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7
 8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA
 10 WESTERN DIVISION

11 GUNS N' ROSES, a California
partnership,

12 Plaintiff,

13 v.
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15 CANARCHY CRAFT BREWERY
 COLLECTIVE LLC, dba OSKAR
 16 BLUES BREWERY, a Colorado
 Limited Liability Company

17 Defendant.
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Case No. 2:19-cv-4052

COMPLAINT FOR:

- (1) **TRADEMARK INFRINGEMENT IN VIOLATION OF 15 U.S.C. § 1114;**
- (2) **FALSE DESIGNATION OF ORIGIN IN VIOLATION OF 15 U.S.C. § 1125(a);**
- (3) **TRADEMARK DILUTION IN VIOLATION OF 15 U.S.C. § 1125(c);**
- (4) **COMMON LAW TRADEMARK INFRINGEMENT;**
- (5) **UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.;**
- (6) **COMMON LAW UNFAIR COMPETITION; AND**
- (7) **MISAPPROPRIATION OF RIGHT OF PUBLICITY IN VIOLATION OF CAL. CIV. CODE § 3344 AND COMMON LAW.**

DEMAND FOR JURY TRIAL

1 Plaintiff Guns N’ Roses (“GNR”) for their Complaint against Defendant
2 CANarchy Brewery Collective LLC, doing business as Oskar Blues Brewery
3 (“Defendant”), and Does 1-10, alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. This action arises under the trademark laws of the United States, 15
6 U.S.C. § 1051, *et seq.*, and California statutory and common law. The Court has
7 original subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121 and
8 28 U.S.C. §§ 1331 and 1338. The Court has supplemental jurisdiction pursuant to 28
9 U.S.C. § 1367(a) over claims arising under California law because all of the claims
10 herein arise out of a common nucleus of facts.

11 2. Venue is proper under 28 U.S.C. §1391(b) because, upon information
12 and belief, a substantial part of the events or omissions giving rise to the claims
13 occurred in this District and Defendant is subject to personal jurisdiction in this
14 District.

15 **THE PARTIES**

16 3. GNR is a musical group and partnership organized and existing under
17 the laws of the state of California with their principle place of business in Los Angeles,
18 California. GNR’s general partners are W. Axl Rose (“Axl Rose”), Saul Hudson, pka
19 Slash, and Michael McKagan.

20 4. Upon information and belief, Defendant is a Colorado limited liability
21 company with its principle place of business Longmont, Colorado and that is
22 registered to do business in California.

23 5. The true names, identities and capacities, whether individual, associate,
24 corporate or otherwise, of Defendants DOES 1 to 10, inclusive, and each of them (the
25 “DOE Defendants”), are unknown to GNR at this time, who therefore sues the DOE
26 Defendants by such fictitious names. When the true names and capacities or
27 participation of the DOE Defendants are ascertained, GNR will amend this complaint
28 to assert the true names, identities and capacities. GNR is informed and believes and

1 thereon alleges that each of the DOE Defendants sued herein is responsible for the
2 wrongful acts alleged herein, and is therefore liable to GNR in some manner for the
3 events and happenings alleged in this Complaint. GNR is informed and believes and
4 thereon alleges that at all times herein mentioned, the DOE Defendants were and are
5 doing business and/or residing in this District.

6 **FACTUAL BACKGROUND**

7 **A. GNR's Three Decades of Worldwide Success Under the Famous GUNS N'**
8 **ROSES Trademark**

9 6. In 1984, GNR's co-founders Tracii Guns and Axl Rose combined their
10 respective bands "LA Guns" and "Hollywood Rose" to form the band "Guns N'
11 Roses." Since the formation, GNR has achieved national and international renown as
12 one of the greatest, and most commercial and critically successful, bands of all time.

13 7. GNR's debut studio album, *Appetite for Destruction*, was released in
14 1987. On the strength of their famous and iconic songs -- including "Welcome to the
15 Jungle," "Sweet Child O' Mine," and "Paradise City" -- *Appetite for Destruction*
16 reached number one on the *Billboard* 200, *Billboard* magazine's chart ranking the
17 200 most popular albums in the United States, in 1988.

18 8. Since its release, *Appetite for Destruction* has sold at least 30 million
19 copies worldwide. This includes at least 18 million copies sold in the United States,
20 which makes *Appetite for Destruction* the best-selling debut album, and one of the
21 best-selling albums period, of all time in the United States. Among other critical
22 accolades, *Appetite for Destruction* was ranked number 62 on *Rolling Stone*'s list of
23 the 500 Greatest Albums of All Time and number 42 on VH1's list of the best 100
24 albums in rock and roll history, and has been repeatedly hailed by music critics and
25 fans as one of greatest rock and roll albums of all time.

26 9. GNR's subsequent studio albums -- *G N' R Lies* (1988), *Use Your*
27 *Illusion I* (1991), *Use Your Illusion II* (1991), "*The Spaghetti Incident*" (1993), and
28 *Chinese Democracy* (2008) -- have sold, at least, 20 million copies collectively in the

1 United States alone since their release. As with *Appetite for Destruction*, each of
2 GNR's subsequent studio albums has been the subject of critical praise in publications
3 such as *Entertainment Weekly*, *Rolling Stone*, *Los Angeles Times*, *Chicago Tribune*,
4 *Spin*, and *NME*.

5 10. In addition to and in connection with its recorded musical output, GNR
6 has created some of the most iconic and popular music videos of all-time. As of May
7 7, 2019, the official music videos for GNR songs "Welcome to the Jungle," "Paradise
8 City," "Sweet Child O' Mine," and "November Rain" have been collectively viewed
9 nearly 3 *billion* times on YouTube, alone. The excellence of GNR's music videos has
10 been widely acknowledged, including by seminal music television channel MTV
11 when it awarded GNR a Video Vanguard Award to recognize their accomplishments
12 in music and film.

13 11. GNR, and their recorded music and music videos, have been nominated
14 for and won numerous awards including American Music Awards (eight nominations
15 and four wins), Billboard Music Awards (six nominations and one win), Grammy
16 Awards (four nominations), and MTV Video Music Awards (nine nominations and
17 four wins).

18 12. GNR's live performances, in the United States and abroad, have also
19 been massively successful. In addition to performing and touring with some of the
20 greatest acts in popular music's history -- including Metallica and Aerosmith -- GNR
21 has headlined national and international tours that have been attended by millions of
22 people and earned hundreds of millions of dollars. By way of example, GNR's *Not*
23 *in This Lifetime... Tour* -- which ran from April 2016 to December 2018, included
24 more than 150 shows in the United States and worldwide, and featured a headlining
25 performance at the world-famous Coachella Festival -- grossed more than \$563
26 million, making it one of the highest-grossing tours of all time. Among other
27 accolades, GNR's *Not in This Lifetime... Tour* won "Top Tour/Top Draw" at the 2017
28 Billboard Touring Awards, nominated for "Top Rock Tour" at the 2017 Billboard

1 Music Awards, and was awarded the inaugural Ticketmaster Touring Milestone
 2 Award in 2019.

3 13. Due to their more than three decades of musical excellence and success,
 4 GNR was inducted into the Rock & Roll Hall of Fame in 2012 -- their first year of
 5 eligibility for induction -- taking their place alongside music legends such as James
 6 Brown, Ray Charles, Elvis Presley, Aretha Franklin, The Beatles, Bob Dylan, The
 7 Rolling Stones, Stevie Wonder, Bob Marley, Johnny Cash, The Jimi Hendrix
 8 Experience, Led Zeppelin, Queen, The Ramones, and Prince.

9 14. Given their fame and renown, GNR and their music have been the
 10 subject of considerable press and public comment over the course of their three-plus
 11 decade existence, including countless articles in world-famous magazines like *Rolling*
 12 *Stone*, and hundreds of books, television shows, and films. GNR and their music have
 13 also been prominently featured in television shows, films (including the blockbuster
 14 *Terminator 2: Judgment Day*), and video games such as *Guitar Hero*.

15 15. GNR, themselves or through their licensees, has also successfully
 16 offered to sell and sold a variety of “Guns N’ Roses” -- branded products to
 17 consumers. This includes, but is not limited, clothing and related accessories such as
 18 t-shirts, hats, patches, stickers, buttons, and bandannas -- an item uniquely associated
 19 with GNR and their co-founder and lead singer Axl Rose, who has famously worn
 20 bandannas for decades. This also includes items used for and related to the imbibing
 21 of alcohol including wine glasses, pint glasses, beer “koozies” (sleeves used to keep
 22 beer cans cold), and shot glasses.

23 16. GNR is the owner of the following incontestable federal trademark
 24 registrations of the mark GUNS N’ ROSES, true and correct copies of which are
 25 attached hereto as **Exhibit A**:

<u>Reg. No.</u>	<u>Class and Goods/Services</u>	<u>Reg. Date</u>
1,762,599	Class 9: Prerecorded video and audio tapes, prerecorded phonograph records and	April 6, 1997

<u>Reg. No.</u>	<u>Class and Goods/Services</u>	<u>Reg. Date</u>
	prerecorded compact discs all featuring music.	
1,766,309	Class 41: Entertainment services; namely, performances by a musical group.	April 20, 1993
2,035,815	Class 25: Clothing, namely, T-shirts, shirts, hats, caps, bandannas, sweatpants, and thermal shirts	February 4, 1997

17. By virtue of their use of the GUNS N' ROSES mark over the course of three decades, GNR also has common law rights in the GUNS N' ROSES mark for a broad range of goods and services including, but not limited to, the goods and services identified herein.

18. GNR and/or persons or entities acting on their behalf and direction and/or with their consent have undertaken significant efforts to market GNR, their marks, their music, their live performances, and their merchandise through various channels including, but not limited to, traditional media and social media. GNR's *Not in This Lifetime... Tour* was marketed throughout the United States and abroad in various channels including television, radio, print, and online. GNR's social media following evidences the success of these (and other) efforts undertaken over the course of thirty years. As of May 7, 2019, GNR's official Facebook page (available at the domain <facebook.com/gunsnroses>) has more 27 million Followers and 29 million "Likes," official Instagram account (available at the domain <instagram.com/gunsnroses>) has more than 3.9 million Followers, and official Twitter account (available at the domain <twitter.com/gunsnroses>) has more than 6.2 million Followers.

B. Defendant and its Infringing Activities

19. On information and belief, Defendant is a brewery that sells beer and merchandise throughout the United States and operates bars and/or restaurants in several states in the United States.

20. On information and belief, Defendant has offered to sell and sold craft beer under the mark GUNS ‘N’ ROSE in canned and keg form since at least as early as 2018 without GNR’s approval, license, or consent. A true and correct copy of the label for the canned version of Defendant’s GUNS ‘N’ ROSE beer is reproduced below:



21. Defendant has also offered to sell and sold various merchandise under and bearing the mark GUNS ‘N’ ROSÉ, including hats, t-shirts, pint glasses, stickers, buttons, and bandannas, without GNR’s approval, license, or consent. True and correct copies of product listings for Defendant’s GUNS ‘N’ ROSÉ hats, t-shirts, pint glasses, stickers, buttons, and bandannas, which were printed from Defendant’s webstore available at the domain <store.oskarblues.com> on May 6, 2019, are attached hereto as **Exhibit B**.

22. On August 2, 2018, Defendant filed an application to register the mark GUNS N ROSE (Application No. 88/062,803) for beer with the United States Patent and Trademark Office (the “PTO”). A true and correct copy of Defendant’s trademark application is attached hereto as **Exhibit C**.

1 23. In December 2018, GNR, through their business manager, contacted
2 Defendant informally and spoke with Defendant's Chief Executive Officer and set
3 forth GNR's claims and attempted to resolve this dispute short of escalating the matter
4 to counsel. Defendant rejected GNR's claims.

5 24. Following the call with Defendant's Chief Executive Officer, on
6 December 21, 2018, GNR sent Defendant a letter requesting that, among other things,
7 it cease its authorized use GUNS N ROSE or any other marks confusingly similar to
8 the GUNS N' ROSES mark, and abandon its application to register the GUNS N
9 ROSE mark. A true and correct copy of GNR's December 21, 2018 letter is attached
10 hereto as **Exhibit D**.

11 25. Defendant responded to GNR's December 21, 2018 letter on January 22,
12 2019. Instead of agreeing to GNR's requests, Defendant, in terse and conclusory
13 terms, denied GNR's claims and concluded that "its response...resolves this matter."
14 A true and correct copy of Defendant's January 22, 2019 letter is attached hereto at
15 **Exhibit E**.

16 26. Tellingly, Defendant did not contend in its January 22, 2019 letter that it
17 was not aware of GNR or their GUNS N' ROSES trademark at the time it selected
18 and adopted the GUNS 'N' ROSÉ mark (which appears on Defendant's goods) or the
19 GUNS N ROSE mark (which is the subject of Defendant's August 2, 2018 application
20 filed with the PTO).

21 27. Defendant's professed ignorance of "any instances of a musical artist or
22 group using its name as the name of a beer" was belied by GNR's December 21, 2018
23 assertion that "many musical artists and entertainers have expanded or intend to
24 expand in alcoholic beverages" including GNR contemporaries Metallica, AC/DC,
25 Deftones, Anthrax, Iron Maiden, Motörhead, and Mastodon. This practice is common
26 with "hard rock," "heavy metal," and "rock and roll" bands -- genres with which GNR
27 is commonly associated and into which they are often classified. At least one
28 purchaser of Defendant's GUNS 'N' ROSÉ beer made this connection in an

1 Instagram post about “having [a] beerchella” by drinking Metallica-branded, Sex
2 Pistols-branded, Grateful Dead-branded, and Defendant’s GUNS ‘N’ ROSÉ beer:



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13 28. GNR responded to Defendant’s January 22, 2019 letter on March 13,
14 2019. A true and correct copy of GNR’s March 13, 2019 letter is attached hereto as
15 **Exhibit F**. Not only did GNR reiterate their December 21, 2018 requests, it noted
16 that Defendant’s GUNS ‘N’ ROSÉ merchandise, of which GNR had only recently
17 become aware and in which GNR indisputably holds prior registered rights,
18 exacerbated the likelihood of confusion and association. This merchandise includes
19 Defendant’s GUNS ‘N’ ROSÉ buttons, which are commonly offered by musical
20 groups, bands, and artists. It also includes Defendant’s GUNS ‘N’ ROSÉ bandannas
21 -- the only bandannas offered for sale by Defendant despite the fact it offers
22 merchandise for several of its other beer “brands.” Given that bandannas are uniquely
23 associated with GNR and their lead singer and general partner Axl Rose, and that the
24 only bandannas offered by Defendant are GUNS ‘N’ ROSÉ bandannas, it is clear that
25 Defendant intended to further associate itself and its products with GNR in order to
26 freeride off GNR’s goodwill, prestige, and reputation.

27 29. On December 31, 2018, Defendant changed its name from Oskar Blues
28 Brewery, LLC to CANarchy Craft Brewery Collective LLC. On March 25, 2019 and

1 after the cease and desist correspondence with GNR, Defendant recorded the change
2 of name against Defendant's application to register GUNS N ROSE with the PTO.

3 30. On March 26, 2019, GNR instituted an opposition proceeding before the
4 PTO's Trademark Trial and Appeal Board (the "TTAB"), opposing Defendant's
5 application to register the mark GUNS N ROSE based on, among other things, its
6 prior rights in the GUNS N' ROSES mark. A true and correct copy of GNR's notice
7 of opposition, without exhibits, in the TTAB proceeding is attached hereto as **Exhibit**
8 **G**.

9 31. That same day, Defendant responded to GNR's March 13, 2019 letter.
10 A true and correct copy of Defendant's March 26, 2019 letter is attached hereto as
11 **Exhibit H**. Despite agreeing to expressly abandon to its application to register the
12 mark GUNS N ROSE and not use any marks incorporating the terms GUNS N ROSE
13 or GUNS N ROSES in the future, Defendant stated that it would continue to sell and
14 market GUNS 'N' ROSE beer, clothing, or other products through March 2020.

15 32. Five weeks later, on May 1, 2019, Defendant filed an express
16 abandonment of its application in the TTAB opposition proceeding, expressly
17 abandoning its application to register the mark GUNS N ROSE with prejudice.

18 33. On May 7, 2019, the TTAB sustained GNR's opposition to Defendant's
19 application to register the GUNS N ROSE mark, entered judgment in GNR's favor,
20 and refused registration of the GUNS N ROSE mark. A true and correct copy of the
21 TTAB's May 7, 2019 order is attached hereto as **Exhibit I**.

22 34. Notwithstanding Defendant's express abandonment of its application to
23 register the mark GUNS N ROSE and the TTAB's order, Defendant has refused to
24 immediately and completely cease sales and marketing of GUNS 'N' ROSE beer,
25 clothing, or other products until March 2020. As of the filing of this Complaint,
26 Defendant's GUNS N ROSE beer continues to be sold at retailers such as BevMo,
27 and Defendant's infringing GUNS N ROSE merchandise continues to be sold on
28 Defendant's website. Defendant should not be entitled to continue to sell infringing

1 products and intentionally trade on the GNR's goodwill, prestige, and fame without
2 GNR's approval, license, or consent.

3 **FIRST CAUSE OF ACTION**

4 **(Trademark Infringement in Violation of 15 U.S.C. §§ 1114)**

5 35. GNR repeats and realleges each and every allegation of Paragraphs 1
6 through 34, above, as though fully set forth herein.

7 36. GNR owns valid and subsisting federal and common law rights in the
8 mark GUNS N' ROSES, including three incontestable federal registrations of the
9 mark for a variety of goods and services.

10 37. Defendant has used in commerce, without GNR's permission or
11 authorization, the GUNS N' ROSES mark or marks confusingly similar thereto
12 specifically, the marks GUNS N ROSE and/or GUNS 'N' ROSÉ -- in a manner that
13 is likely to cause confusion with respect to the source and origin of Defendant's goods
14 and is likely to cause confusion or mistake and to deceive purchasers as to GNR's
15 affiliation, connection, or association with, or approval or sponsorship of, Defendant,
16 its business, and/or its goods.

17 38. Defendant's acts constitute infringement of GNR's GUNS N' ROSES
18 trademark in violation of 15 U.S.C. § 1114.

19 39. As a direct and proximate result of Defendant's wrongful acts, GNR has
20 suffered and continues to suffer and/or is likely to suffer damage to their trademarks,
21 business reputation, and goodwill. Defendant will continue to use, unless restrained,
22 the GUNS N' ROSES mark or marks confusingly similar thereto, and will cause
23 irreparable damage to GNR. GNR has no adequate remedy at law and is entitled to
24 an injunction restraining Defendant and, as applicable, its officers, members, agents,
25 servants, and employees, and all persons acting in concert with them, from engaging
26 in further acts of infringement.

1 40. GNR is further entitled to recover from Defendant the actual damages
2 that GNR has sustained, is sustaining, and/or is likely to sustain as a result of
3 Defendant's wrongful acts.

4 41. GNR is further entitled to recover from Defendant the gains, profits, and
5 advantages that Defendant has obtained as a result of its wrongful acts.

6 42. Due to the willful nature of Defendant's wrongful acts, GNR is entitled
7 to an award of treble damages and increased profits under 15 U.S.C. § 1117.

8 43. Pursuant to 15 U.S.C. § 1117, GNR is also entitled to their costs of suit,
9 and to recover their reasonable attorneys' fees because this is an exceptional case.

10 **SECOND CAUSE OF ACTION**

11 **(False Designation of Origin and Association in Violation of 15 U.S.C. §**
12 **1125(a))**

13 44. GNR repeats and realleges each and every allegation of paragraphs 1
14 through 43, above, as though fully set forth herein.

15 45. Defendant's unauthorized use of the GUNS N' ROSES mark or marks
16 confusingly similar thereto -- specifically, the marks GUNS N ROSE and/or GUNS
17 'N' ROSÉ -- in conjunction with Defendant's business and its offering of beer and
18 merchandise, Defendant's false designation of origin, and Defendant's false and
19 misleading descriptions and representations of fact, as alleged herein, are likely to
20 cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or
21 association of Defendant with GNR, or as to the origin, sponsorship, or approval of
22 Defendant's goods or commercial activities by GNR in violation of 15 U.S.C.
23 § 1125(a).

24 46. As a direct and proximate result of Defendant's wrongful acts, GNR has
25 suffered and continues to suffer and/or is likely to suffer damage to their trademarks,
26 trade name, business reputation, and goodwill. Defendant will continue, unless
27 restrained, to conduct its business and offer products using the GUNS N' ROSES
28 mark or other trademarks confusingly similar thereto and will cause irreparable

1 damage to GNR. GNR has no adequate remedy at law and is entitled to an injunction
2 restraining Defendant and, as applicable, its officers, members, agents, servants, and
3 employees, and all persons acting in concert with them, from engaging in further acts
4 of false designation of origin or association.

5 47. GNR is further entitled to recover from Defendant the actual damages
6 GNR has sustained, is sustaining, and/or is likely to sustain as a result of Defendant's
7 wrongful acts. GNR is presently unable to ascertain the full extent of the monetary
8 damages they have suffered and/or is likely to sustain by reason of Defendant's acts
9 of false designation of origin or affiliation.

10 48. GNR is further entitled to recover from Defendant the gains, profits, and
11 advantages Defendant has obtained as a result of its wrongful acts. GNR is presently
12 unable to ascertain the extent of the gains, profits, and advantages Defendant has
13 realized by reason of its acts of false designation of origin or affiliation.

14 49. Due to the willful nature of Defendant's wrongful acts, GNR is entitled
15 to an award of treble damages and increased profits pursuant to 15 U.S.C. § 1117.

16 50. Pursuant to 15 U.S.C. §1117, GNR is also entitled to their costs of suit,
17 and to recover their reasonable attorneys' fees because this is an exceptional case.

18 **THIRD CAUSE OF ACTION**

19 **(Trademark Dilution in Violation of 15 U.S.C. § 1125(c))**

20 51. GNR repeats and realleges each and every allegation of Paragraphs 1
21 through 50, above, as though fully set forth herein.

22 52. GNR began using the GUNS N' ROSES mark before Defendant's began
23 promoting and using the marks GUNS N ROSE and/or GUNS 'N' ROSÉ. The GUNS
24 N' ROSES mark is inherently distinctive and has acquired distinction through GNR's
25 extensive, continuous, and exclusive use of it.

26 53. The GUNS N' ROSES mark is famous and distinctive within the
27 meaning of 15 U.S.C. §§ 1125(c)(1) and 1127.

28

1 54. Defendant's use of the GUNS N' ROSE and/or GUNS 'N' ROSÉ mark
2 is likely to dilute by blurring the distinctive quality of the GUNS N' ROSES mark in
3 violation of 15 U.S.C. § 1125(c).

4 55. Defendant's acts complained of herein are likely to damage GNR
5 irreparably. GNR has no adequate remedy at law for such wrongs and injuries. The
6 damage to GNR includes harm to their trademarks, goodwill, and reputation that
7 money cannot compensate. GNR is therefore entitled to a preliminary and permanent
8 injunction enjoining Defendant's use of the GUNS N' ROSE mark and the GUNS N'
9 ROSES mark or any marks likely to dilute the GUNS N' ROSES mark in connection
10 with the promotion, advertisement and sale of any goods or services offered by
11 Defendant.

12 56. Due to the willful nature of Defendant's actions, GNR is further entitled
13 to recover from Defendant the actual damages sustained by GNR as a result of
14 Defendant's wrongful acts. GNR is presently unable to ascertain the full extent of the
15 monetary damages they have suffered by reason of Defendant's acts of dilution.

16 57. Due to the willful nature of Defendant's actions, GNR is further entitled
17 to recover from Defendant the gains, profits, and advantages Defendant has obtained
18 as a result of its wrongful acts. GNR is presently unable to ascertain the extent of the
19 gains, profits, and advantages Defendant has realized by reason of its willful acts of
20 dilution.

21 58. Pursuant to 15 U.S.C. § 1117, GNR is also entitled to their costs of suit,
22 to recover their reasonable attorneys' fees because this is an exceptional case.

23 **FOURTH CAUSE OF ACTION**

24 **(Common Law Trademark Infringement)**

25 59. GNR repeats and realleges each and every allegation of Paragraphs 1
26 through 58, above, as though fully set forth herein.

27 60. Defendant has used in commerce, without GNR's permission or
28 authorization, the GUNS N' ROSES mark or marks confusingly similar thereto --

1 specifically, GUNS N ROSE and/or GUNS ‘N’ ROSÉ mark -- in a manner that is
2 likely to cause confusion with respect to the source and origin of Defendant’s goods
3 and is likely to cause confusion or mistake and to deceive purchasers as to GNR’s
4 affiliation, connection, or association with, or approval or sponsorship of, Defendant,
5 its business, and/or its goods.

6 61. Defendant’s acts constitute infringement of the GUNS N’ ROSES mark
7 in violation of the common law.

8 62. As a direct and proximate result of Defendant’s wrongful acts, GNR has
9 suffered and continues to suffer and/or is likely to suffer damage to their trademarks,
10 trade name, business reputation, and goodwill. Defendant will continue to use, unless
11 restrained, the GUNS N’ ROSES mark or marks confusingly similar thereto, and will
12 cause irreparable damage to GNR. GNR has no adequate remedy at law and is entitled
13 to an injunction restraining Defendant and, as applicable, its officers, members,
14 agents, servants, and employees, and all persons acting in concert with them, from
15 engaging in further acts of infringement.

16 63. GNR is further entitled to recover from Defendant the actual damages
17 GNR has sustained, is sustaining, and/or is likely to sustain as a result of Defendant’s
18 wrongful acts.

19 64. GNR is further entitled to recover from Defendant the gains, profits, and
20 advantages Defendant has obtained as a result of its wrongful acts.

21 65. Upon information and belief, Defendant has engaged in the conduct
22 alleged above with oppression, fraud and malice. Accordingly, GNR is entitled to an
23 award of punitive damages pursuant to Cal. Civ. Code § 3294 in an amount to be
24 proved at trial.

25 **FIFTH CAUSE OF ACTION**

26 **(Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

27 66. GNR repeats and realleges each and every allegation of Paragraphs 1
28 through 65, above, as though fully set forth herein.

1 67. By reason of the foregoing, Defendant has been, and is, engaged in
2 unlawful business practices in violation of §§ 17200 *et seq.* of the California Bus. &
3 Prof. Code.

4 68. Defendant's acts complained of herein have injured and will continue to
5 injure GNR irreparably. GNR has no adequate remedy at law for these wrongs and
6 injuries. The injury to GNR includes harm to their GUNS N' ROSES mark, goodwill,
7 and reputation in the marketplace that money cannot compensate. GNR is therefore
8 entitled to:

9 (a) injunctive relief restraining and enjoining Defendant and, as
10 applicable, its officers, members, agents, servants, and employees, and all persons
11 acting thereunder, in concert with, or on their behalf, from using the GUNS N'
12 ROSES mark or any mark, name, symbol, or logo which is confusingly similar
13 thereto, in connection with the marketing or sale of any goods or services by
14 Defendant; and

15 (b) restitution of Defendant's profits earned from its unauthorized use
16 of the GUNS N' ROSES mark or any mark, name, symbol, or logo which is
17 confusingly similar thereto, in which profits GNR has a vested interest.

18 **SIXTH CAUSE OF ACTION**

19 **(Common Law Unfair Competition)**

20 69. GNR repeats and realleges each and every allegation of Paragraphs 1
21 through 68, above, as though fully set forth herein.

22 70. GNR invested substantial time and money in their development of the
23 GUNS N' ROSES mark.

24 71. Defendant used the GUNS N' ROSES mark or marks confusingly
25 similar thereto -- specifically, the GUNS N ROSE and/or GUNS 'N' ROSÉ mark --
26 to build its business and/or pass off its products as GNR's without GNR's
27 authorization.

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1 72. Defendant passed off its goods offered under the GUNS N' ROSES mark
2 or marks confusingly similar thereto -- specifically, the GUNS N ROSE and/or GUNS
3 'N' ROSE mark -- in a manner likely to cause confusion as to the source of
4 Defendant's goods or as to GNR's association or affiliation with, or sponsorship of,
5 Defendant's goods.

6 73. As a direct and proximate result of Defendant's wrongful acts, GNR has
7 suffered and continues to suffer and/or is likely to suffer damage to their trademarks,
8 trade name, business reputation, and goodwill. Defendant will continue, unless
9 restrained, to pass off its business as GNR's and to conduct its business and offer
10 goods using the GUNS N' ROSES mark or other trademarks confusingly similar
11 thereto and will cause irreparable damage to GNR. GNR has no adequate remedy at
12 law and is entitled to an injunction restraining Defendant and, as applicable, its
13 officers, members, agents, servants, and employees, and all persons acting in concert
14 with them, from engaging in further acts of unfair competition.

15 74. GNR is further entitled to recover from Defendant the actual damages
16 GNR has sustained, is sustaining, and/or is likely to sustain as a result of Defendant's
17 wrongful acts. GNR is presently unable to ascertain the full extent of the monetary
18 damages they have suffered and/or are likely to sustain by reason of Defendant's acts
19 of unfair competition.

20 75. GNR is further entitled to recover from Defendant the gains, profits, and
21 advantages Defendant has obtained as a result of its wrongful acts. GNR is presently
22 unable to ascertain the extent of the gains, profits, and advantages Defendant has
23 realized by reason of its acts of unfair competition.

24 76. Upon information and belief, Defendant has engaged in the conduct
25 alleged above with oppression, fraud and malice. Accordingly, GNR is entitled to an
26 award of punitive damages pursuant to Cal. Civ. Code § 3294 in an amount to be
27 proved at trial.

28

1 **SEVENTH CAUSE OF ACTION**

2 **(Misappropriation of Right of Publicity in Violation Cal. Civ. Code § 3344 and**
3 **Common Law)**

4 77. GNR repeats and realleges each and every allegation of Paragraphs 1
5 through 76, above, as though fully set forth herein.

6 78. Due to their more than three decades of hard work and near-
7 unprecedented success, GNR's "Guns N' Roses" name has substantial commercial
8 value and possesses considerable goodwill in the eyes of the public, in general, and
9 purchasers of recorded music, concert tickets, and merchandise.

10 79. Defendant has knowingly misappropriated GNR's name, and is using it
11 on products, merchandise, and goods, and for purposes of advertising or selling, or
12 soliciting purchases of products, merchandise, goods or services, without GNR's
13 consent.

14 80. Defendant's actions constitute misappropriation of GNR's and its
15 members' (most notably Axl Roses') right of publicity in violation of Cal. Civ. Code
16 § 3344 and California common law.

17 81. As a direct and proximate result of Defendant's wrongful acts, GNR
18 GNR's and its members' (most notably Axl Roses') have suffered and continues to
19 suffer and/or is likely to suffer damage to their name, reputation, and goodwill.
20 Defendant will continue, unless restrained, to use GNR's name, without authorization,
21 on products, and for purposes of advertising or selling, or soliciting purchases of
22 products. GNR has no adequate remedy at law and is entitled to an injunction
23 restraining Defendant and, as applicable, its officers, members, agents, servants, and
24 employees, and all persons acting in concert with them, from engaging in further acts
25 of misappropriation of GNR's right of publicity.

26 82. GNR is further entitled to recover from Defendant the actual damages
27 GNR has sustained, is sustaining, and/or is likely to sustain as a result of Defendant's
28 misappropriation of GNR's right of publicity. GNR is presently unable to ascertain

1 the full extent of the monetary damages they have suffered and/or are likely to sustain
2 by reason of Defendant's misappropriation of their right of publicity.

3 83. GNR is further entitled to recover from Defendant the gains, profits, and
4 advantages Defendant has obtained as a result of its unauthorized use of GNR's name.
5 GNR is presently unable to ascertain the extent of the gains, profits, and advantages
6 Defendant has realized by reason of its misappropriation of GNR's right of publicity.

7 84. Upon information and belief, Defendant has engaged in the conduct
8 alleged above with oppression, fraud and malice. Accordingly, GNR is entitled to an
9 award of punitive damages pursuant to Cal. Civ. Code §§ 3294 and 3344(a) in an
10 amount to be proved at trial.

11 85. Pursuant to Cal. Civ. Code § 3344(a), GNR is also entitled to recover its
12 attorneys' fees and costs.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, GNR prays that this Court enter judgment against Defendant
15 as follows:

16 1. Finding that Defendant has: infringed the GUNS N' ROSES mark under
17 15 U.S.C. § 1114 and the common law; violated 15 U.S.C. § 1125(a); diluted the
18 GUNS N' ROSES mark under 15 U.S.C. § 1125(c); violated Cal. Bus. & Prof. Code
19 § 17200 by engaging in unlawful business practices; committed unfair competition
20 under the common law; and misappropriated GNR's name in violation of Cal. Civ.
21 Code § 3344 and the common law;

22 2. Ordering that Defendant and, as applicable, its officers, agents, servants,
23 directors, employees, servants, partners, representatives, assigns, successors, related
24 companies, and attorneys and all persons in active concert or participation with
25 Defendant or with any of the foregoing be enjoined preliminarily during the pendency
26 of this action and permanently thereafter from:

27 (a) Manufacturing, transporting, promoting, importing, advertising,
28 publicizing, distributing, offering for sale, or selling any goods or services offered

1 under the GUNS N ROSE or GUNS ‘N’ ROSÉ marks, the GUNS N’ ROSES mark,
2 or any other mark, name, symbol, or logo, which is likely to cause confusion or to
3 cause mistake or to deceive persons into the erroneous belief that any goods or
4 services that Defendant caused to enter the stream of commerce or any of Defendant’s
5 commercial activities are sponsored or licensed by GNR, are authorized by GNR, or
6 are connected or affiliated in some way with GNR or the GUNS N’ ROSES mark;

7 (b) Manufacturing, transporting, promoting, importing, advertising,
8 publicizing, distributing, offering for sale, or selling any goods or services offered
9 under the GUNS N ROSE or GUNS ‘N’ ROSÉ marks, the GUNS N’ ROSES mark,
10 or any other mark, name, symbol, or logo that is a copy or colorable imitation of,
11 incorporates, or is confusingly similar to the GUNS N’ ROSES mark;

12 (c) Implying GNR’s approval, endorsement, or sponsorship of, or
13 affiliation or connection with, Defendant’s goods, services, or commercial activities,
14 passing off Defendant’s products as that of GNR’s, or engaging in any act or series
15 of acts which, either alone or in combination, constitutes unfair methods of
16 competition with GNR and from otherwise interfering with or injuring the GUNS N’
17 ROSES mark or the goodwill associated therewith;

18 (d) Engaging in any act which is likely to dilute the distinctive quality
19 of the GUNS N’ ROSES mark;

20 (e) Representing or implying that Defendant is in any way sponsored
21 by, affiliated with, or licensed by GNR;

22 (f) Misappropriating GNR’s “Guns N’ Roses” name and/or using
23 GNR’s name on products, merchandise, and goods, or for purposes of advertising or
24 selling, or soliciting purchases of products, merchandise, goods or services, without
25 GNR’s consent.

26 (g) Knowingly assisting, inducing, aiding, or abetting any other
27 person or business entity in engaging in or performing any of the activities referred to
28 in Paragraphs 2(a) to (f) above.

1 3. Ordering that Defendant be required to deliver to GNR for destruction
2 any and all products, merchandise, digital files, packaging, printed graphics,
3 promotional materials, business cards, signs, labels, advertisements, flyers, circulars,
4 and any other items in any of its possession, custody, or control bearing the GUNS N
5 ROSE or GUNS ‘N’ ROSÉ marks, the GUNS N’ ROSES mark, or any other mark,
6 name, symbol, or logo that is a copy or colorable imitation of, incorporates, or is
7 confusingly similar to the GUNS N’ ROSES mark;

8 4. Ordering that Defendant be required to recall and deliver to GNR for
9 destruction any and all products bearing the GUNS N ROSE or the GUNS ‘N’ ROSÉ
10 marks or the GUNS N’ ROSES mark from retailers or distributors to which it sold
11 such products;

12 5. Granting an award of damages suffered by GNR according to proof at
13 the time of trial;

14 6. Ordering that Defendant account to GNR for any and all profits earned
15 as a result of Defendant’s acts in violation of GNR’s rights under the Lanham Act and
16 the common law and misappropriation of GNR’s right of publicity in violation of Cal.
17 Civ. Code § 3344;

18 7. Granting an award of three times the amount of compensatory damages
19 and increased profits pursuant to 15 U.S.C. § 1117;

20 8. Ordering restitution of Defendant’s profits earned from its unauthorized
21 use of the GUNS N’ ROSES mark or any mark, name, symbol, or logo which is
22 confusingly similar thereto, in which profits GNR has a vested interest, pursuant to
23 Cal. Bus. & Prof. Code § 17200, *et seq.*;

24 9. Granting an award of punitive damages for the willful and wanton nature
25 of Defendant’s aforesaid acts under the common law;

26 10. For pre-judgment interest on any recovery by GNR;

27 11. Granting an award of GNR’s costs, expenses, and reasonable attorneys’
28 fees; and

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12. Granting such other and further relief as is just and proper.

Respectfully submitted,

SHEPPARD MULLIN RICHTER & HAMPTON LLP

Dated: May 9, 2019

By: /s/Jill M. Pietrini

Jill M. Pietrini

Benjamin O. Aigboboh

Attorneys for Plaintiff GUNS N' ROSES

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JURY DEMAND

GNR demands a trial by jury of all issues triable by jury.

Respectfully submitted,

SHEPPARD MULLIN RICHTER & HAMPTON LLP

Dated: May 9, 2019

By: /s/Jill M. Pietrini
Jill M. Pietrini
Benjamin O. Aigboboh

Attorneys for Plaintiff GUNS N' ROSES

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