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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,
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 v.
 14 JERSEY VILLAGE FLORIST, LLC, a
 15 Texas Limited Liability Company
 16 Defendant.

Case No. 2:22-cv-08728

COMPLAINT FOR:

- (1) **TRADEMARK INFRINGEMENT, 15 U.S.C. § 1114;**
- (2) **FALSE DESIGNATION OF ORIGIN, 15 U.S.C. § 1125(a);**
- (3) **TRADEMARK DILUTION, 15 U.S.C. § 1125(c);**
- (4) **COMMON LAW TRADEMARK INFRINGEMENT;**
- (5) **UNFAIR COMPETITION, CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.;**
- (6) **COMMON LAW UNFAIR COMPETITION;**
- (7) **CANCELLATION OF TRADEMARK REGISTRATION – FALSE SUGGESTION; AND**
- (8) **CANCELLATION OF TRADEMARK REGISTRATION – ABANDONMENT**

DEMAND FOR JURY TRIAL

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1 Plaintiff Guns N’ Roses (“GNR”) for its Complaint against Defendant Jersey
2 Village Florida, LLC (“Defendant”) alleges as follows:

3 **JURISDICTION AND VENUE**

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

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

14 **THE PARTIES**

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

19 4. Upon information and belief, Defendant is a Texas limited liability
20 company with its principal place of business Houston, Texas and does business in this
21 District and/or in other parts of California.

22 **FACTUAL BACKGROUND**

23 **A. GNR’s Three-Plus Decades of Worldwide Success Under the Famous**
24 **GUNS N’ ROSES Trademark**

25 5. In 1984, GNR’s co-founders Tracii Guns and Axl Rose combined their
26 respective bands “LA Guns” and “Hollywood Rose” and surnames “Guns” and
27 “Rose” to form the band “Guns N’ Roses.” Since its formation, GNR has achieved
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1 national and international renown as one of the greatest, and most commercially and
2 critically successful, bands of all time.

3 6. GNR's debut studio album, *Appetite for Destruction*, was released in
4 1987. On the strength of its famous and iconic songs, including "Welcome to the
5 Jungle," "Sweet Child O' Mine," and "Paradise City," *Appetite for Destruction*
6 reached number one on the *Billboard* 200, *Billboard* magazine's chart ranking the
7 200 best-selling albums in the United States, in 1988.

8 7. Since its release, *Appetite for Destruction* has sold at least 30 million
9 copies worldwide. This includes at least 18 million copies sold in the United States,
10 which makes *Appetite for Destruction* one of the best-selling debut albums, and one
11 of the best-selling albums period, of all time in the United States. Among other
12 critical accolades, *Appetite for Destruction* was ranked number 62 on *Rolling Stone's*
13 list of the 500 Greatest Albums of All Time and number 42 on VH1's list of the best
14 100 albums in rock and roll history, and has been repeatedly hailed by music critics
15 and fans as one of greatest rock and roll albums of all time.

16 8. GNR's subsequent studio albums and compilations – including, but not
17 limited to, *G N' R Lies* (1988), *Use Your Illusion I* (1991), *Use Your Illusion II* (1991),
18 *The Spaghetti Incident* (1993), *Live Era '87-'93* (1999), *Greatest Hits* (2004), and
19 *Chinese Democracy* (2008) – have sold, at least, 25 million copies collectively in the
20 United States alone since their release. As with *Appetite for Destruction*, each of
21 GNR's subsequent studio albums has been the subject of critical praise in publications
22 such as *Entertainment Weekly*, *Rolling Stone*, *Los Angeles Times*, *Chicago Tribune*,
23 and *Spin*.

24 9. In addition to and in connection with its recorded musical output, GNR
25 has created some of the most iconic and popular music videos of all-time. As of
26 November 30, 2022, the official music videos for GNR songs "Welcome to the
27 Jungle," "Paradise City," "Sweet Child O' Mine," and "November Rain" have been
28 collectively viewed nearly 4.7 billion times on YouTube. The excellence of GNR's

1 music videos has been widely acknowledged, including by seminal music television
2 channel MTV when it awarded GNR a Video Vanguard Award to recognize GNR’s
3 accomplishments in music and film.

4 10. GNR, and its recorded music and music videos, have been nominated for
5 and won numerous awards including American Music Awards (eight nominations and
6 four wins), Billboard Music Awards (six nominations and one win), Grammy Awards
7 (four nominations), and MTV Video Music Awards (nine nominations and four wins).

8 11. GNR’s live performances, in the United States and abroad, have also
9 been massively successful. In addition to performing and touring with some of the
10 greatest acts in popular music’s history – including Metallica and Aerosmith – GNR
11 has headlined national and international tours that have been attended by millions of
12 people and earned hundreds of millions of dollars. By way of example, GNR’s *Not*
13 *in This Lifetime... Tour* – which ran from April 2016 to December 2018, included
14 more than 150 shows in the United States and worldwide, and featured a headlining
15 performance at the world-famous Coachella Festival – grossed more than \$563
16 million, making it one of the highest-grossing tours of all time. Among other
17 accolades, GNR’s *Not in This Lifetime... Tour* won “Top Tour/Top Draw” at the 2017
18 Billboard Touring Awards, nominated for “Top Rock Tour” at the 2017 Billboard
19 Music Awards, and was awarded the inaugural Ticketmaster Touring Milestone
20 Award in 2019.

21 12. Due to its more than three decades of musical excellence and success,
22 GNR was inducted into the Rock & Roll Hall of Fame in 2012 – its first year of
23 eligibility for induction – taking its place alongside music legends such as James
24 Brown, Ray Charles, Elvis Presley, Aretha Franklin, The Beatles, Bob Dylan, The
25 Rolling Stones, Stevie Wonder, Bob Marley, Metallica, Johnny Cash, The Jimi
26 Hendrix Experience, Led Zeppelin, Queen, The Ramones, and Prince.

27 13. Given GNR’s fame and renown, GNR and its music have been the
28 subject of considerable press and public comment over the course of its almost four-

1 decade existence, including countless articles in world-famous magazines like *Rolling*
 2 *Stone*, and hundreds of books, television shows, and films. GNR and its music have
 3 also been prominently featured in television shows, films (including the blockbuster
 4 *Terminator 2: Judgment Day*), and video games such as *Guitar Hero*.

5 14. GNR, itself or through its licensees, has also successfully offered to sell
 6 and sold a variety of “Guns N’ Roses”-branded products to consumers. This includes,
 7 but is not limited, clothing, slot machines, protective face masks, furniture, hats,
 8 patches, stickers, buttons, glassware, watches, backpacks, and bandannas, an item
 9 uniquely associated with GNR and its co-founder and lead singer Axl Rose, who has
 10 famously worn bandannas for decades.

11 15. GNR is the owner of the following incontestable federal trademark
 12 registrations of the mark GUNS N’ ROSES issued by the U.S. Patent and Trademark
 13 Office (“PTO”), true and correct copies of which are 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 prerecorded compact discs all featuring music. | April 6, 1997 |
| 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 |

21 16. By virtue of its and its licensees’ use of the GUNS N’ ROSES mark over
 22 the course of nearly four decades, there are also common law rights in the GUNS N’
 23 ROSES mark for a broad range of goods and services including, but not limited to,
 24 the goods and services identified herein.

25 17. GNR and/or persons or entities acting on its behalf and direction and/or
 26 with its consent have undertaken significant efforts to market GNR and its marks,
 27 music, live performances, and merchandise through various channels including, but
 28 not limited to, traditional media and social media. GNR’s *Not in This Lifetime... Tour*

1 was marketed throughout the United States and abroad in various channels including
2 television, radio, print, and online. GNR's social media following evidences the
3 success of these (and other) efforts undertaken over the course of thirty years. As of
4 November 30, 2022, GNR's official Facebook page (available at the domain
5 <facebook.com/gunsnroses>) has more 29 million Followers, official Instagram
6 account (available at the domain <instagram.com/gunsnroses>) has more than 6.4
7 million Followers, and official Twitter account (available at the domain
8 <twitter.com/gunsnroses>) has more than 6.4 million Followers.

9 18. GNR has policed unauthorized uses of the GUNS N' ROSES trademark
10 and marks similar thereto by, *inter alia*, sending cease and desist letters, instituting
11 proceedings before the PTO's Trademark Trial & Appeal Board ("TTAB"), and filing
12 lawsuits for trademark infringement.

13 19. The N' in GUNS N' ROSES is short for, and commonly understood as
14 an abbreviation of, "and." Notably, the search query "guns and roses" on Google
15 elicits results for "guns n' roses." A true and correct copy of a printout of these
16 Google search results is attached hereto as **Exhibit B**.

17 **B. Defendant and its Infringing Activities**

18 20. On information and belief, Defendant, under the names and trademarks
19 TEXAS GUNS AND ROSES, TEXAS GUNS AND ROSES.COM, and TEXAS
20 GUNS AND ROSES.COM & Design (as depicted below) (collectively, "Defendant's
21 Marks"), operates a physical retail store and online retail store on the domain name
22 <texasgunsandroses.com> (the "Website") that primarily sells firearms and firearm
23 accessories, such as ammunition, scopes, body armor, suppressors, and metal safes,
24 and also sells clothing and backpacks.



28 A true and correct printout of pages from the Website is attached hereto as **Exhibit C**.

1 21. On October 31, 2014, Defendant filed an application to register the mark
2 TEXAS GUNS AND ROSES.COM & Design. On November 8, 2016, the PTO
3 registered TEXAS GUNS AND ROSES.COM & Design for “metal safes” in Class 6
4 and “Retail store services and online retail store services in the field of outdoor
5 hunting equipment, including handguns, rifles, shotguns, suppressors, knives and
6 multi-tools, holsters, magnified optics, mounts, binoculars, gun safes, magazines, and
7 other related accessories” in Class 35. Defendant expressly disclaimed the exclusive
8 right to use TEXAS in Class 6, TEXAS GUNS in Class 35, and .com in Classes 6 and
9 35. A true and correct copy of the certificate of registration of TEXAS GUNS AND
10 ROSES.COM & Design. Reg. No. 5,078,499, is attached hereto as **Exhibit D**.

11 22. Defendant uses Defendant’s Marks without GNR’s approval, license, or
12 consent.

13 23. In light of the equivalency of N’ and AND, Defendant’s Marks
14 incorporate the GUNS N’ ROSES mark in its entirety, with the exception that
15 Defendant uses the descriptive and disclaimed term TEXAS and, on occasion, the
16 descriptive and disclaimed term .COM.

17 24. On information and belief, Defendant selected and adopted Defendant’s
18 Marks for the purpose of confusing consumers into believing that it was connected or
19 associated with, or licensed by, GNR.

20 25. On information and belief, Defendant purports to sell roses and other
21 flowers under Defendant’s Marks. This is a contrivance to purportedly justify
22 Defendant’s wholesale appropriation of the GUNS N’ ROSES mark. Notably,
23 Defendant has not sought registration of any of Defendant’s Marks for any goods or
24 services related to flowers, and Defendant does not prominently market flowers for
25 sale on its Website.

26 26. GNR became aware of Defendant’s use and registration of Defendant’s
27 Marks in or around October 2019. On or around February 20, 2020, GNR sent
28 Defendant a letter requesting that it, *inter alia*, cease and desist from using

1 Defendant's Marks and voluntarily cancel its registration of TEXAS GUNS AND
2 ROSES.COM & Design. A true and correct copy of this letter is attached hereto as
3 **Exhibit E**. Receiving no response or acknowledgement from Defendant, GNR sent
4 a follow-up letter to Defendant on May 12, 2020. A true and correct copy of this
5 letter, without enclosures, is attached hereto as **Exhibit F**. Again, GNR received no
6 response or acknowledgement of receipt from Defendant.

7 27. On or around November 5, 2021, GNR filed with the TTAB a petition to
8 cancel Defendant's registration of TEXAS GUNS AND ROSES.COM & Design on
9 the grounds that the registered mark is likely to cause confusion with the GUNS N'
10 ROSES mark, falsely suggested a connection with GNR, and was likely to dilute the
11 GUNS N' ROSES mark. A true and correct copy of the petition for cancellation,
12 without enclosures, is attached hereto as **Exhibit G**. The petition for cancellation
13 was assigned Cancellation No. 92-078395.

14 28. Notwithstanding GNR's cease and desist letters and commencement of
15 the TTAB proceeding, Defendant has continued to use Defendant's Marks and
16 intentionally trade on GNR's goodwill, prestige, and fame without GNR's approval,
17 license, or consent. This is particularly damaging to GNR given the nature of
18 Defendant's business. GNR, quite reasonably, does not want to be associated with
19 Defendant, a firearms and weapons retailer. Furthermore, Defendant espouses
20 political views related to the regulation and control of firearms and weapons on the
21 Website that may be polarizing to many U.S. consumers.

22 **FIRST CAUSE OF ACTION**

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

24 29. GNR repeats and realleges each and every allegation of Paragraphs 1
25 through 28, above, as though fully set forth herein.

26 30. The mark GUNS N' ROSES is valid at common law and is the subject
27 of three incontestable federal registrations of the mark for a variety of goods and
28 services.

1 31. Defendant has used in commerce, without permission or authorization,
2 the GUNS N' ROSES mark or marks confusingly similar thereto – specifically,
3 Defendant's Marks – in a manner that is likely to cause confusion with respect to the
4 source and origin of Defendant's goods and services and is likely to cause confusion
5 or mistake and to deceive purchasers as to GNR's affiliation, connection, or
6 association with, or approval or sponsorship of, Defendant, its business, and/or its
7 goods.

8 32. Defendant's acts constitute infringement of the GUNS N' ROSES
9 trademark in violation of 15 U.S.C. § 1114.

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

18 34. GNR is further entitled to recover from Defendant the actual damages
19 that GNR has sustained, is sustaining, and/or is likely to sustain as a result of
20 Defendant's wrongful acts.

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

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

25 37. Pursuant to 15 U.S.C. § 1117, GNR is also entitled to its costs of suit,
26 and to recover its reasonable attorneys' fees because this is an exceptional case.

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1 damages they have suffered and/or is likely to sustain by reason of Defendant's acts
2 of false designation of origin or affiliation.

3 43. GNR is further entitled to recover from Defendant the gains, profits, and
4 advantages Defendant has obtained as a result of its wrongful acts. GNR is presently
5 unable to ascertain the extent of the gains, profits, and advantages Defendant has
6 realized by reason of its acts of false designation of origin or affiliation.

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

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

11 46. Pursuant to 15 U.S.C. § 1119, GNR is also entitled to cancellation of
12 Defendant's registration of TEXAS GUNS AND ROSES.COM & Design. Reg. No.
13 5,078,499.

14 **THIRD CAUSE OF ACTION**

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

16 47. GNR repeats and realleges each and every allegation of Paragraphs 1
17 through 46, above, as though fully set forth herein.

18 48. GNR began using the GUNS N' ROSES mark before Defendant's first
19 use of any of Defendant's Marks. The GUNS N' ROSES mark is inherently
20 distinctive and has acquired distinction through GNR's extensive, continuous, and
21 substantially exclusive use of it.

22 49. The GUNS N' ROSES mark is famous and distinctive within the
23 meaning of 15 U.S.C. §§ 1125(c)(1) and 1127 and, furthermore, became famous
24 before Defendant's first use of any of Defendant's Marks.

25 50. Defendant's use of Defendant's Marks is likely to dilute by blurring the
26 distinctive quality of the GUNS N' ROSES mark in violation of 15 U.S.C. § 1125(c).

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1 51. Defendant's use of Defendant's Marks is also likely to dilute by
2 tarnishment the reputation of the GUNS N' ROSES mark in violation of 15 U.S.C.
3 § 1125(c).

4 52. 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 the GUNS N' ROSES trademark and trade name,
7 and to its goodwill and reputation that money cannot compensate. GNR is therefore
8 entitled to a preliminary and permanent injunction enjoining Defendant's use of
9 Defendants' Marks, the GUNS N' ROSES mark, or any marks likely to dilute the
10 GUNS N' ROSES mark in connection with the promotion, advertisement, and sale of
11 any goods or services offered by Defendant.

12 53. 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 54. 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 55. Pursuant to 15 U.S.C. § 1117, GNR is also entitled to its costs of suit, to
22 recover its reasonable attorneys' fees because this is an exceptional case.

23 56. Pursuant to 15 U.S.C. § 1119, GNR is also entitled to cancellation of
24 Defendant's registration of TEXAS GUNS AND ROSES.COM & Design. Reg. No.
25 5,078,499.

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1 **FOURTH CAUSE OF ACTION**

2 **(Common Law Trademark and Trade Name Infringement)**

3 57. GNR repeats and realleges each and every allegation of Paragraphs 1
4 through 56, above, as though fully set forth herein.

5 58. Defendant has used in commerce, without GNR's permission or
6 authorization, the GUNS N' ROSES mark and trade name or marks and trade names
7 confusingly similar thereto – specifically, Defendant's Marks – in a manner that is
8 likely to cause confusion with respect to the source and origin of Defendant's goods
9 and services, and is likely to cause confusion or mistake and to deceive purchasers as
10 to GNR's affiliation, connection, or association with, or approval or sponsorship of,
11 Defendant, its business, and/or its goods and services.

12 59. Defendant's acts constitute infringement of the GUNS N' ROSES mark
13 and trade name in violation of the common law.

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

23 61. GNR is further entitled to recover from Defendant the actual damages
24 GNR has sustained, is sustaining, and/or is likely to sustain as a result of Defendant's
25 wrongful acts.

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

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1 **SIXTH CAUSE OF ACTION**

2 **(Common Law Unfair Competition)**

3 67. GNR repeats and realleges each and every allegation of Paragraphs 1
4 through 66, above, as though fully set forth herein.

5 68. GNR invested substantial time and money in the development of the
6 GUNS N' ROSES mark and trade name.

7 69. Defendant used the GUNS N' ROSES mark and trade name or marks
8 and trade names confusingly similar thereto – specifically, Defendant's Marks – to
9 build its business and/or pass off its products and services as GNR's or associated
10 with GNR without GNR's authorization.

11 70. Defendant passed off its goods and services offered under the GUNS N'
12 ROSES mark or marks confusingly similar thereto – specifically, Defendant's Marks
13 – in a manner likely to cause confusion as to the source of Defendant's goods or
14 services or as to GNR's association or affiliation with, or sponsorship of, Defendant's
15 goods or services.

16 71. As a direct and proximate result of Defendant's wrongful acts, GNR has
17 suffered and continues to suffer and/or is likely to suffer damage to the GUNS N'
18 ROSES trademark and trade name, and to its business reputation and goodwill.
19 Defendant will continue, unless restrained, to pass off its business as GNR's and to
20 conduct its business and offer goods and services using the GUNS N' ROSES mark
21 and trade name or other trademarks and trade names confusingly similar thereto and
22 will cause irreparable damage to GNR. GNR has no adequate remedy at law and is
23 entitled to an injunction restraining Defendant and, as applicable, its officers,
24 members, agents, servants, and employees, and all persons acting in concert with
25 them, from engaging in further acts of unfair competition.

26 72. 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 wrongful acts. GNR is presently unable to ascertain the full extent of the monetary

1 damages they have suffered and/or are likely to sustain by reason of Defendant's acts
2 of unfair competition.

3 73. GNR is further entitled to recover from Defendant the gains, profits, and
4 advantages Defendant has obtained as a result of its wrongful acts. GNR is presently
5 unable to ascertain the extent of the gains, profits, and advantages Defendant has
6 realized by reason of its acts of unfair competition.

7 74. 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 in an amount to be
10 proved at trial.

11 **SEVENTH CAUSE OF ACTION**

12 **(Cancellation of Trademark Reg. No. 5,078,499 –**

13 **False Suggestion of a Connection – 15 U.S.C. § 1119)**

14 75. GNR repeats and realleges each and every allegation of Paragraphs 1
15 through 74, above, as though fully set forth herein.

16 76. TEXAS GUNS AND ROSES.COM & Design is nearly identical, or at
17 a minimum very similar, to the name and trademark GUNS N' ROSES, which was
18 previously used by and associated with GNR. The name and mark GUNS AND
19 ROSES is recognized as such, in that it uniquely and unmistakably points to GNR.
20 GNR is not connected with the products or services sold or offered by Defendant
21 under the TEXAS GUNS AND ROSES.COM & Design mark. The fame and
22 reputation of GNR is of such a nature that a connection with GNR is presumed
23 when the TEXAS GUNS AND ROSES.COM & Design mark is used for or with
24 Defendant's goods and services.

25 77. Consequently, Defendant's registration TEXAS GUNS AND
26 ROSES.COM & Design falsely suggests a connection with GNR and should be
27 canceled.

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1 17200 by engaging in unlawful business practices; and committed unfair competition
2 under the common law;

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

8 (a) Manufacturing, transporting, promoting, importing, advertising,
9 publicizing, distributing, offering for sale, or selling any goods or services offered
10 under Defendant's Marks, the GUNS N' ROSES mark and trade name, or any other
11 mark, name, symbol, or logo, which is likely to cause confusion or to cause mistake
12 or to deceive persons into the erroneous belief that any goods or services that
13 Defendant caused to enter the stream of commerce or any of Defendant's commercial
14 activities are sponsored or licensed by GNR, are authorized by GNR, or are connected
15 or affiliated in some way with GNR or the GUNS N' ROSES mark and trade name;

16 (b) Manufacturing, transporting, promoting, importing, advertising,
17 publicizing, distributing, offering for sale, or selling any goods or services offered
18 under Defendant's Marks, the GUNS N' ROSES mark and trade name, or any other
19 mark, name, symbol, or logo that is a copy or colorable imitation of, incorporates, or
20 is confusingly similar to the GUNS N' ROSES mark and trade name;

21 (c) Implying GNR's approval, endorsement, or sponsorship of, or
22 affiliation or connection with, Defendant's goods, services, or commercial activities,
23 passing off Defendant's products as that of GNR's, or engaging in any act or series
24 of acts which, either alone or in combination, constitutes unfair methods of
25 competition with GNR and from otherwise interfering with or injuring the GUNS N'
26 ROSES mark and trade name or the goodwill associated therewith;

27 (d) Engaging in any act which is likely to dilute the distinctive quality
28 of the GUNS N' ROSES mark;

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

3 (f) Knowingly assisting, inducing, aiding, or abetting any other
4 person or business entity in engaging in or performing any of the activities referred to
5 in Paragraphs 2(a) to (e) above;

6 3. Ordering that Defendant be required to deliver to GNR for destruction
7 any and all products, merchandise, digital files, packaging, printed graphics,
8 promotional materials, business cards, signs, labels, advertisements, flyers, circulars,
9 and any other items in any of its possession, custody, or control bearing Defendant's
10 Marks, the GUNS N' ROSES mark and trade name, or any other mark, name, symbol,
11 or logo that is a copy or colorable imitation of, incorporates, or is confusingly similar
12 to the GUNS N' ROSES mark and trade name;

13 4. Ordering that Defendant be required to recall and deliver to GNR for
14 destruction any and all products bearing Defendant's Marks or the GUNS N' ROSES
15 mark and trade name from retailers or distributors to which it sold such products;

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

18 6. Ordering that Defendant account to GNR for any and all profits earned
19 as a result of Defendant's acts in violation of GNR's rights under the Lanham Act and
20 the common law;

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

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

27 9. Ordering the cancellation of Defendant's registration of TEXAS GUNS
28 AND ROSES.COM & Design, Reg. No. 5,078,499;

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JURY DEMAND

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

Respectfully submitted,

SHEPPARD MULLIN PRICHTER & HAMPTON LL

Dated: December 1, 2022

By: /s/Jill M. Pietrini

Jill M. Pietrini

Paul A. Bost

Attorneys for Plaintiff GUNS N' ROSES

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