actual loss and damages, costs, interest, royalties, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

VALENCIA COUNT III
(Violation of Common Law Right of Publicity;
Unauthorized Misappropriation of Name or Likeness against all Defendants)

1791. Valencia has a common law right of publicity.

1792. Defendants may not publish, print, display or publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of Valencia without express written or oral consent to such use.

1793. Defendants published, printed, displayed and/or publicly used Valencia's Image on their social media outlets, among others, for purposes of trade and/or commercial advertising including, but not limited to, promoting, advertising and marketing of Eyz Wide Shut and Eyz Wide Shut events and activities.

1794. Valencia's Image is recognizable in the photo identified in **Exhibit O**.

1795. Defendants took these actions without Valencia's permission, consent or authority. In fact, Defendants never sought permission nor authority to use Valencia's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1796. Valencia never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1797. Defendants intentionally or, at a minimum, recklessly, published, printed, displayed, or otherwise publicly disseminated or used Valencia's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

1798. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or reckless disregard to deprive Valencia of a property interest during the entire time period in which the unauthorized use took place.

1799. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Valencia's rights.

1800. Alternatively, Defendants acted negligently towards Valencia in using and disseminating, without authority, her Image on Eyz Wide Shut social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

1801. Defendants have caused irreparable harm to Valencia, her reputation and brand by attributing to Valencia the swinger's lifestyle and activities at Eyz Wide Shut.

1802. Defendants have also damaged Valencia as a direct and proximate result of their unauthorized use of Valencia's Image without compensating Valencia.

WHEREFORE, Valencia respectfully requests that the Court issue a judgment against Defendants for all remedies available under a claim of misappropriation including, but not limited to, actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

VALENCIA COUNT IV
(Violation of Fla. Stat. § 501.204:
Florida's Deceptive and Unfair Trade Practices Act against all Defendants)

1803. Section 501.204(1), Florida Statutes ("FDUTPA") provides that "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

1804. Defendants are direct and active participants in market dealings with Valencia by using her image to advertise and promote Eyz Wide Shut not only to patrons of Eyz Wide Shut, but to the general public in interstate commerce.

1805. Valencia's Image is recognizable in the photo identified in **Exhibit O**.

1806. Defendants at all material times were engaged in a trade or commerce, as defined within Section 501.203, Florida Statutes.

1807. Defendants have engaged in deceptive acts and unfair practices in the course of their business activities by:

- a. failing to obtain consent from Valencia prior to promoting Defendants' business by and through the misappropriation and use of Valencia's Image;
- b. failing to obtain authorization from Valencia prior to the publication of Valencia's Image on Eyz Wide Shut social media outlets;
- c. failing to compensate Valencia for the misappropriation and use of her Image on Eyz Wide Shut social media outlets;

d. falsely representing by implication to the public that Valencia endorsed the Defendants' business, or would be present at and participate in Eyz Wide Shut events; and

e. falsely representing by implication that Valencia sanctioned the type of business, events, lifestyle, or other activities promoted by Defendants.

1808. Defendants' conduct described herein was misleading.

1809. Defendants knew their unauthorized use of Valencia's Image was misleading.

1810. Defendants' unauthorized use of Valencia's Image as detailed herein violates Section 501.204(1), Florida Statutes, and was wrongful.

1811. Defendants' wrongful conduct as detailed herein was willful and malicious.

1812. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Valencia of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Valencia.

1813. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Valencia's rights.

1814. Alternatively, the method and manner in which Defendants used Valencia's Image further evinces that Defendants were aware or consciously disregarded that Valencia did not consent to Defendants' use to advertise Defendants' business.

1815. Defendants have caused irreparable harm to Valencia, her reputation and brand by attributing to Valencia the swinger's lifestyle and activities at Eyz Wide Shut.

1816. Defendants' unauthorized use of Valencia's Image directly and proximately caused damage to Valencia in an amount to be determined at trial.

WHEREFORE, Valencia respectfully requests that the Court issue a judgment against Defendants for actual damages, including loss of profit, attorneys' fees, interest, costs,

compensatory damages, damage to professional reputation, consequential damages, statutory civil penalties under Fla. Stat. § 501.2075, and such other relief as this Court deems just and proper.

VALENCIA COUNT V
**(Violation of Fla. Stat. § 812.014 and Fla. Stat. § 772.11:
Civil Theft against all Defendants)**

1817. Section 772.11, Florida Statutes, creates a private right of action for victims of theft of tangible and intangible personal property, including rights, privileges, interests and claims.

1818. Defendants knowingly appropriated, used and disseminated Valencia's Image without authorization or consent.

1819. Valencia's Image is recognizable in the photo identified in **Exhibit O**.

1820. Defendants' misappropriation of Valencia's Image was for Defendants' own use and benefit and to deprive Valencia of certain rights.

1821. Defendants' misconduct detailed in this First Amended Complaint denied Valencia the right to engage in arms-length negotiations over the use and dissemination of her Image, the right to negotiate over reasonable bargained-for compensation, the right to say "no" to the proposed use by Defendants and the right to otherwise protect her Image from harm at the hands of Defendants.

1822. Defendants' appropriation of Valencia's Image as detailed herein without authority violates Sections 772.11 and 812.014, Florida Statutes, and was wrongful.

1823. Defendants' wrongful conduct as detailed herein was willful and malicious.

1824. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Valencia of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Valencia.

1825. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Valencia's rights.

1826. Alternatively, the method and manner in which Defendants used Valencia's Image further evinces that Defendants were aware or consciously disregarded the fact that Valencia did not consent to Defendants' use in order to advertise Defendants' business.

1827. Defendants' appropriation and use of Valencia's Image without authority directly and proximately caused damage to Valencia in an amount to be determined at trial.

WHEREFORE, Valencia respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. § 772.11(1), including but not limited to, treble the amount of actual damages, costs, interest, and attorneys' fees and other relief deemed just and proper by this Court.

VALENCIA COUNT VI
(Unjust Enrichment against all Defendants)

1828. Valencia has conferred a benefit upon Defendants by virtue of Defendants' usage of her image without compensation.

1829. Valencia's Image is recognizable in the photo identified in **Exhibit O**.

1830. Defendants were aware that Valencia's Image were valuable.

1831. Defendants were aware of the resulting benefit from usage of Valencia's Image.

1832. Defendants have retained profits and other benefits conferred upon them by using Valencia's Image to promote and advertise Defendants' business, Eyz Wide Shut or Eyz Wide Shut events.

1833. It would be inequitable for Defendants to retain the benefits conferred upon them by using Valencia's Image without paying fair value for the image.

WHEREFORE, Valencia respectfully requests that the Court issue a judgment against Defendants for damages, including but not limited to actual damages, costs, interest, imposition of a constructive trust, restitution of unlawful proceeds, including Defendants' gross profits and such other and further relief in law or equity as this Court deems just and proper.

VALENCIA COUNT VII
(Conversion against all Defendants)

1834. Valencia is, and at relevant times was, the exclusive owner of all rights, title, and interest to her Image unlawfully converted by Defendants for Defendants' benefit.

1835. Valencia's Image is recognizable in the photo identified in **Exhibit O**.

1836. Valencia has, and for all times relevant herein had, an intangible property interest in her Image unlawfully converted by Defendants for Defendants' benefit.

1837. By their acts and conduct alleged above, Defendants have converted Valencia's property rights, including without limitation, Valencia's Image for Defendants' use and wrongful disposition for financial gain.

1838. Valencia is informed and believes and on such information alleges that Defendants have refused to return Valencia's property to her or pay for the deprivation of Valencia's property.

1839. As a result, Valencia has suffered compensatory and exemplary damages to be determined according to proof at trial; but Valencia alleges that the same are within the jurisdiction of the Court.

1840. Further, Valencia is informed and believes and thereon alleges that in engaging in the conduct described above, Defendants acted with oppression, fraud, and/or malice. Defendants' conduct has been despicable and taken in conscious disregard of Valencia's rights.

WHEREFORE, Valencia respectfully requests this Court to issue a judgment against Defendants and for all remedies available under the common law claim for conversion, including

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but not limited to actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits, and/or other relief deemed just and proper.

VALENCIA COUNT VIII
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Endorsement against all Defendants)

1841. Section 43 of the Lanham Act, 15 U.S.C. § 1125, et seq. applies to Defendants and protects Valencia from the conduct described herein.

1842. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from committing any act that "is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person . . . or approval of his or her goods, services, or commercial activities by another person . . ." 15 U.S.C. §1125(a)(1)(A).

1843. Valencia is a model, entertainer, and spokesperson who earns a living based solely on marketing, endorsing, and advertising products and services for her clients.

1844. Valencia works diligently to build herself into a brand that becomes inseparable from her persona.

1845. In fact, Valencia's personae is so associated her brand that the use of the same or similar images and likenesses by Defendants constitutes a false representation by Defendants that its goods and services, i.e. swinger club activities, come from the same source as Valencia's brand.

1846. In other words, Defendants use of Valencia's personae is, on its face, a false statement that she has, in fact, endorsed Defendants' swingers club and activities.

1847. Moreover, Valencia's images are inherently distinctive or, in the alternative, have through their use acquired a distinctiveness through secondary meaning.

1848. Valencia's images either suggest the basic nature of her product or service, identify the characteristic of her product or service, or suggest characteristics of her product or service that requires an effort of the imagination by the consumer in order to be understood as descriptive.

1849. Valencia's brand - the reason her clients seek to hire her - is unique in that it is encompassed in Valencia's identity, i.e., her persona.

1850. Valencia's rights to her personae rises to the level of common law trademarks and is entitled to protection under Section 2 of the Lanham Act. Therefore, Defendants' use of Valencia's image constitutes a False Endorsement under section 2 of the Lanham Act.

1851. Defendants used and altered Valencia's image, likeness and/or identity as described herein without authority in order to create the false perception that she worked at or was otherwise affiliated with Eyz Wide Shut, or endorsed Defendants, Eyz Wide Shut or Eyz Wide Shut's business activities, and/or consented to or authorized Defendants' or Eyz Wide Shut's usage of her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut's events and activities.

1852. Valencia's Image is recognizable in the photo identified in **Exhibit O**.

1853. Defendants use of Valencia's image was for Defendants' commercial benefit and was designed for the sole and express purpose of attracting clientele to Eyz Wide Shut thereby generating revenue for Defendants.

1854. Most (if not all) of the Eyz Wide Shut patrons have undoubtedly viewed Valencia's images in magazines and online.

1855. Defendants' unauthorized use and alteration of Valencia's image, likeness and/or identity to advertise, endorse, promote and market Defendants' business, Eyz Wide Shut and/or

Eyz Wide Shut's events and activities as described in this Complaint has led to a competitive injury to Valencia.

1856. Defendants' unauthorized use and alteration of Valencia's image, likeness and/or identity as described in this Complaint constitutes a false designation of the source or origin, sponsorship, approval, association, or endorsement, which has deceived Valencia's fans and present and prospective clients into believing that, among other things, Valencia works at or is otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut's events or activities, or consented to or authorized Defendants' or Eyz Wide Shut's usage or alteration of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut's events and activities and/or that Valencia would participate in or appear at the specific events promoted in the advertisement.

1857. Despite the fact that Defendants were at all times aware that Valencia did not work at, nor endorse Eyz Wide Shut, Defendants nevertheless used Valencia's image to mislead potential customers as to Valencia's employment at Eyz Wide Shut.

1858. Defendants knew that their use of Valencia's image would cause consumer confusion as to each Plaintiff's sponsorship, endorsement, and/or employment at Eyz Wide Shut.

1859. Upon information and belief, Defendants' use of Valencia's image as described above did, in fact, deceive and/or cause consumer confusion as to whether Valencia worked at and/or endorsed Eyz Wide Shut, and endorsed Eyz Wide Shut's business.

1860. As a direct and proximate results of Defendants' actions, Valencia has no control over the nature and quality of the services provided by Eyz Wide Shut, the nature of the advertisements depicting her image, likeness and/or identity, or how her image is being depicted by Eyz Wide Shut.

1861. Defendants' unauthorized use and alteration of Valencia's image, likeness and identity as described herein violates 15 U.S.C. §1125(a) and was wrongful.

1862. Defendants' wrongful conduct as described herein was willful.

1863. As such, the present case is an exceptional case warranting an award of reasonable attorney's fees pursuant to 15 U.S.C. § 1117.

1864. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to wrongfully portray Valencia as endorsing Defendants' business, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Valencia from such an endorsement.

1865. Further, any failure, neglect or default by Defendants will reflect adversely on Valencia as the believed source of origin, sponsorship, approval or association thereof, hampering efforts by Valencia to continue to protect her reputation for high quality professional modeling, resulting in loss of sales thereof and the considerable expenditures to promote her personal modeling services to legitimate mainstream media, all to the irreparable harm of Valencia.

1866. Due to Defendants' unauthorized use of Valencia's image, Valencia has been damaged in an amount to be determined at trial.

WHEREFORE, Valencia respectfully requests that the Court enter a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

Plaintiff Sara Underwood's Causes of Action

UNDERWOOD COUNT I

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**(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Advertising against all Defendants)**

1867. Section 43 of the Lanham Act, 15 U.S.C. § 1125, *et seq.* applies to Defendants and protects Underwood from the conduct described herein. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from “misrepresent[ing] the nature, characteristics, qualities or geographic origin of his or her or another person’s goods, services or commercial activities . . .” 15 U.S.C. §1125(a)(1)(B).

1868. Defendants used Underwood’s Image as described herein without authority in order to create the perception that Underwood worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants’ business and activities, and/or consented to or authorized Defendants to use her image in order to advertise, promote, and market Defendants’ business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities.

1869. Underwood’s Image is recognizable in the photo identified in **Exhibit P**.

1870. Defendants’ use of Underwood’s Image to advertise, promote and market Defendants’ business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities as described in this First Amended Complaint was false and misleading.

1871. Defendants’ unauthorized use of Underwood’s Image as described in this First Amended Complaint constitutes false advertising by suggesting or implying, among other things, that Underwood worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants’ business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants’ usage of her image in order to advertise, promote, and market Defendants business or Eyz Wide Shut events and activities and/or that Underwood would participate in or appear at the specific events promoted in the advertisement.

1872. Defendants' false advertising described above has the capacity or tendency to confuse consumers, including actual and prospective patrons of Eyz Wide Shut, as to the general quality of attendees and participants of Eyz Wide Shut and in its events, as well as specifically whether Underwood worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities.

1873. Upon information and belief, Defendants' false advertising described above did, in fact, deceive and/or cause consumer confusion as to whether Underwood worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events and activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities. Among other things, upon information and belief, such unauthorized use misled and served to entice consumers and prospective consumers to join Eyz Wide Shut, visit Eyz Wide Shut, and participate in events at Eyz Wide Shut and had a material effect and impact on the decision of members and prospective members and participants to join Eyz Wide Shut, visit Eyz Wide Shut and take part in the events at Eyz Wide Shut.

1874. Defendants' advertisements, promotions and marketing of Eyz Wide Shut and events at Eyz Wide Shut occur in and are targeted to interstate commerce. Specifically, Defendants promote their business and events through interstate promotions and campaigns to target persons from different states throughout the United States. Defendants principally use the World Wide Web, social media and other vehicles of interstate commerce to advertise, market, promote, and entice or lure membership and attendance at Eyz Wide Shut events.

1875. Defendants' unauthorized use of Underwood's Image as described herein was designed to benefit Defendants' business interests by, among other things, promoting Eyz Wide Shut and its activities and attracting clientele to Eyz Wide Shut.

1876. Defendants knew or should have known that their unauthorized use of Underwood's Image would cause consumer confusion as described in this First Amended Complaint.

1877. Defendants' unauthorized use of Underwood's Image as described herein violates 15 U.S.C. §1125(a) and was wrongful.

1878. Defendants' wrongful conduct as described herein was willful.

1879. As such, the present case is an exceptional case warranting an award of reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

1880. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Underwood of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Underwood.

1881. The method and manner in which Defendants used the image of Underwood further evinces that Defendants were aware of or consciously disregarded the fact that Underwood did not consent to Defendants' use of the image to advertise Defendants' business.

1882. Defendants have caused irreparable harm to Underwood, her reputation and brand by attributing to Underwood the swinger's lifestyle and activities at Eyz Wide Shut.

1883. Defendants' unauthorized use of Underwood's Image directly and proximately caused and continue to cause damage to Underwood in an amount to be determined at trial.

WHEREFORE, Underwood respectfully requests that the Court issue a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, pre-judgment and post-judgment interest, and/or such further relief that is just and proper.

UNDERWOOD COUNT II

**(Violation of Fla. Stat. § 540.08: Right of Publicity;
Unauthorized Misappropriation of Name/Likeness against all Defendants)**

1884. Underwood has a statutory right of publicity under Section 540.08, Florida Statutes.

1885. Section 540.08, Florida Statutes, provides that: "[n]o person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use."

1886. Despite the clear language of Section 540.08, Defendants published Underwood's Image on social media outlets, among others, in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut event and activities.

1887. Underwood's Image is recognizable in the photo identified in **Exhibit P**.

1888. Defendants never sought permission or authority to use Underwood's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1889. Underwood never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1890. Defendants intentionally or, at a minimum, recklessly published, printed, displayed, or otherwise publicly disseminated or used Underwood's Image without her express written or oral

consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

1891. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or with reckless disregard to deprive Underwood of a property interest during the entire time period in which the unauthorized use took place.

1892. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Underwood's rights.

1893. Alternatively, Defendants acted negligently towards Underwood in using and disseminating, without authority, her Image on social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

1894. Defendants have caused irreparable harm to Underwood, her reputation and brand by attributing to Underwood the swinger's lifestyle and activities at Eyz Wide Shut.

1895. Defendants have also damaged Underwood as a direct and proximate result of their unauthorized use of Underwood's Image without compensating Underwood. Defendants' conduct has been despicable and taken in conscious disregard of Underwood's rights.

WHEREFORE, Underwood respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. §540.08, including but not limited to, both actual loss and damages, costs, interest, royalties, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

UNDERWOOD COUNT III
(Violation of Common Law Right of Publicity;
Unauthorized Misappropriation of Name or Likeness against all Defendants)

1896. Underwood has a common law right of publicity.

1897. Defendants may not publish, print, display or publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of Underwood without express written or oral consent to such use.

1898. Defendants published, printed, displayed and/or publicly used Underwood's Image on their social media outlets, among others, for purposes of trade and/or commercial advertising including, but not limited to, promoting, advertising and marketing of Eyz Wide Shut and Eyz Wide Shut events and activities.

1899. Underwood's Image is recognizable in the photo identified in **Exhibit P**.

1900. Defendants took these actions without Underwood's permission, consent or authority. In fact, Defendants never sought permission nor authority to use Underwood's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1901. Underwood never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1902. Defendants intentionally or, at a minimum, recklessly, published, printed, displayed, or otherwise publicly disseminated or used Underwood's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

1903. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or reckless disregard to deprive Underwood of a property interest during the entire time period in which the unauthorized use took place.

1904. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Underwood's rights.

1905. Alternatively, Defendants acted negligently towards Underwood in using and disseminating, without authority, her Image on Eyz Wide Shut social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

1906. Defendants have caused irreparable harm to Underwood, her reputation and brand by attributing to Underwood the swinger's lifestyle and activities at Eyz Wide Shut.

1907. Defendants have also damaged Underwood as a direct and proximate result of their unauthorized use of Underwood's Image without compensating Underwood.

WHEREFORE, Underwood respectfully requests that the Court issue a judgment against Defendants for all remedies available under a claim of misappropriation including, but not limited to, actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

UNDERWOOD COUNT IV
(Violation of Fla. Stat. § 501.204:
Florida's Deceptive and Unfair Trade Practices Act against all Defendants)

1908. Section 501.204(1), Florida Statutes ("FDUTPA") provides that "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

1909. Defendants are direct and active participants in market dealings with Underwood by using her image to advertise and promote Eyz Wide Shut not only to patrons of Eyz Wide Shut, but to the general public in interstate commerce.

1910. Underwood's Image is recognizable in the photo identified in **Exhibit P**.

1911. Defendants at all material times were engaged in a trade or commerce, as defined within Section 501.203, Florida Statutes.

1912. Defendants have engaged in deceptive acts and unfair practices in the course of their business activities by:

- a. failing to obtain consent from Underwood prior to promoting Defendants' business by and through the misappropriation and use of Underwood's Image;
- b. failing to obtain authorization from Underwood prior to the publication of Underwood's Image on Eyz Wide Shut social media outlets;
- c. failing to compensate Underwood for the misappropriation and use of her Image on Eyz Wide Shut social media outlets;
- d. falsely representing by implication to the public that Underwood endorsed the Defendants' business, or would be present at and participate in Eyz Wide Shut events; and
- e. falsely representing by implication that Underwood sanctioned the type of business, events, lifestyle, or other activities promoted by Defendants.

1913. Defendants' conduct described herein was misleading.

1914. Defendants knew their unauthorized use of Underwood's Image was misleading.

1915. Defendants' unauthorized use of Underwood's Image as detailed herein violates Section 501.204(1), Florida Statutes, and was wrongful.

1916. Defendants' wrongful conduct as detailed herein was willful and malicious.

1917. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Underwood of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Underwood.

1918. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Underwood's rights.

1919. Alternatively, the method and manner in which Defendants used Underwood's Image further evinces that Defendants were aware or consciously disregarded that Underwood did not consent to Defendants' use to advertise Defendants' business.

1920. Defendants have caused irreparable harm to Underwood, her reputation and brand by attributing to Underwood the swinger's lifestyle and activities at Eyz Wide Shut.

1921. Defendants' unauthorized use of Underwood's Image directly and proximately caused damage to Underwood in an amount to be determined at trial.

WHEREFORE, Underwood respectfully requests that the Court issue a judgment against Defendants for actual damages, including loss of profit, attorneys' fees, interest, costs, compensatory damages, damage to professional reputation, consequential damages, statutory civil penalties under Fla. Stat. § 501.2075, and such other relief as this Court deems just and proper.

UNDERWOOD COUNT V
(Violation of Fla. Stat. § 812.014 and Fla. Stat. § 772.11:
Civil Theft against all Defendants)

1922. Section 772.11, Florida Statutes, creates a private right of action for victims of theft of tangible and intangible personal property, including rights, privileges, interests and claims.

1923. Defendants knowingly appropriated, used and disseminated Underwood's Image without authorization or consent.

1924. Underwood's Image is recognizable in the photo identified in **Exhibit P**.

1925. Defendants' misappropriation of Underwood's Image was for Defendants' own use and benefit and to deprive Underwood of certain rights.

1926. Defendants' misconduct detailed in this First Amended Complaint denied Underwood the right to engage in arms-length negotiations over the use and dissemination of her Image, the right to negotiate over reasonable bargained-for compensation, the right to say "no" to

the proposed use by Defendants and the right to otherwise protect her Image from harm at the hands of Defendants.

1927. Defendants' appropriation of Underwood's Image as detailed herein without authority violates Sections 772.11 and 812.014, Florida Statutes, and was wrongful.

1928. Defendants' wrongful conduct as detailed herein was willful and malicious.

1929. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Underwood of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Underwood.

1930. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Underwood's rights.

1931. Alternatively, the method and manner in which Defendants used Underwood's Image further evinces that Defendants were aware or consciously disregarded the fact that Underwood did not consent to Defendants' use in order to advertise Defendants' business.

1932. Defendants' appropriation and use of Underwood's Image without authority directly and proximately caused damage to Underwood in an amount to be determined at trial.

WHEREFORE, Underwood respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. § 772.11(1), including but not limited to, treble the amount of actual damages, costs, interest, and attorneys' fees and other relief deemed just and proper by this Court.

UNDERWOOD COUNT VI
(Unjust Enrichment against all Defendants)

1933. Underwood has conferred a benefit upon Defendants by virtue of Defendants' usage of her image without compensation.

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1934. Underwood's Image is recognizable in the photo identified in **Exhibit P**.

1935. Defendants were aware that Underwood's Image were valuable.

1936. Defendants were aware of the resulting benefit from usage of Underwood's Image.

1937. Defendants have retained profits and other benefits conferred upon them by using Underwood's Image to promote and advertise Defendants' business, Eyz Wide Shut or Eyz Wide Shut events.

1938. It would be inequitable for Defendants to retain the benefits conferred upon them by using Underwood's Image without paying fair value for the image.

WHEREFORE, Underwood respectfully requests that the Court issue a judgment against Defendants for damages, including but not limited to actual damages, costs, interest, imposition of a constructive trust, restitution of unlawful proceeds, including Defendants' gross profits and such other and further relief in law or equity as this Court deems just and proper.

UNDERWOOD COUNT VII
(Conversion against all Defendants)

1939. Underwood is, and at relevant times was, the exclusive owner of all rights, title, and interest to her Image unlawfully converted by Defendants for Defendants' benefit.

1940. Underwood's Image is recognizable in the photo identified in **Exhibit P**.

1941. Underwood has, and for all times relevant herein had, an intangible property interest in her Image unlawfully converted by Defendants for Defendants' benefit.

1942. By their acts and conduct alleged above, Defendants have converted Underwood's property rights, including without limitation, Underwood's Image for Defendants' use and wrongful disposition for financial gain.

1943. Underwood is informed and believes and on such information alleges that Defendants have refused to return Underwood's property to her or pay for the deprivation of Underwood's property.

1944. As a result, Underwood has suffered compensatory and exemplary damages to be determined according to proof at trial; but Underwood alleges that the same are within the jurisdiction of the Court.

1945. Further, Underwood is informed and believes and thereon alleges that in engaging in the conduct described above, Defendants acted with oppression, fraud, and/or malice. Defendants' conduct has been despicable and taken in conscious disregard of Underwood's rights.

WHEREFORE, Underwood respectfully requests this Court to issue a judgment against Defendants and for all remedies available under the common law claim for conversion, including but not limited to actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits, and/or other relief deemed just and proper.

UNDERWOOD COUNT VIII
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Endorsement against all Defendants)

1946. Section 43 of the Lanham Act, 15 U.S.C. § 1125, et seq. applies to Defendants and protects Underwood from the conduct described herein.

1947. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from committing any act that "is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person . . . or approval of his or her goods, services, or commercial activities by another person . . ." 15 U.S.C. §1125(a)(1)(A).

1948. Underwood is a model, entertainer, and spokesperson who earns a living based solely on marketing, endorsing, and advertising products and services for her clients.

1949. Underwood works diligently to build herself into a brand that becomes inseparable from her persona.

1950. In fact, Underwood's personae is so associated with her brand that the use of the same or similar images and likenesses by Defendants constitutes a false representation by Defendants that its goods and services, i.e. swinger club activities, come from the same source as Underwood's brand.

1951. In other words, Defendants use of Underwood's personae is, on its face, a false statement that she has, in fact, endorsed Defendants' swingers club and activities.

1952. Moreover, Underwood's images are inherently distinctive or, in the alternative, have through their use acquired a distinctiveness through secondary meaning.

1953. Underwood's images either suggest the basic nature of her product or service, identify the characteristic of her product or service, or suggest characteristics of her product or service that requires an effort of the imagination by the consumer in order to be understood as descriptive.

1954. Underwood's brand - the reason her clients seek to hire her - is unique in that it is encompassed in Underwood's identity, i.e., her persona.

1955. Underwood's rights to her personae rises to the level of common law trademarks and is entitled to protection under Section 2 of the Lanham Act. Therefore, Defendants' use of Underwood's image constitutes a False Endorsement under section 2 of the Lanham Act.

1956. Defendants used and altered Underwood's image, likeness and/or identity as described herein without authority in order to create the false perception that she worked at or was

otherwise affiliated with Eyz Wide Shut, or endorsed Defendants, Eyz Wide Shut or Eyz Wide Shut's business activities, and/or consented to or authorized Defendants' or Eyz Wide Shut's usage of her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut's events and activities.

1957. Underwood's Image is recognizable in the photo identified in **Exhibit P**.

1958. Defendants use of Underwood's image was for Defendants' commercial benefit and was designed for the sole and express purpose of attracting clientele to Eyz Wide Shut thereby generating revenue for Defendants.

1959. Most (if not all) of the Eyz Wide Shut patrons have undoubtedly viewed Underwood's images in magazines and online.

1960. Defendants' unauthorized use and alteration of Underwood's image, likeness and/or identity to advertise, endorse, promote and market Defendants' business, Eyz Wide Shut and/or Eyz Wide Shut's events and activities as described in this Complaint has led to a competitive injury to Underwood.

1961. Defendants' unauthorized use and alteration of Underwood's image, likeness and/or identity as described in this Complaint constitutes a false designation of the source or origin, sponsorship, approval, association, or endorsement, which has deceived Underwood's fans and present and prospective clients into believing that, among other things, Underwood works at or is otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut's events or activities, or consented to or authorized Defendants' or Eyz Wide Shut's usage or alteration of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut's events and activities and/or that Underwood would participate in or appear at the specific events promoted in the advertisement.

1962. Despite the fact that Defendants were at all times aware that Underwood did not work at, nor endorse Eyz Wide Shut, Defendants nevertheless used Underwood's image to mislead potential customers as to Underwood's employment at Eyz Wide Shut.

1963. Defendants knew that their use of Underwood's image would cause consumer confusion as to each Plaintiff's sponsorship, endorsement, and/or employment at Eyz Wide Shut.

1964. Upon information and belief, Defendants' use of Underwood's image as described above did, in fact, deceive and/or cause consumer confusion as to whether Underwood worked at and/or endorsed Eyz Wide Shut, and endorsed Eyz Wide Shut's business.

1965. As a direct and proximate results of Defendants' actions, Underwood has no control over the nature and quality of the services provided by Eyz Wide Shut, the nature of the advertisements depicting her image, likeness and/or identity, or how her image is being depicted by Eyz Wide Shut.

1966. Defendants' unauthorized use and alteration of Underwood's image, likeness and identity as described herein violates 15 U.S.C. §1125(a) and was wrongful.

1967. Defendants' wrongful conduct as described herein was willful.

1968. As such, the present case is an exceptional case warranting an award of reasonable attorney's fees pursuant to 15 U.S.C. § 1117.

1969. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to wrongfully portray Underwood as endorsing Defendants' business, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Underwood from such an endorsement.

1970. Further, any failure, neglect or default by Defendants will reflect adversely on Underwood as the believed source of origin, sponsorship, approval or association thereof,

hampering efforts by Underwood to continue to protect her reputation for high quality professional modeling, resulting in loss of sales thereof and the considerable expenditures to promote her personal modeling services to legitimate mainstream media, all to the irreparable harm of Underwood.

1971. Due to Defendants' unauthorized use of Underwood's image, Underwood has been damaged in an amount to be determined at trial.

WHEREFORE, Underwood respectfully requests that the Court enter a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

Plaintiff Tiffany Selby's Causes of Action

SELBY COUNT I
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Advertising against all Defendants)

1972. Section 43 of the Lanham Act, 15 U.S.C. § 1125, *et seq.* applies to Defendants and protects Selby from the conduct described herein. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from “misrepresent[ing] the nature, characteristics, qualities or geographic origin of his or her or another person’s goods, services or commercial activities . . .” 15 U.S.C. §1125(a)(1)(B).

1973. Defendants used Selby's Image as described herein without authority in order to create the perception that Selby worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business and activities, and/or consented to or authorized Defendants to use

her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities.

1974. Selby's Image is recognizable in the photo identified in **Exhibit Q**.

1975. Defendants' use of Selby's Image to advertise, promote and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities as described in this First Amended Complaint was false and misleading.

1976. Defendants' unauthorized use of Selby's Image as described in this First Amended Complaint constitutes false advertising by suggesting or implying, among other things, that Selby worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants business or Eyz Wide Shut events and activities and/or that Selby would participate in or appear at the specific events promoted in the advertisement.

1977. Defendants' false advertising described above has the capacity or tendency to confuse consumers, including actual and prospective patrons of Eyz Wide Shut, as to the general quality of attendees and participants of Eyz Wide Shut and in its events, as well as specifically whether Selby worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities.

1978. Upon information and belief, Defendants' false advertising described above did, in fact, deceive and/or cause consumer confusion as to whether Selby worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut

events and activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities. Among other things, upon information and belief, such unauthorized use misled and served to entice consumers and prospective consumers to join Eyz Wide Shut, visit Eyz Wide Shut, and participate in events at Eyz Wide Shut and had a material effect and impact on the decision of members and prospective members and participants to join Eyz Wide Shut, visit Eyz Wide Shut and take part in the events at Eyz Wide Shut.

1979. Defendants' advertisements, promotions and marketing of Eyz Wide Shut and events at Eyz Wide Shut occur in and are targeted to interstate commerce. Specifically, Defendants promote their business and events through interstate promotions and campaigns to target persons from different states throughout the United States. Defendants principally use the World Wide Web, social media and other vehicles of interstate commerce to advertise, market, promote, and entice or lure membership and attendance at Eyz Wide Shut events.

1980. Defendants' unauthorized use of Selby's Image as described herein was designed to benefit Defendants' business interests by, among other things, promoting Eyz Wide Shut and its activities and attracting clientele to Eyz Wide Shut.

1981. Defendants knew or should have known that their unauthorized use of Selby's Image would cause consumer confusion as described in this First Amended Complaint.

1982. Defendants' unauthorized use of Selby's Image as described herein violates 15 U.S.C. §1125(a) and was wrongful.

1983. Defendants' wrongful conduct as described herein was willful.

1984. As such, the present case is an exceptional case warranting an award of reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

1985. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Selby of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Selby.

1986. The method and manner in which Defendants used the image of Selby further evinces that Defendants were aware of or consciously disregarded the fact that Selby did not consent to Defendants' use of the image to advertise Defendants' business.

1987. Defendants have caused irreparable harm to Selby, her reputation and brand by attributing to Selby the swinger's lifestyle and activities at Eyz Wide Shut.

1988. Defendants' unauthorized use of Selby's Image directly and proximately caused and continue to cause damage to Selby in an amount to be determined at trial.

WHEREFORE, Selby respectfully requests that the Court issue a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

SELBY COUNT II

**(Violation of Fla. Stat. § 540.08: Right of Publicity;
Unauthorized Misappropriation of Name/Likeness against all Defendants)**

1989. Selby has a statutory right of publicity under Section 540.08, Florida Statutes.

1990. Section 540.08, Florida Statutes, provides that: "[n]o person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use."

1991. Despite the clear language of Section 540.08, Defendants published Selby's Image on social media outlets, among others, in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut event and activities.

1992. Selby's Image is recognizable in the photo identified in **Exhibit Q**.

1993. Defendants never sought permission or authority to use Selby's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1994. Selby never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

1995. Defendants intentionally or, at a minimum, recklessly published, printed, displayed, or otherwise publicly disseminated or used Selby's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

1996. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or with reckless disregard to deprive Selby of a property interest during the entire time period in which the unauthorized use took place.

1997. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Selby's rights.

1998. Alternatively, Defendants acted negligently towards Selby in using and disseminating, without authority, her Image on social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

1999. Defendants have caused irreparable harm to Selby, her reputation and brand by attributing to Selby the swinger's lifestyle and activities at Eyz Wide Shut.

2000. Defendants have also damaged Selby as a direct and proximate result of their unauthorized use of Selby's Image without compensating Selby. Defendants' conduct has been despicable and taken in conscious disregard of Selby's rights.

WHEREFORE, Selby respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. §540.08, including but not limited to, both actual loss and damages, costs, interest, royalties, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

SELBY COUNT III

**(Violation of Common Law Right of Publicity;
Unauthorized Misappropriation of Name or Likeness against all Defendants)**

2001. Selby has a common law right of publicity.

2002. Defendants may not publish, print, display or publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of Selby without express written or oral consent to such use.

2003. Defendants published, printed, displayed and/or publicly used Selby's Image on their social media outlets, among others, for purposes of trade and/or commercial advertising including, but not limited to, promoting, advertising and marketing of Eyz Wide Shut and Eyz Wide Shut events and activities.

2004. Selby's Image is recognizable in the photo identified in **Exhibit Q**.

2005. Defendants took these actions without Selby's permission, consent or authority. In fact, Defendants never sought permission nor authority to use Selby's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

2006. Selby never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

2007. Defendants intentionally or, at a minimum, recklessly, published, printed, displayed, or otherwise publicly disseminated or used Selby's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

2008. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or reckless disregard to deprive Selby of a property interest during the entire time period in which the unauthorized use took place.

2009. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Selby's rights.

2010. Alternatively, Defendants acted negligently towards Selby in using and disseminating, without authority, her Image on Eyz Wide Shut social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

2011. Defendants have caused irreparable harm to Selby, her reputation and brand by attributing to Selby the swinger's lifestyle and activities at Eyz Wide Shut.

2012. Defendants have also damaged Selby as a direct and proximate result of their unauthorized use of Selby's Image without compensating Selby.

WHEREFORE, Selby respectfully requests that the Court issue a judgment against Defendants for all remedies available under a claim of misappropriation including, but not limited to, actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

SELBY COUNT IV
**(Violation of Fla. Stat. § 501.204:
Florida's Deceptive and Unfair Trade Practices Act against all Defendants)**

2013. Section 501.204(1), Florida Statutes ("FDUTPA") provides that "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

2014. Defendants are direct and active participants in market dealings with Selby by using her image to advertise and promote Eyz Wide Shut not only to patrons of Eyz Wide Shut, but to the general public in interstate commerce.

2015. Selby's Image is recognizable in the photo identified in **Exhibit Q**.

2016. Defendants at all material times were engaged in a trade or commerce, as defined within Section 501.203, Florida Statutes.

2017. Defendants have engaged in deceptive acts and unfair practices in the course of their business activities by:

- a. failing to obtain consent from Selby prior to promoting Defendants' business by and through the misappropriation and use of Selby's Image;
- b. failing to obtain authorization from Selby prior to the publication of Selby's Image on Eyz Wide Shut social media outlets;
- c. failing to compensate Selby for the misappropriation and use of her Image on Eyz Wide Shut social media outlets;
- d. falsely representing by implication to the public that Selby endorsed the Defendants' business, or would be present at and participate in Eyz Wide Shut events; and
- e. falsely representing by implication that Selby sanctioned the type of business, events, lifestyle, or other activities promoted by Defendants.

2018. Defendants' conduct described herein was misleading.

2019. Defendants knew their unauthorized use of Selby's Image was misleading.

2020. Defendants' unauthorized use of Selby's Image as detailed herein violates Section 501.204(1), Florida Statutes, and was wrongful.

2021. Defendants' wrongful conduct as detailed herein was willful and malicious.

2022. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Selby of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Selby.

2023. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Selby's rights.

2024. Alternatively, the method and manner in which Defendants used Selby's Image further evinces that Defendants were aware or consciously disregarded that Selby did not consent to Defendants' use to advertise Defendants' business.

2025. Defendants have caused irreparable harm to Selby, her reputation and brand by attributing to Selby the swinger's lifestyle and activities at Eyz Wide Shut.

2026. Defendants' unauthorized use of Selby's Image directly and proximately caused damage to Selby in an amount to be determined at trial.

WHEREFORE, Selby respectfully requests that the Court issue a judgment against Defendants for actual damages, including loss of profit, attorneys' fees, interest, costs, compensatory damages, damage to professional reputation, consequential damages, statutory civil penalties under Fla. Stat. § 501.2075, and such other relief as this Court deems just and proper.

SELBY COUNT V
(Violation of Fla. Stat. § 812.014 and Fla. Stat. § 772.11:
Civil Theft against all Defendants)

The Casas Law Firm, P.C.
Brickell Bayview Center 80 S.W. 8th Street, Suite 2000, Miami, FL 33130

2027. Section 772.11, Florida Statutes, creates a private right of action for victims of theft of tangible and intangible personal property, including rights, privileges, interests and claims.

2028. Defendants knowingly appropriated, used and disseminated Selby's Image without authorization or consent.

2029. Selby's Image is recognizable in the photo identified in **Exhibit Q**.

2030. Defendants' misappropriation of Selby's Image was for Defendants' own use and benefit and to deprive Selby of certain rights.

2031. Defendants' misconduct detailed in this First Amended Complaint denied Selby the right to engage in arms-length negotiations over the use and dissemination of her Image, the right to negotiate over reasonable bargained-for compensation, the right to say "no" to the proposed use by Defendants and the right to otherwise protect her Image from harm at the hands of Defendants.

2032. Defendants' appropriation of Selby's Image as detailed herein without authority violates Sections 772.11 and 812.014, Florida Statutes, and was wrongful.

2033. Defendants' wrongful conduct as detailed herein was willful and malicious.

2034. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Selby of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Selby.

2035. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Selby's rights.

2036. Alternatively, the method and manner in which Defendants used Selby's Image further evinces that Defendants were aware or consciously disregarded the fact that Selby did not consent to Defendants' use in order to advertise Defendants' business.

2037. Defendants' appropriation and use of Selby's Image without authority directly and proximately caused damage to Selby in an amount to be determined at trial.

WHEREFORE, Selby respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. § 772.11(1), including but not limited to, treble the amount of actual damages, costs, interest, and attorneys' fees and other relief deemed just and proper by this Court.

SELBY COUNT VI
(Unjust Enrichment against all Defendants)

2038. Selby has conferred a benefit upon Defendants by virtue of Defendants' usage of her image without compensation.

2039. Selby's Image is recognizable in the photo identified in **Exhibit Q**.

2040. Defendants were aware that Selby's Image were valuable.

2041. Defendants were aware of the resulting benefit from usage of Selby's Image.

2042. Defendants have retained profits and other benefits conferred upon them by using Selby's Image to promote and advertise Defendants' business, Eyz Wide Shut or Eyz Wide Shut events.

2043. It would be inequitable for Defendants to retain the benefits conferred upon them by using Selby's Image without paying fair value for the image.

WHEREFORE, Selby respectfully requests that the Court issue a judgment against Defendants for damages, including but not limited to actual damages, costs, interest, imposition of a constructive trust, restitution of unlawful proceeds, including Defendants' gross profits and such other and further relief in law or equity as this Court deems just and proper.

SELBY COUNT VII
(Conversion against all Defendants)

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Brickell Bayview Center 80 S.W. 8th Street, Suite 2000, Miami, FL 33130

2044. Selby is, and at relevant times was, the exclusive owner of all rights, title, and interest to her Image unlawfully converted by Defendants for Defendants' benefit.

2045. Selby's Image is recognizable in the photo identified in **Exhibit Q**.

2046. Selby has, and for all times relevant herein had, an intangible property interest in her Image unlawfully converted by Defendants for Defendants' benefit.

2047. By their acts and conduct alleged above, Defendants have converted Selby's property rights, including without limitation, Selby's Image for Defendants' use and wrongful disposition for financial gain.

2048. Selby is informed and believes and on such information alleges that Defendants have refused to return Selby's property to her or pay for the deprivation of Selby's property.

2049. As a result, Selby has suffered compensatory and exemplary damages to be determined according to proof at trial; but Selby alleges that the same are within the jurisdiction of the Court.

2050. Further, Selby is informed and believes and thereon alleges that in engaging in the conduct described above, Defendants acted with oppression, fraud, and/or malice. Defendants' conduct has been despicable and taken in conscious disregard of Selby's rights.

WHEREFORE, Selby respectfully requests this Court to issue a judgment against Defendants and for all remedies available under the common law claim for conversion, including but not limited to actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits, and/or other relief deemed just and proper.

SELBY COUNT VIII
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Endorsement against all Defendants)

2051. Section 43 of the Lanham Act, 15 U.S.C. § 1125, et seq. applies to Defendants and protects Selby from the conduct described herein.

2052. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from committing any act that “is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person . . . or approval of his or her goods, services, or commercial activities by another person . . .” 15 U.S.C. §1125(a)(1)(A).

2053. Selby is a model, entertainer, and spokesperson who earns a living based solely on marketing, endorsing, and advertising products and services for her clients.

2054. Selby works diligently to build herself into a brand that becomes inseparable from her persona.

2055. In fact, Selby’s personae is so associated with her brand that the use of the same or similar images and likenesses by Defendants constitutes a false representation by Defendants that its goods and services, i.e. swinger club activities, come from the same source as Selby’s brand.

2056. In other words, Defendants use of Selby’s personae is, on its face, a false statement that she has, in fact, endorsed Defendants’ swingers club and activities.

2057. Moreover, Selby’s images are inherently distinctive or, in the alternative, have through their use acquired a distinctiveness through secondary meaning.

2058. Selby’s images either suggest the basic nature of her product or service, identify the characteristic of her product or service, or suggest characteristics of her product or service that requires an effort of the imagination by the consumer in order to be understood as descriptive.

2059. Selby’s brand - the reason her clients seek to hire her - is unique in that it is encompassed in Selby’s identity, i.e., her persona.

2060. Selby's rights to her personae rises to the level of common law trademarks and is entitled to protection under Section 2 of the Lanham Act. Therefore, Defendants' use of Selby's image constitutes a False Endorsement under section 2 of the Lanham Act.

2061. Defendants used and altered Selby's image, likeness and/or identity as described herein without authority in order to create the false perception that she worked at or was otherwise affiliated with Eyz Wide Shut, or endorsed Defendants, Eyz Wide Shut or Eyz Wide Shut's business activities, and/or consented to or authorized Defendants' or Eyz Wide Shut's usage of her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut's events and activities.

2062. Selby's Image is recognizable in the photo identified in **Exhibit Q**.

2063. Defendants use of Selby's image was for Defendants' commercial benefit and was designed for the sole and express purpose of attracting clientele to Eyz Wide Shut thereby generating revenue for Defendants.

2064. Most (if not all) of the Eyz Wide Shut patrons have undoubtedly viewed Selby's images in magazines and online.

2065. Defendants' unauthorized use and alteration of Selby's image, likeness and/or identity to advertise, endorse, promote and market Defendants' business, Eyz Wide Shut and/or Eyz Wide Shut's events and activities as described in this Complaint has led to a competitive injury to Selby.

2066. Defendants' unauthorized use and alteration of Selby's image, likeness and/or identity as described in this Complaint constitutes a false designation of the source or origin, sponsorship, approval, association, or endorsement, which has deceived Selby's fans and present and prospective clients into believing that, among other things, Selby works at or is otherwise

affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut's events or activities, or consented to or authorized Defendants' or Eyz Wide Shut's usage or alteration of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut's events and activities and/or that Selby would participate in or appear at the specific events promoted in the advertisement.

2067. Despite the fact that Defendants were at all times aware that Selby did not work at, nor endorse Eyz Wide Shut, Defendants nevertheless used Selby's image to mislead potential customers as to Selby's employment at Eyz Wide Shut.

2068. Defendants knew that their use of Selby's image would cause consumer confusion as to each Plaintiff's sponsorship, endorsement, and/or employment at Eyz Wide Shut.

2069. Upon information and belief, Defendants' use of Selby's image as described above did, in fact, deceive and/or cause consumer confusion as to whether Selby worked at and/or endorsed Eyz Wide Shut, and endorsed Eyz Wide Shut's business.

2070. As a direct and proximate results of Defendants' actions, Selby has no control over the nature and quality of the services provided by Eyz Wide Shut, the nature of the advertisements depicting her image, likeness and/or identity, or how her image is being depicted by Eyz Wide Shut.

2071. Defendants' unauthorized use and alteration of Selby's image, likeness and identity as described herein violates 15 U.S.C. §1125(a) and was wrongful.

2072. Defendants' wrongful conduct as described herein was willful.

2073. As such, the present case is an exceptional case warranting an award of reasonable attorney's fees pursuant to 15 U.S.C. § 1117.

2074. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to wrongfully portray Selby as endorsing Defendants' business, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Selby from such an endorsement.

2075. Further, any failure, neglect or default by Defendants will reflect adversely on Selby as the believed source of origin, sponsorship, approval or association thereof, hampering efforts by Selby to continue to protect her reputation for high quality professional modeling, resulting in loss of sales thereof and the considerable expenditures to promote her personal modeling services to legitimate mainstream media, all to the irreparable harm of Selby.

2076. Due to Defendants' unauthorized use of Selby's image, Selby has been damaged in an amount to be determined at trial.

WHEREFORE, Selby respectfully requests that the Court enter a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

Plaintiff Tiffany Toth's Causes of Action

TOTH COUNT I
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Advertising against all Defendants)

2077. Section 43 of the Lanham Act, 15 U.S.C. § 1125, *et seq.* applies to Defendants and protects Toth from the conduct described herein. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from "misrepresent[ing] the nature, characteristics,

qualities or geographic origin of his or her or another person's goods, services or commercial activities" 15 U.S.C. §1125(a)(1)(B).

2078. Defendants used Toth's Image as described herein without authority in order to create the perception that Toth worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business and activities, and/or consented to or authorized Defendants to use her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities.

2079. Toth's Image is recognizable in the photo identified in **Exhibit R**.

2080. Defendants' use of Toth's Image to advertise, promote and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities as described in this First Amended Complaint was false and misleading.

2081. Defendants' unauthorized use of Toth's Image as described in this First Amended Complaint constitutes false advertising by suggesting or implying, among other things, that Toth worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants business or Eyz Wide Shut events and activities and/or that Toth would participate in or appear at the specific events promoted in the advertisement.

2082. Defendants' false advertising described above has the capacity or tendency to confuse consumers, including actual and prospective patrons of Eyz Wide Shut, as to the general quality of attendees and participants of Eyz Wide Shut and in its events, as well as specifically whether Toth worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized

Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities.

2083. Upon information and belief, Defendants' false advertising described above did, in fact, deceive and/or cause consumer confusion as to whether Toth worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events and activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities. Among other things, upon information and belief, such unauthorized use misled and served to entice consumers and prospective consumers to join Eyz Wide Shut, visit Eyz Wide Shut, and participate in events at Eyz Wide Shut and had a material effect and impact on the decision of members and prospective members and participants to join Eyz Wide Shut, visit Eyz Wide Shut and take part in the events at Eyz Wide Shut.

2084. Defendants' advertisements, promotions and marketing of Eyz Wide Shut and events at Eyz Wide Shut occur in and are targeted to interstate commerce. Specifically, Defendants promote their business and events through interstate promotions and campaigns to target persons from different states throughout the United States. Defendants principally use the World Wide Web, social media and other vehicles of interstate commerce to advertise, market, promote, and entice or lure membership and attendance at Eyz Wide Shut events.

2085. Defendants' unauthorized use of Toth's Image as described herein was designed to benefit Defendants' business interests by, among other things, promoting Eyz Wide Shut and its activities and attracting clientele to Eyz Wide Shut.

2086. Defendants knew or should have known that their unauthorized use of Toth's Image would cause consumer confusion as described in this First Amended Complaint.

2087. Defendants' unauthorized use of Toth's Image as described herein violates 15 U.S.C. §1125(a) and was wrongful.

2088. Defendants' wrongful conduct as described herein was willful.

2089. As such, the present case is an exceptional case warranting an award of reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

2090. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Toth of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Toth.

2091. The method and manner in which Defendants used the image of Toth further evinces that Defendants were aware of or consciously disregarded the fact that Toth did not consent to Defendants' use of the image to advertise Defendants' business.

2092. Defendants have caused irreparable harm to Toth, her reputation and brand by attributing to Toth the swinger's lifestyle and activities at Eyz Wide Shut.

2093. Defendants' unauthorized use of Toth's Image directly and proximately caused and continue to cause damage to Toth in an amount to be determined at trial.

WHEREFORE, Toth respectfully requests that the Court issue a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

TOTH COUNT II

**(Violation of Fla. Stat. § 540.08: Right of Publicity;
Unauthorized Misappropriation of Name/Likeness against all Defendants)**

2094. Toth has a statutory right of publicity under Section 540.08, Florida Statutes.

2095. Section 540.08, Florida Statutes, provides that: “[n]o person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use.”

2096. Despite the clear language of Section 540.08, Defendants published Toth’s Image on social media outlets, among others, in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut event and activities.

2097. Toth’s Image is recognizable in the photo identified in **Exhibit R**.

2098. Defendants never sought permission or authority to use Toth’s Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

2099. Toth never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants’ use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

2100. Defendants intentionally or, at a minimum, recklessly published, printed, displayed, or otherwise publicly disseminated or used Toth’s Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

2101. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or with reckless disregard to deprive Toth of a property interest during the entire time period in which the unauthorized use took place.

2102. At a minimum, Defendants’ conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Toth’s rights.

2103. Alternatively, Defendants acted negligently towards Toth in using and disseminating, without authority, her Image on social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

2104. Defendants have caused irreparable harm to Toth, her reputation and brand by attributing to Toth the swinger's lifestyle and activities at Eyz Wide Shut.

2105. Defendants have also damaged Toth as a direct and proximate result of their unauthorized use of Toth's Image without compensating Toth. Defendants' conduct has been despicable and taken in conscious disregard of Toth's rights.

WHEREFORE, Toth respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. §540.08, including but not limited to, both actual loss and damages, costs, interest, royalties, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

TOTH COUNT III
(Violation of Common Law Right of Publicity;
Unauthorized Misappropriation of Name or Likeness against all Defendants)

2106. Toth has a common law right of publicity.

2107. Defendants may not publish, print, display or publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of Toth without express written or oral consent to such use.

2108. Defendants published, printed, displayed and/or publicly used Toth's Image on their social media outlets, among others, for purposes of trade and/or commercial advertising including, but not limited to, promoting, advertising and marketing of Eyz Wide Shut and Eyz Wide Shut events and activities.

2109. Toth's Image is recognizable in the photo identified in **Exhibit R**.

2110. Defendants took these actions without Toth's permission, consent or authority. In fact, Defendants never sought permission nor authority to use Toth's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

2111. Toth never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

2112. Defendants intentionally or, at a minimum, recklessly, published, printed, displayed, or otherwise publicly disseminated or used Toth's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

2113. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or reckless disregard to deprive Toth of a property interest during the entire time period in which the unauthorized use took place.

2114. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Toth's rights.

2115. Alternatively, Defendants acted negligently towards Toth in using and disseminating, without authority, her Image on Eyz Wide Shut social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

2116. Defendants have caused irreparable harm to Toth, her reputation and brand by attributing to Toth the swinger's lifestyle and activities at Eyz Wide Shut.

2117. Defendants have also damaged Toth as a direct and proximate result of their unauthorized use of Toth's Image without compensating Toth.

WHEREFORE, Toth respectfully requests that the Court issue a judgment against Defendants for all remedies available under a claim of misappropriation including, but not limited to, actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

TOTH COUNT IV
(Violation of Fla. Stat. § 501.204:
Florida's Deceptive and Unfair Trade Practices Act against all Defendants)

2118. Section 501.204(1), Florida Statutes ("FDUTPA") provides that "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

2119. Defendants are direct and active participants in market dealings with Toth by using her image to advertise and promote Eyz Wide Shut not only to patrons of Eyz Wide Shut, but to the general public in interstate commerce.

2120. Toth's Image is recognizable in the photo identified in **Exhibit R**.

2121. Defendants at all material times were engaged in a trade or commerce, as defined within Section 501.203, Florida Statutes.

2122. Defendants have engaged in deceptive acts and unfair practices in the course of their business activities by:

- a. failing to obtain consent from Toth prior to promoting Defendants' business by and through the misappropriation and use of Toth's Image;
- b. failing to obtain authorization from Toth prior to the publication of Toth's Image on Eyz Wide Shut social media outlets;
- c. failing to compensate Toth for the misappropriation and use of her Image on Eyz Wide Shut social media outlets;

d. falsely representing by implication to the public that Toth endorsed the Defendants' business, or would be present at and participate in Eyz Wide Shut events; and

e. falsely representing by implication that Toth sanctioned the type of business, events, lifestyle, or other activities promoted by Defendants.

2123. Defendants' conduct described herein was misleading.

2124. Defendants knew their unauthorized use of Toth's Image was misleading.

2125. Defendants' unauthorized use of Toth's Image as detailed herein violates Section 501.204(1), Florida Statutes, and was wrongful.

2126. Defendants' wrongful conduct as detailed herein was willful and malicious.

2127. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Toth of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Toth.

2128. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Toth's rights.

2129. Alternatively, the method and manner in which Defendants used Toth's Image further evinces that Defendants were aware or consciously disregarded that Toth did not consent to Defendants' use to advertise Defendants' business.

2130. Defendants have caused irreparable harm to Toth, her reputation and brand by attributing to Toth the swinger's lifestyle and activities at Eyz Wide Shut.

2131. Defendants' unauthorized use of Toth's Image directly and proximately caused damage to Toth in an amount to be determined at trial.

WHEREFORE, Toth respectfully requests that the Court issue a judgment against Defendants for actual damages, including loss of profit, attorneys' fees, interest, costs,

compensatory damages, damage to professional reputation, consequential damages, statutory civil penalties under Fla. Stat. § 501.2075, and such other relief as this Court deems just and proper.

TOTH COUNT V
**(Violation of Fla. Stat. § 812.014 and Fla. Stat. § 772.11:
Civil Theft against all Defendants)**

2132. Section 772.11, Florida Statutes, creates a private right of action for victims of theft of tangible and intangible personal property, including rights, privileges, interests and claims.

2133. Defendants knowingly appropriated, used and disseminated Toth's Image without authorization or consent.

2134. Toth's Image is recognizable in the photo identified in **Exhibit R**.

2135. Defendants' misappropriation of Toth's Image was for Defendants' own use and benefit and to deprive Toth of certain rights.

2136. Defendants' misconduct detailed in this First Amended Complaint denied Toth the right to engage in arms-length negotiations over the use and dissemination of her Image, the right to negotiate over reasonable bargained-for compensation, the right to say "no" to the proposed use by Defendants and the right to otherwise protect her Image from harm at the hands of Defendants.

2137. Defendants' appropriation of Toth's Image as detailed herein without authority violates Sections 772.11 and 812.014, Florida Statutes, and was wrongful.

2138. Defendants' wrongful conduct as detailed herein was willful and malicious.

2139. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Toth of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Toth.

2140. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Toth's rights.

2141. Alternatively, the method and manner in which Defendants used Toth's Image further evinces that Defendants were aware or consciously disregarded the fact that Toth did not consent to Defendants' use in order to advertise Defendants' business.

2142. Defendants' appropriation and use of Toth's Image without authority directly and proximately caused damage to Toth in an amount to be determined at trial.

WHEREFORE, Toth respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. § 772.11(1), including but not limited to, treble the amount of actual damages, costs, interest, and attorneys' fees and other relief deemed just and proper by this Court.

TOTH COUNT VI
(Unjust Enrichment against all Defendants)

2143. Toth has conferred a benefit upon Defendants by virtue of Defendants' usage of her image without compensation.

2144. Toth's Image is recognizable in the photo identified in **Exhibit R**.

2145. Defendants were aware that Toth's Image were valuable.

2146. Defendants were aware of the resulting benefit from usage of Toth's Image.

2147. Defendants have retained profits and other benefits conferred upon them by using Toth's Image to promote and advertise Defendants' business, Eyz Wide Shut or Eyz Wide Shut events.

2148. It would be inequitable for Defendants to retain the benefits conferred upon them by using Toth's Image without paying fair value for the image.

WHEREFORE, Toth respectfully requests that the Court issue a judgment against Defendants for damages, including but not limited to actual damages, costs, interest, imposition of

a constructive trust, restitution of unlawful proceeds, including Defendants' gross profits and such other and further relief in law or equity as this Court deems just and proper.

TOTH COUNT VII
(Conversion against all Defendants)

2149. Toth is, and at relevant times was, the exclusive owner of all rights, title, and interest to her Image unlawfully converted by Defendants for Defendants' benefit.

2150. Toth's Image is recognizable in the photo identified in **Exhibit R**.

2151. Toth has, and for all times relevant herein had, an intangible property interest in her Image unlawfully converted by Defendants for Defendants' benefit.

2152. By their acts and conduct alleged above, Defendants have converted Toth's property rights, including without limitation, Toth's Image for Defendants' use and wrongful disposition for financial gain.

2153. Toth is informed and believes and on such information alleges that Defendants have refused to return Toth's property to her or pay for the deprivation of Toth's property.

2154. As a result, Toth has suffered compensatory and exemplary damages to be determined according to proof at trial; but Toth alleges that the same are within the jurisdiction of the Court.

2155. Further, Toth is informed and believes and thereon alleges that in engaging in the conduct described above, Defendants acted with oppression, fraud, and/or malice. Defendants' conduct has been despicable and taken in conscious disregard of Toth's rights.

WHEREFORE, Toth respectfully requests this Court to issue a judgment against Defendants and for all remedies available under the common law claim for conversion, including but not limited to actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits, and/or other relief deemed just and proper.

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TOTH COUNT VIII
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Endorsement against all Defendants)

2156. Section 43 of the Lanham Act, 15 U.S.C. § 1125, et seq. applies to Defendants and protects Toth from the conduct described herein.

2157. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from committing any act that “is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person . . . or approval of his or her goods, services, or commercial activities by another person . . .” 15 U.S.C. §1125(a)(1)(A).

2158. Toth is a model, entertainer, and spokesperson who earns a living based solely on marketing, endorsing, and advertising products and services for her clients.

2159. Toth works diligently to build herself into a brand that becomes inseparable from her persona.

2160. In fact, Toth’s personae is so associated with her brand that the use of the same or similar images and likenesses by Defendants constitutes a false representation by Defendants that its goods and services, i.e. swinger club activities, come from the same source as Toth’s brand.

2161. In other words, Defendants use of Toth’s personae is, on its face, a false statement that she has, in fact, endorsed Defendants’ swingers club and activities.

2162. Moreover, Toth’s images are inherently distinctive or, in the alternative, have through their use acquired a distinctiveness through secondary meaning.

2163. Toth’s images either suggest the basic nature of her product or service, identify the characteristic of her product or service, or suggest characteristics of her product or service that requires an effort of the imagination by the consumer in order to be understood as descriptive.

2164. Toth's brand - the reason her clients seek to hire her - is unique in that it is encompassed in Toth's identity, i.e., her persona.

2165. Toth's rights to her personae rises to the level of common law trademarks and is entitled to protection under Section 2 of the Lanham Act. Therefore, Defendants' use of Toth's image constitutes a False Endorsement under section 2 of the Lanham Act.

2166. Defendants used and altered Toth's image, likeness and/or identity as described herein without authority in order to create the false perception that she worked at or was otherwise affiliated with Eyz Wide Shut, or endorsed Defendants, Eyz Wide Shut or Eyz Wide Shut's business activities, and/or consented to or authorized Defendants' or Eyz Wide Shut's usage of her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut's events and activities.

2167. Toth's Image is recognizable in the photo identified in **Exhibit R**.

2168. Defendants use of Toth's image was for Defendants' commercial benefit and was designed for the sole and express purpose of attracting clientele to Eyz Wide Shut thereby generating revenue for Defendants.

2169. Most (if not all) of the Eyz Wide Shut patrons have undoubtedly viewed Toth's images in magazines and online.

2170. Defendants' unauthorized use and alteration of Toth's image, likeness and/or identity to advertise, endorse, promote and market Defendants' business, Eyz Wide Shut and/or Eyz Wide Shut's events and activities as described in this Complaint has led to a competitive injury to Toth.

2171. Defendants' unauthorized use and alteration of Toth's image, likeness and/or identity as described in this Complaint constitutes a false designation of the source or origin,

sponsorship, approval, association, or endorsement, which has deceived Toth's fans and present and prospective clients into believing that, among other things, Toth works at or is otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut's events or activities, or consented to or authorized Defendants' or Eyz Wide Shut's usage or alteration of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut's events and activities and/or that Toth would participate in or appear at the specific events promoted in the advertisement.

2172. Despite the fact that Defendants were at all times aware that Toth did not work at, nor endorse Eyz Wide Shut, Defendants nevertheless used Toth's image to mislead potential customers as to Toth's employment at Eyz Wide Shut.

2173. Defendants knew that their use of Toth's image would cause consumer confusion as to each Plaintiff's sponsorship, endorsement, and/or employment at Eyz Wide Shut.

2174. Upon information and belief, Defendants' use of Toth's image as described above did, in fact, deceive and/or cause consumer confusion as to whether Toth worked at and/or endorsed Eyz Wide Shut, and endorsed Eyz Wide Shut's business.

2175. As a direct and proximate results of Defendants' actions, Toth has no control over the nature and quality of the services provided by Eyz Wide Shut, the nature of the advertisements depicting her image, likeness and/or identity, or how her image is being depicted by Eyz Wide Shut.

2176. Defendants' unauthorized use and alteration of Toth's image, likeness and identity as described herein violates 15 U.S.C. §1125(a) and was wrongful.

2177. Defendants' wrongful conduct as described herein was willful.

2178. As such, the present case is an exceptional case warranting an award of reasonable attorney's fees pursuant to 15 U.S.C. § 1117.

2179. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to wrongfully portray Toth as endorsing Defendants' business, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Toth from such an endorsement.

2180. Further, any failure, neglect or default by Defendants will reflect adversely on Toth as the believed source of origin, sponsorship, approval or association thereof, hampering efforts by Toth to continue to protect her reputation for high quality professional modeling, resulting in loss of sales thereof and the considerable expenditures to promote her personal modeling services to legitimate mainstream media, all to the irreparable harm of Toth.

2181. Due to Defendants' unauthorized use of Toth's image, Toth has been damaged in an amount to be determined at trial.

WHEREFORE, Toth respectfully requests that the Court enter a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

Plaintiff Vida Guerra's Causes of Action

GUERRA COUNT I
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Advertising against all Defendants)

2182. Section 43 of the Lanham Act, 15 U.S.C. § 1125, *et seq.* applies to Defendants and protects Guerra from the conduct described herein. Specifically, the Lanham Act prohibits a party

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in commercial advertising and promotion from “misrepresent[ing] the nature, characteristics, qualities or geographic origin of his or her or another person’s goods, services or commercial activities” 15 U.S.C. §1125(a)(1)(B).

2183. Defendants used Guerra’s Image as described herein without authority in order to create the perception that Guerra worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants’ business and activities, and/or consented to or authorized Defendants to use her image in order to advertise, promote, and market Defendants’ business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities.

2184. Guerra’s Image is recognizable in the photo identified in **Exhibit S.**

2185. Defendants’ use of Guerra’s Image to advertise, promote and market Defendants’ business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities as described in this First Amended Complaint was false and misleading.

2186. Defendants’ unauthorized use of Guerra’s Image as described in this First Amended Complaint constitutes false advertising by suggesting or implying, among other things, that Guerra worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants’ business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants’ usage of her image in order to advertise, promote, and market Defendants business or Eyz Wide Shut events and activities and/or that Guerra would participate in or appear at the specific events promoted in the advertisement.

2187. Defendants’ false advertising described above has the capacity or tendency to confuse consumers, including actual and prospective patrons of Eyz Wide Shut, as to the general quality of attendees and participants of Eyz Wide Shut and in its events, as well as specifically whether Guerra worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants’

business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities.

2188. Upon information and belief, Defendants' false advertising described above did, in fact, deceive and/or cause consumer confusion as to whether Guerra worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events and activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities. Among other things, upon information and belief, such unauthorized use misled and served to entice consumers and prospective consumers to join Eyz Wide Shut, visit Eyz Wide Shut, and participate in events at Eyz Wide Shut and had a material effect and impact on the decision of members and prospective members and participants to join Eyz Wide Shut, visit Eyz Wide Shut and take part in the events at Eyz Wide Shut.

2189. Defendants' advertisements, promotions and marketing of Eyz Wide Shut and events at Eyz Wide Shut occur in and are targeted to interstate commerce. Specifically, Defendants promote their business and events through interstate promotions and campaigns to target persons from different states throughout the United States. Defendants principally use the World Wide Web, social media and other vehicles of interstate commerce to advertise, market, promote, and entice or lure membership and attendance at Eyz Wide Shut events.

2190. Defendants' unauthorized use of Guerra's Image as described herein was designed to benefit Defendants' business interests by, among other things, promoting Eyz Wide Shut and its activities and attracting clientele to Eyz Wide Shut.

2191. Defendants knew or should have known that their unauthorized use of Guerra's Image would cause consumer confusion as described in this First Amended Complaint.

2192. Defendants' unauthorized use of Guerra's Image as described herein violates 15 U.S.C. §1125(a) and was wrongful.

2193. Defendants' wrongful conduct as described herein was willful.

2194. As such, the present case is an exceptional case warranting an award of reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

2195. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Guerra of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Guerra.

2196. The method and manner in which Defendants used the image of Guerra further evinces that Defendants were aware of or consciously disregarded the fact that Guerra did not consent to Defendants' use of the image to advertise Defendants' business.

2197. Defendants have caused irreparable harm to Guerra, her reputation and brand by attributing to Guerra the swinger's lifestyle and activities at Eyz Wide Shut.

2198. Defendants' unauthorized use of Guerra's Image directly and proximately caused and continue to cause damage to Guerra in an amount to be determined at trial.

WHEREFORE, Guerra respectfully requests that the Court issue a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

GUERRA COUNT II

**(Violation of Fla. Stat. § 540.08: Right of Publicity;
Unauthorized Misappropriation of Name/Likeness against all Defendants)**

2199. Guerra has a statutory right of publicity under Section 540.08, Florida Statutes.

2200. Section 540.08, Florida Statutes, provides that: “[n]o person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use.”

2201. Despite the clear language of Section 540.08, Defendants published Guerra’s Image on social media outlets, among others, in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut event and activities.

2202. Guerra’s Image is recognizable in the photo identified in **Exhibit S**.

2203. Defendants never sought permission or authority to use Guerra’s Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

2204. Guerra never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants’ use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

2205. Defendants intentionally or, at a minimum, recklessly published, printed, displayed, or otherwise publicly disseminated or used Guerra’s Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

2206. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or with reckless disregard to deprive Guerra of a property interest during the entire time period in which the unauthorized use took place.

2207. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Guerra's rights.

2208. Alternatively, Defendants acted negligently towards Guerra in using and disseminating, without authority, her Image on social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

2209. Defendants have caused irreparable harm to Guerra, her reputation and brand by attributing to Guerra the swinger's lifestyle and activities at Eyz Wide Shut.

2210. Defendants have also damaged Guerra as a direct and proximate result of their unauthorized use of Guerra's Image without compensating Guerra. Defendants' conduct has been despicable and taken in conscious disregard of Guerra's rights.

WHEREFORE, Guerra respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. §540.08, including but not limited to, both actual loss and damages, costs, interest, royalties, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

GUERRA COUNT III
(Violation of Common Law Right of Publicity;
Unauthorized Misappropriation of Name or Likeness against all Defendants)

2211. Guerra has a common law right of publicity.

2212. Defendants may not publish, print, display or publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of Guerra without express written or oral consent to such use.

2213. Defendants published, printed, displayed and/or publicly used Guerra's Image on their social media outlets, among others, for purposes of trade and/or commercial advertising

including, but not limited to, promoting, advertising and marketing of Eyz Wide Shut and Eyz Wide Shut events and activities.

2214. Guerra's Image is recognizable in the photo identified in **Exhibit S**.

2215. Defendants took these actions without Guerra's permission, consent or authority. In fact, Defendants never sought permission nor authority to use Guerra's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

2216. Guerra never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

2217. Defendants intentionally or, at a minimum, recklessly, published, printed, displayed, or otherwise publicly disseminated or used Guerra's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

2218. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or reckless disregard to deprive Guerra of a property interest during the entire time period in which the unauthorized use took place.

2219. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Guerra's rights.

2220. Alternatively, Defendants acted negligently towards Guerra in using and disseminating, without authority, her Image on Eyz Wide Shut social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

2221. Defendants have caused irreparable harm to Guerra, her reputation and brand by attributing to Guerra the swinger's lifestyle and activities at Eyz Wide Shut.

2222. Defendants have also damaged Guerra as a direct and proximate result of their unauthorized use of Guerra's Image without compensating Guerra.

WHEREFORE, Guerra respectfully requests that the Court issue a judgment against Defendants for all remedies available under a claim of misappropriation including, but not limited to, actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

GUERRA COUNT IV
(Violation of Fla. Stat. § 501.204:
Florida's Deceptive and Unfair Trade Practices Act against all Defendants)

2223. Section 501.204(1), Florida Statutes ("FDUTPA") provides that "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

2224. Defendants are direct and active participants in market dealings with Guerra by using her image to advertise and promote Eyz Wide Shut not only to patrons of Eyz Wide Shut, but to the general public in interstate commerce.

2225. Guerra's Image is recognizable in the photo identified in **Exhibit S**.

2226. Defendants at all material times were engaged in a trade or commerce, as defined within Section 501.203, Florida Statutes.

2227. Defendants have engaged in deceptive acts and unfair practices in the course of their business activities by:

- a. failing to obtain consent from Guerra prior to promoting Defendants' business by and through the misappropriation and use of Guerra's Image;
- b. failing to obtain authorization from Guerra prior to the publication of Guerra's Image on Eyz Wide Shut social media outlets;

- c. failing to compensate Guerra for the misappropriation and use of her Image on Eyz Wide Shut social media outlets;
- d. falsely representing by implication to the public that Guerra endorsed the Defendants' business, or would be present at and participate in Eyz Wide Shut events; and
- e. falsely representing by implication that Guerra sanctioned the type of business, events, lifestyle, or other activities promoted by Defendants.

2228. Defendants' conduct described herein was misleading.

2229. Defendants knew their unauthorized use of Guerra's Image was misleading.

2230. Defendants' unauthorized use of Guerra's Image as detailed herein violates Section 501.204(1), Florida Statutes, and was wrongful.

2231. Defendants' wrongful conduct as detailed herein was willful and malicious.

2232. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Guerra of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Guerra.

2233. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Guerra's rights.

2234. Alternatively, the method and manner in which Defendants used Guerra's Image further evinces that Defendants were aware or consciously disregarded that Guerra did not consent to Defendants' use to advertise Defendants' business.

2235. Defendants have caused irreparable harm to Guerra, her reputation and brand by attributing to Guerra the swinger's lifestyle and activities at Eyz Wide Shut.

2236. Defendants' unauthorized use of Guerra's Image directly and proximately caused damage to Guerra in an amount to be determined at trial.

WHEREFORE, Guerra respectfully requests that the Court issue a judgment against Defendants for actual damages, including loss of profit, attorneys' fees, interest, costs, compensatory damages, damage to professional reputation, consequential damages, statutory civil penalties under Fla. Stat. § 501.2075, and such other relief as this Court deems just and proper.

GUERRA COUNT V
**(Violation of Fla. Stat. § 812.014 and Fla. Stat. § 772.11:
Civil Theft against all Defendants)**

2237. Section 772.11, Florida Statutes, creates a private right of action for victims of theft of tangible and intangible personal property, including rights, privileges, interests and claims.

2238. Defendants knowingly appropriated, used and disseminated Guerra's Image without authorization or consent.

2239. Guerra's Image is recognizable in the photo identified in **Exhibit S**.

2240. Defendants' misappropriation of Guerra's Image was for Defendants' own use and benefit and to deprive Guerra of certain rights.

2241. Defendants' misconduct detailed in this First Amended Complaint denied Guerra the right to engage in arms-length negotiations over the use and dissemination of her Image, the right to negotiate over reasonable bargained-for compensation, the right to say "no" to the proposed use by Defendants and the right to otherwise protect her Image from harm at the hands of Defendants.

2242. Defendants' appropriation of Guerra's Image as detailed herein without authority violates Sections 772.11 and 812.014, Florida Statutes, and was wrongful.

2243. Defendants' wrongful conduct as detailed herein was willful and malicious.

2244. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Guerra of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Guerra.

2245. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Guerra's rights.

2246. Alternatively, the method and manner in which Defendants used Guerra's Image further evinces that Defendants were aware or consciously disregarded the fact that Guerra did not consent to Defendants' use in order to advertise Defendants' business.

2247. Defendants' appropriation and use of Guerra's Image without authority directly and proximately caused damage to Guerra in an amount to be determined at trial.

WHEREFORE, Guerra respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. § 772.11(1), including but not limited to, treble the amount of actual damages, costs, interest, and attorneys' fees and other relief deemed just and proper by this Court.

GUERRA COUNT VI
(Unjust Enrichment against all Defendants)

2248. Guerra has conferred a benefit upon Defendants by virtue of Defendants' usage of her image without compensation.

2249. Guerra's Image is recognizable in the photo identified in **Exhibit S**.

2250. Defendants were aware that Guerra's Image were valuable.

2251. Defendants were aware of the resulting benefit from usage of Guerra's Image.

2252. Defendants have retained profits and other benefits conferred upon them by using Guerra's Image to promote and advertise Defendants' business, Eyz Wide Shut or Eyz Wide Shut events.

2253. It would be inequitable for Defendants to retain the benefits conferred upon them by using Guerra's Image without paying fair value for the image.

WHEREFORE, Guerra respectfully requests that the Court issue a judgment against Defendants for damages, including but not limited to actual damages, costs, interest, imposition of a constructive trust, restitution of unlawful proceeds, including Defendants' gross profits and such other and further relief in law or equity as this Court deems just and proper.

GUERRA COUNT VII
(Conversion against all Defendants)

2254. Guerra is, and at relevant times was, the exclusive owner of all rights, title, and interest to her Image unlawfully converted by Defendants for Defendants' benefit.

2255. Guerra's Image is recognizable in the photo identified in **Exhibit S**.

2256. Guerra has, and for all times relevant herein had, an intangible property interest in her Image unlawfully converted by Defendants for Defendants' benefit.

2257. By their acts and conduct alleged above, Defendants have converted Guerra's property rights, including without limitation, Guerra's Image for Defendants' use and wrongful disposition for financial gain.

2258. Guerra is informed and believes and on such information alleges that Defendants have refused to return Guerra's property to her or pay for the deprivation of Guerra's property.

2259. As a result, Guerra has suffered compensatory and exemplary damages to be determined according to proof at trial; but Guerra alleges that the same are within the jurisdiction of the Court.

2260. Further, Guerra is informed and believes and thereon alleges that in engaging in the conduct described above, Defendants acted with oppression, fraud, and/or malice. Defendants' conduct has been despicable and taken in conscious disregard of Guerra's rights.

WHEREFORE, Guerra respectfully requests this Court to issue a judgment against Defendants and for all remedies available under the common law claim for conversion, including but not limited to actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits, and/or other relief deemed just and proper.

GUERRA COUNT VIII
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Endorsement against all Defendants)

2261. Section 43 of the Lanham Act, 15 U.S.C. § 1125, et seq. applies to Defendants and protects Guerra from the conduct described herein.

2262. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from committing any act that "is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person . . . or approval of his or her goods, services, or commercial activities by another person . . ." 15 U.S.C. §1125(a)(1)(A).

2263. Guerra is a model, entertainer, and spokesperson who earns a living based solely on marketing, endorsing, and advertising products and services for her clients.

2264. Guerra works diligently to build herself into a brand that becomes inseparable from her persona.

2265. In fact, Guerra's personae is so associated with her brand that the use of the same or similar images and likenesses by Defendants constitutes a false representation by Defendants that its goods and services, i.e. swinger club activities, come from the same source as Guerra's brand.

2266. In other words, Defendants use of Guerra's personae is, on its face, a false statement that she has, in fact, endorsed Defendants' swingers club and activities.

2267. Moreover, Guerra's images are inherently distinctive or, in the alternative, have through their use acquired a distinctiveness through secondary meaning.

2268. Guerra's images either suggest the basic nature of her product or service, identify the characteristic of her product or service, or suggest characteristics of her product or service that requires an effort of the imagination by the consumer in order to be understood as descriptive.

2269. Guerra's brand - the reason her clients seek to hire her - is unique in that it is encompassed in Guerra's identity, i.e., her persona.

2270. Guerra's rights to her personae rises to the level of common law trademarks and is entitled to protection under Section 2 of the Lanham Act. Therefore, Defendants' use of Guerra's image constitutes a False Endorsement under section 2 of the Lanham Act.

2271. Defendants used and altered Guerra's image, likeness and/or identity as described herein without authority in order to create the false perception that she worked at or was otherwise affiliated with Eyz Wide Shut, or endorsed Defendants, Eyz Wide Shut or Eyz Wide Shut's business activities, and/or consented to or authorized Defendants' or Eyz Wide Shut's usage of her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut's events and activities.

2272. Guerra's Image is recognizable in the photo identified in **Exhibit S.**

2273. Defendants use of Guerra's image was for Defendants' commercial benefit and was designed for the sole and express purpose of attracting clientele to Eyz Wide Shut thereby generating revenue for Defendants.

2274. Most (if not all) of the Eyz Wide Shut patrons have undoubtedly viewed Guerra's images in magazines and online.

2275. Defendants' unauthorized use and alteration of Guerra's image, likeness and/or identity to advertise, endorse, promote and market Defendants' business, Eyz Wide Shut and/or Eyz Wide Shut's events and activities as described in this Complaint has led to a competitive injury to Guerra.

2276. Defendants' unauthorized use and alteration of Guerra's image, likeness and/or identity as described in this Complaint constitutes a false designation of the source or origin, sponsorship, approval, association, or endorsement, which has deceived Guerra's fans and present and prospective clients into believing that, among other things, Guerra works at or is otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut's events or activities, or consented to or authorized Defendants' or Eyz Wide Shut's usage or alteration of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut's events and activities and/or that Guerra would participate in or appear at the specific events promoted in the advertisement.

2277. Despite the fact that Defendants were at all times aware that Guerra did not work at, nor endorse Eyz Wide Shut, Defendants nevertheless used Guerra's image to mislead potential customers as to Guerra's employment at Eyz Wide Shut.

2278. Defendants knew that their use of Guerra's image would cause consumer confusion as to each Plaintiff's sponsorship, endorsement, and/or employment at Eyz Wide Shut.

2279. Upon information and belief, Defendants' use of Guerra's image as described above did, in fact, deceive and/or cause consumer confusion as to whether Guerra worked at and/or endorsed Eyz Wide Shut, and endorsed Eyz Wide Shut's business.

2280. As a direct and proximate results of Defendants' actions, Guerra has no control over the nature and quality of the services provided by Eyz Wide Shut, the nature of the advertisements

depicting her image, likeness and/or identity, or how her image is being depicted by Eyz Wide Shut.

2281. Defendants' unauthorized use and alteration of Guerra's image, likeness and identity as described herein violates 15 U.S.C. §1125(a) and was wrongful.

2282. Defendants' wrongful conduct as described herein was willful.

2283. As such, the present case is an exceptional case warranting an award of reasonable attorney's fees pursuant to 15 U.S.C. § 1117.

2284. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to wrongfully portray Guerra as endorsing Defendants' business, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Guerra from such an endorsement.

2285. Further, any failure, neglect or default by Defendants will reflect adversely on Guerra as the believed source of origin, sponsorship, approval or association thereof, hampering efforts by Guerra to continue to protect her reputation for high quality professional modeling, resulting in loss of sales thereof and the considerable expenditures to promote her personal modeling services to legitimate mainstream media, all to the irreparable harm of Guerra.

2286. Due to Defendants' unauthorized use of Guerra's image, Guerra has been damaged in an amount to be determined at trial.

WHEREFORE, Guerra respectfully requests that the Court enter a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

Plaintiff Kim Cozzens's Causes of Action

COZZENS COUNT I
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Advertising against all Defendants)

2287. Section 43 of the Lanham Act, 15 U.S.C. § 1125, *et seq.* applies to Defendants and protects Cozzens from the conduct described herein. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from “misrepresent[ing] the nature, characteristics, qualities or geographic origin of his or her or another person’s goods, services or commercial activities . . .” 15 U.S.C. §1125(a)(1)(B).

2288. Defendants used Cozzens’s Image as described herein without authority in order to create the perception that Cozzens worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Eyz Wide Shut or Eyz Wide Shut business activities, and/or consented to or authorized Defendants’ usage of her image in order to advertise, promote, and market Defendants’ business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities.

2289. Cozzens’s Image is recognizable in the photo identified in **Exhibit T**.

2290. Defendants’ use of Cozzens’s Image to advertise, promote and market Defendants’ business, Eyz Wide Shut, and/or Eyz Wide Shut events and activities as described in this First Amended Complaint was false and misleading.

2291. Defendants’ unauthorized use of Cozzens’s Image as described in this First Amended Complaint constitutes false advertising by suggesting or implying, among other things, that Cozzens worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants’ business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants’ usage of her image in order to advertise, promote, and market Defendants’ business

or Eyz Wide Shut events and activities and/or that Cozzens would participate in or appear at the specific events promoted in the advertisement.

2292. Defendants' false advertising described above has the capacity or tendency to confuse consumers, including actual and prospective patrons of Eyz Wide Shut, as to the general quality of attendees and participants at Eyz Wide Shut and in its events, as well as specifically whether Cozzens worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events or activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities.

2293. Upon information and belief, Defendants' false advertising described above did, in fact, deceive and/or cause consumer confusion as to whether Cozzens worked at or was otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut events and activities, or consented to or authorized Defendants' usage of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut events and activities. Among other things, upon information and belief, such unauthorized use misled and served to entice consumers and prospective consumers to join Eyz Wide Shut, visit Eyz Wide Shut, and participate in events at Eyz Wide Shut and had a material effect and impact on the decision of members and prospective members and participants to join Eyz Wide Shut, visit Eyz Wide Shut and take part in the events at Eyz Wide Shut.

2294. Defendants' advertisements, promotions and marketing of Eyz Wide Shut and events at Eyz Wide Shut occur in and are targeted to interstate commerce. Specifically, Defendants promote their business and events through interstate promotions and campaigns to target persons from different states throughout the United States. Defendants principally use the World Wide

Web, social media and other vehicles of interstate commerce to advertise, market, promote, and entice or lure membership and attendance at Eyz Wide Shut events.

2295. Defendants' unauthorized use of Cozzens's Image as described herein was designed to benefit Defendants' business interests by, among other things, promoting Eyz Wide Shut and its activities and attracting clientele to Eyz Wide Shut.

2296. Defendants knew or should have known that their unauthorized use of Cozzens's Image would cause consumer confusion as described in this First Amended Complaint.

2297. Defendants' unauthorized use of Cozzens's Image as described herein violates 15 U.S.C. §1125(a) and was wrongful.

2298. Defendants' wrongful conduct as described herein was willful.

2299. As such, the present case is an exceptional case warranting an award of reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

2300. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Cozzens of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Cozzens.

2301. The method and manner in which Defendants used the image of Cozzens further evinces that Defendants were aware of or consciously disregarded the fact that Cozzens did not consent to Defendants' use of the image to advertise Defendants' business.

2302. Defendants have caused irreparable harm to Cozzens, her reputation and brand by attributing to Cozzens the swinger's lifestyle and activities at Eyz Wide Shut.

2303. Defendants' unauthorized use of Cozzens's Image directly and proximately caused damage to Cozzens in an amount to be determined at trial.

WHEREFORE, Cozzens respectfully requests that the Court issue a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

COZZENS COUNT II

**(Violation of Fla. Stat. § 540.08: Right of Publicity;
Unauthorized Misappropriation of Name/Likeness against all Defendants)**

2304. Cozzens has a statutory right of publicity under Section 540.08, Florida Statutes.

2305. Section 540.08, Florida Statutes, provides that: "[n]o person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use."

2306. Despite the clear language of Section 540.08, Defendants published Cozzens's Image on Eyz Wide Shut social media outlet, among others, in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

2307. Cozzens's Image is recognizable in the photo identified in **Exhibit T**.

2308. Defendants never sought permission nor authority to use Cozzens's Image to advertise, promote, market or endorse Eyz Wide Shut or any Eyz Wide Shut event or activity.

2309. Cozzens never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event or activity.

2310. Defendants intentionally or, at a minimum, recklessly published, printed, displayed, or otherwise publicly disseminated or used Cozzens's Image without her express written or oral

consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

2311. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or with reckless disregard to deprive Cozzens of a property interest during the entire time period in which the unauthorized use took place.

2312. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Cozzens's rights.

2313. Alternatively, Defendants acted negligently towards Cozzens in using and disseminating, without authority, her Image on social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

2314. Defendants have caused irreparable harm to Cozzens, her reputation and brand by attributing to Cozzens the swinger's lifestyle and activities at Eyz Wide Shut.

2315. Defendants have also damaged Cozzens as a direct and proximate result of their unauthorized use of Cozzens's Image without compensating Cozzens.

WHEREFORE, Cozzens respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. §540.08, including but not limited to, both actual loss and damages, costs, interest, royalties, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

COZZENS COUNT III
(Violation of Common Law Right of Publicity;
Unauthorized Misappropriation of Name or Likeness against all Defendants)

2316. Cozzens has a common law right of publicity.

2317. Defendants may not publish, print, display or publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of Cozzens without express written or oral consent to such use.

2318. Defendants published, printed, displayed and/or publicly used Cozzens's Image on social media outlets, among others, for purposes of trade and/or commercial advertising including, but not limited to, promoting, advertising and marketing Eyz Wide Shut and Eyz Wide Shut events and activities.

2319. Cozzens's Image is recognizable in the photo identified in **Exhibit T**.

2320. Defendants took these actions without Cozzens's permission, consent or authority. In fact, Defendant never sought permission or authority to use Cozzens's Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event or activity.

2321. Cozzens never consented to, permitted, assigned, licensed, or otherwise agreed to Defendants' use of her Image to advertise, promote, market or endorse Eyz Wide Shut, or any Eyz Wide Shut event or activity.

2322. Defendants intentionally or, at a minimum, recklessly, published, printed, displayed, or otherwise publicly disseminated or used Cozzens's Image without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this First Amended Complaint.

2323. Defendants had actual or constructive knowledge of the wrongfulness of their conduct and acted with intent or reckless disregard to deprive Cozzens of a property interest during the entire time period in which the unauthorized use took place.

2324. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Cozzens's rights.

2325. Alternatively, Defendant acted negligently towards Cozzens in using and disseminating, without authority, her Image on social media outlets in order to promote, advertise and market Eyz Wide Shut and Eyz Wide Shut events and activities.

2326. Defendants have caused irreparable harm to Cozzens, her reputation and brand by attributing to Cozzens the swinger's lifestyle and activities at Eyz Wide Shut.

2327. Defendants have also damaged Cozzens as a direct and proximate result of their unauthorized use of Cozzens's Image without compensating Cozzens.

WHEREFORE, Cozzens respectfully requests that the Court issue a judgment against Defendants for all remedies available under a claim of misappropriation including, but not limited to, actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

COZZENS COUNT IV
(Violation of Fla. Stat. § 501.204:
Florida's Deceptive and Unfair Trade Practices Act against all Defendants)

2328. Section 501.204(1), Florida Statutes ("FDUTPA") provides that "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

2329. Defendants are direct and active participants in market dealings with Cozzens by using her image to advertise and promote Eyz Wide Shut not only to patrons of Eyz Wide Shut, but to the general public in interstate commerce.

2330. Cozzens's Image is recognizable in the photo identified in **Exhibit T**.

2331. Defendants at all material times were engaged in a trade or commerce, as defined within Section 501.203, Florida Statutes.

2332. Defendants have engaged in deceptive acts and unfair practices in the course of their business activities by:

- a. failing to obtain consent from Cozzens prior to promoting Defendants' business by and through the misappropriation and use of Cozzens's Image;
- b. failing to obtain authorization from Cozzens prior to the publication of Cozzens's Image on Eyz Wide Shut social media;
- c. failing to compensate Cozzens for the misappropriation and use of her Image on Eyz Wide Shut social media;
- d. falsely representing by implication to the public that Cozzens endorsed the Defendants' business, or would be present at and participate in Eyz Wide Shut events; and
- e. falsely representing by implication that Cozzens sanctioned the type of business, events, lifestyle, or other activities promoted by Defendants.

2333. Defendants' conduct described herein was misleading.

2334. Defendants knew their unauthorized use of Cozzens's Image was misleading.

2335. Defendants' unauthorized use of Cozzens's Image as detailed herein violates Section 501.204(1), Florida Statutes, and was wrongful.

2336. Defendants' wrongful conduct as detailed herein was willful and malicious.

2337. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Cozzens of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Cozzens.

2338. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Cozzens's rights.

2339. Alternatively, the method and manner in which Defendants used Cozzens's Image further evinces that Defendants were aware or consciously disregarded that Cozzens did not consent to Defendants' use to advertise Defendants' business.

2340. Defendants have caused irreparable harm to Cozzens, her reputation and brand by attributing to Cozzens the swinger's lifestyle and activities at Eyz Wide Shut.

2341. Defendants' unauthorized use of Cozzens's Image directly and proximately caused damage to Cozzens in an amount to be determined at trial.

WHEREFORE, Cozzens respectfully requests that the Court issue a judgment against Defendants for actual damages, including loss of profit, attorneys' fees, interest, costs, compensatory damages, damage to professional reputation, consequential damages, statutory civil penalties under Fla. Stat. § 501.2075, and such other relief as this Court deems just and proper.

COZZENS COUNT V
**(Violation of Fla. Stat. § 812.014 and Fla. Stat. § 772.11:
Civil Theft against all Defendants)**

2342. Section 772.11, Florida Statutes, creates a private right of action for victims of theft of tangible and intangible personal property, including rights, privileges, interests and claims.

2343. Defendants knowingly appropriated, used and disseminated Cozzens's Image without authorization or consent.

2344. Cozzens's Image is recognizable in the photo identified in **Exhibit T**.

2345. Defendants' misappropriation of Cozzens's Image was for Defendants' own use and benefit and to deprive Cozzens of certain rights.

2346. Defendants' misconduct detailed in this First Amended Complaint denied Cozzens the right to engage in arms-length negotiations over the use and dissemination of her Image, the right to negotiate over reasonable bargained-for compensation, the right to say "no" to the

proposed use by Defendants and the right to otherwise protect her Image from harm at the hands of Defendants.

2347. Defendants' appropriation of Cozzens's Image as detailed herein without authority violates Sections 772.11 and 812.014, Florida Statutes, and was wrongful.

2348. Defendants' wrongful conduct as detailed herein was willful and malicious.

2349. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Cozzens of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Cozzens.

2350. At a minimum, Defendants' conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Cozzens's rights.

2351. Alternatively, the method and manner in which Defendants used Cozzens's Image further evinces that Defendants were aware or consciously disregarded the fact that Cozzens did not consent to Defendants' use in order to advertise Defendants' business.

2352. Defendants' appropriation and use of Cozzens's Image without authority directly and proximately caused damage to Cozzens in an amount to be determined at trial.

WHEREFORE, Cozzens respectfully requests that the Court issue a judgment against Defendants for all remedies available under Fla. Stat. § 772.11(1), including but not limited to, treble the amount of actual damages, costs, interest, and attorneys' fees and other relief deemed just and proper by this Court.

COZZENS COUNT VI
(Unjust Enrichment against all Defendants)

2353. Cozzens has conferred a benefit upon Defendants by virtue of Defendants' usage of her image without compensation.

2354. Cozzens's Image is recognizable in the photo identified in **Exhibit T**.

The Casas Law Firm, P.C.
Brickell Bayview Center 80 S.W. 8th Street, Suite 2000, Miami, FL 33130

2355. Defendants were aware that Cozzens's Image were valuable.

2356. Defendants were aware of the resulting benefit from usage of Cozzens's Image.

2357. Defendants have retained profits and other benefits conferred upon them by using Cozzens's Image to promote and advertise Defendants' business, Eyz Wide Shut or Eyz Wide Shut events.

2358. It would be inequitable for Defendants to retain the benefits conferred upon them by using Cozzens's Image without paying fair value for the image.

WHEREFORE, Cozzens respectfully requests that the Court issue a judgment against Defendants for damages, including but not limited to actual damages, costs, interest, imposition of a constructive trust, restitution of unlawful proceeds, including Defendants' gross profits and such other and further relief in law or equity as this Court deems just and proper.

COZZENS COUNT VII
(Conversion against all Defendants)

2359. Cozzens is, and at relevant times was, the exclusive owner of all rights, title, and interest to her Image unlawfully converted by Defendants for Defendants' benefit.

2360. Cozzens's Image is recognizable in the photo identified in **Exhibit T**.

2361. Cozzens has, and for all times relevant herein had, an intangible property interest in her Image unlawfully converted by Defendants for Defendants' benefit.

2362. By their acts and conduct alleged above, Defendants have converted Cozzens's property rights, including without limitation, Cozzens's Image for Defendants' use and wrongful disposition for financial gain.

2363. Cozzens is informed and believes and on such information alleges that Defendants have refused to return Cozzens's property to her or pay for the deprivation of Cozzens's property.

2364. As a result, Cozzens has suffered compensatory and exemplary damages to be determined according to proof at trial; but Cozzens alleges that the same are within the jurisdiction of the Court.

2365. Further, Cozzens is informed and believes and thereon alleges that in engaging in the conduct described above, Defendants acted with oppression, fraud, and/or malice. Defendants' conduct has been despicable and taken in conscious disregard of Cozzens's rights.

WHEREFORE, Cozzens respectfully requests this Court to issue a judgment against Defendants and for all remedies available under the common law claim for conversion, including but not limited to actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits, and/or other relief deemed just and proper.

COZZENS COUNT VIII
(Violation of the Lanham Act, 15 U.S.C. § 1125(a):
False Endorsement against all Defendants)

2366. Section 43 of the Lanham Act, 15 U.S.C. § 1125, et seq. applies to Defendants and protects Cozzens from the conduct described herein.

2367. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from committing any act that "is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person . . . or approval of his or her goods, services, or commercial activities by another person . . ." 15 U.S.C. §1125(a)(1)(A).

2368. Cozzens is a model, entertainer, and spokesperson who earns a living based solely on marketing, endorsing, and advertising products and services for her clients.

2369. Cozzens works diligently to build herself into a brand that becomes inseparable from her persona.

2370. In fact, Cozzens' personae is so associated her brand that the use of the same or similar images and likenesses by Defendants constitutes a false representation by Defendants that its goods and services, i.e. swinger club activities, come from the same source as Cozzens' brand.

2371. In other words, Defendants use of Cozzens' personae is, on its face, a false statement that she has, in fact, endorsed Defendants' swingers club and activities.

2372. Moreover, Cozzens' images are inherently distinctive or, in the alternative, have through their use acquired a distinctiveness through secondary meaning.

2373. Cozzens' images either suggest the basic nature of her product or service, identify the characteristic of her product or service, or suggest characteristics of her product or service that requires an effort of the imagination by the consumer in order to be understood as descriptive.

2374. Cozzens' brand - the reason her clients seek to hire her - is unique in that it is encompassed in Cozzens' identity, i.e., her persona.

2375. Cozzens' rights to her personae rises to the level of common law trademarks and is entitled to protection under Section 2 of the Lanham Act. Therefore, Defendants' use of Cozzens' image constitutes a False Endorsement under section 2 of the Lanham Act.

2376. Defendants used and altered Cozzens' image, likeness and/or identity as described herein without authority in order to create the false perception that she worked at or was otherwise affiliated with Eyz Wide Shut, or endorsed Defendants, Eyz Wide Shut or Eyz Wide Shut's business activities, and/or consented to or authorized Defendants' or Eyz Wide Shut's usage of her image in order to advertise, promote, and market Defendants' business, Eyz Wide Shut, and/or Eyz Wide Shut's events and activities.

2377. Cozzens' Image is recognizable in the photo identified in **Exhibit T**.

2378. Defendants use of Cozzens' image was for Defendants' commercial benefit and was designed for the sole and express purpose of attracting clientele to Eyz Wide Shut thereby generating revenue for Defendants.

2379. Most (if not all) of the Eyz Wide Shut patrons have undoubtedly viewed Cozzens' images in magazines and online.

2380. Defendants' unauthorized use and alteration of Cozzens' image, likeness and/or identity to advertise, endorse, promote and market Defendants' business, Eyz Wide Shut and/or Eyz Wide Shut's events and activities as described in this Complaint has led to a competitive injury to Cozzens.

2381. Defendants' unauthorized use and alteration of Cozzens' image, likeness and/or identity as described in this Complaint constitutes a false designation of the source or origin, sponsorship, approval, association, or endorsement, which has deceived Cozzens' fans and present and prospective clients into believing that, among other things, Cozzens works at or is otherwise affiliated with Eyz Wide Shut, endorsed Defendants' business, Eyz Wide Shut or Eyz Wide Shut's events or activities, or consented to or authorized Defendants' or Eyz Wide Shut's usage or alteration of her image in order to advertise, promote, and market Defendants' business or Eyz Wide Shut's events and activities and/or that Cozzens would participate in or appear at the specific events promoted in the advertisement.

2382. Despite the fact that Defendants were at all times aware that Cozzens did not work at, nor endorse Eyz Wide Shut, Defendants nevertheless used Cozzens' image to mislead potential customers as to Cozzens' employment at Eyz Wide Shut.

2383. Defendants knew that their use of Cozzens' image would cause consumer confusion as to each Plaintiff's sponsorship, endorsement, and/or employment at Eyz Wide Shut.

2384. Upon information and belief, Defendants' use of Cozzens' image as described above did, in fact, deceive and/or cause consumer confusion as to whether Cozzens worked at and/or endorsed Eyz Wide Shut, and endorsed Eyz Wide Shut's business.

2385. As a direct and proximate results of Defendants' actions, Cozzens has no control over the nature and quality of the services provided by Eyz Wide Shut, the nature of the advertisements depicting her image, likeness and/or identity, or how her image is being depicted by Eyz Wide Shut.

2386. Defendants' unauthorized use and alteration of Cozzens' image, likeness and identity as described herein violates 15 U.S.C. §1125(a) and was wrongful.

2387. Defendants' wrongful conduct as described herein was willful.

2388. As such, the present case is an exceptional case warranting an award of reasonable attorney's fees pursuant to 15 U.S.C. § 1117.

2389. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to wrongfully portray Cozzens as endorsing Defendants' business, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Cozzens from such an endorsement.

2390. Further, any failure, neglect or default by Defendants will reflect adversely on Cozzens as the believed source of origin, sponsorship, approval or association thereof, hampering efforts by Cozzens to continue to protect her reputation for high quality professional modeling, resulting in loss of sales thereof and the considerable expenditures to promote her personal modeling services to legitimate mainstream media, all to the irreparable harm of Cozzens.

2391. Due to Defendants' unauthorized use of Cozzens' image, Cozzens has been damaged in an amount to be determined at trial.

WHEREFORE, Cozzens respectfully requests that the Court enter a judgment against Defendants and grant actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

PRAYER FOR RELIEF

WHEREFORE, each Plaintiff individually respectfully prays that this Court grant Judgment to each Plaintiff, respectively, and against Defendants, jointly and severally in an amount to be determined at trial and as follows:

1. For damages as provided in 15 U.S.C. § 1125(a);
2. For attorneys' fees and costs of suit, as provided for in 15 U.S.C. § 1125(a);
3. For damages as provided in Fla. Stat. §540.08;
4. For general damages according to proof;
5. For special damages according to proof;
6. For consequential damages according to proof;
7. For treble compensatory damages as provided in Fla. Stat. §772.11;
8. For attorneys' fees and costs of suit, as provided for in Fla. Stat. §772.11;
9. For damages as provided in Fla. Stat. §501.201;
10. For attorneys' fees and costs of suit, as provided for in Fla. Stat. §501.2105;
11. For civil penalty, as provided for in Fla. Stat. §501.2075;
12. For reasonable attorneys' fees and costs as permitted by law;
13. For prejudgment interest and royalties at the legal rate;
14. For such other relief as this Court deems just and proper; and

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15. Plaintiffs reserve the right to amend the pleadings to include punitive damages pursuant to Fla. Stat. §768.72.

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury on all issues so triable.

Dated: March 13, 2017.

Respectfully submitted,

/s/ Ludmila Khomiak
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