

1 BAHRAM NIKNIA (SBN 256181)
2 NIKNIA LAW FIRM
3 1875 Century Park East, Suite 1240
4 Los Angeles, CA 90067
5 Telephone: (310) 601-8025
6 Facsimile: (310) 909-7179
7 bniknia@niknialaw.com

8 Attorneys for Plaintiff
9 *Bruce Brown Films, LLC*

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 BRUCE BROWN FILMS, LLC

13 Plaintiff,

14 v.

15 FOOTLOCKER, INC., NIKE, INC., and
16 DOES 1 through 10, inclusive

17 Defendants.

Case No. 2:20-cv-2553

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF**

- 18 **(1) FEDERAL TRADEMARK
INFRINGEMENT;**
- 19 **(2) FEDERAL UNFAIR
COMPETITION AND FALSE
DESIGNATION OF ORIGIN;**
- 20 **(3) FEDERAL TRADEMARK
DILUTION;**
- 21 **(4) COMMON LAW
TRADEMARK
INFRINGEMENT;**
- 22 **(5) COMMON LAW UNFAIR
COMPETITION**

JURY TRIAL DEMANDED

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INTRODUCTION

1. Plaintiff is the legal and/or beneficial owners of certain trademarks, trade dress, copyrights, commercial use and merchandising rights, publicity rights and related rights associated with the well-known motion picture “The Endless Summer” and its equally well-known film posters (collectively, the “Endless Summer Brand”).

2. This action arises out of Defendant’s willful and intentional acts of trademark.

3. Defendant Footlocker owns and operates the Champs retail shops throughout the United States.

4. Defendant Nike makes and sells athletic footwear, among other goods.

5. Beginning in or about May 2019 until August 2019, Champs and Nike used Plaintiff’s Endless Summer trademark along with distinctive elements of Plaintiff’s Endless Summer poster image to conducted a sales promotion relating to Nike shoes offered by Champs through its online website and in all 529 Champs retail stores throughout the United States (the “Infringing Conduct”).

6. Even after Defendant Champs received Plaintiff’s letter demanding that it cease and desist its infringing conduct, Champs continued the Infringing Conduct.

7. Defendants have created confusion and traded off the good will associated with The Endless Summer by using the Endless Summer Brand in connection with sales and offers to sell shoes and other goods in a manner that is likely to confuse consumers as to Plaintiff’s sponsorship, association with or endorsement of Defendants retail stores and in direct competition with Plaintiff.

PARTIES

8. Plaintiff Bruce Brown Films, LLC (“Plaintiff”) is a California limited liability company with a principle place of business in Los Angeles, California.

1 9. Plaintiff is informed and believes that Footlocker, Inc. (“Footlocker”),
2 is a New York corporation with a place of business in New York, New York.

3 Plaintiff is informed and believes that Footlocker owns and operates Champs retail
4 stores throughout the United States including California.

5 10. Plaintiff is informed and believes that Nike, Inc., (“Nike”) is an Oregon
6 corporation, with a place of business in Beaverton, Oregon. Plaintiff is informed
7 and believes that Nike sells footwear and other goods throughout the United States,
8 including California.

9 11. Defendants Doe 1 through Doe 10, inclusive, are sued herein under
10 fictitious names. Their true names and capacities are unknown to Plaintiff. When
11 their true names and capacities are ascertained, Plaintiff will amend this Complaint
12 by inserting their true names and capacities herein. Plaintiff is informed and
13 believes, and thereon alleges, that each of the fictitiously named defendants is
14 responsible in some manner for the occurrences herein alleged, and that Plaintiff’s
15 damages as herein alleged were proximately caused by those defendants. Each
16 reference in this Complaint to “Defendant” or “Defendants” refers also to all
17 Defendants, including Footlocker, Champs, Nike and all Defendants sued under
18 fictitious names.

19 12. Plaintiff is informed and believes, and on thereon alleges, that at all
20 times herein mentioned each of the Defendants, including all Defendants sued under
21 fictitious names, was the agent, employee, or representative of each of the remaining
22 Defendants, and in doing the things hereinafter alleged, was at times acting within
23 the course and scope of this agency or employment, and at other times, acting in his
24 own individual capacity. In the alternative, each of the individually named
25 Defendants, as alleged herein below, acted in concert and in furtherance of their
26 fraudulent plan and scheme and each actively participated in the wrongful acts
27 alleged herein below.
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1 **JURISDICTION AND VENUE**

2 13. This Court has subject matter jurisdiction over this Complaint pursuant
3 to 28 U.S.C. §§ 1331 and 1338, because the action arises under the Lanham
4 Trademark Act of 1946, 15 U.S.C. § 1051 *et seq.*, and pursuant to the supplemental
5 jurisdiction provisions contained in 28 U.S.C. § 1367.

6 14. This Court has personal jurisdiction over Defendants because, on
7 information and belief, Defendants regularly conduct and have conducted business
8 in California and this District by, among other things, operating stores and selling
9 products throughout the state of California and in this District. Specifically, on
10 information and belief, Footlocker and Nike engaged in the Infringing Conduct
11 alleged herein at all of Footlocker’s Champs stores in Los Angeles. Additionally,
12 Defendants’ conduct occurred in this District and has caused, and continues to cause
13 Plaintiff to suffer harm in this District.

14 15. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) in that,
15 inter alia, a substantial portion of the acts giving rise to this case occurred within this
16 district, and pursuant to 28 U.S.C. § 1400, in that Plaintiffs and these Defendants, or
17 their agents, conduct business, reside or may be found within this district.

18 **PLAINTIFF’S BUSINESS AND INTELLECTUAL PROPERTY**

19 16. Plaintiff’s founder, Bruce Brown, was an internationally recognized
20 pioneer in the field of films and documentaries depicting the sport of surfing and has
21 been dubbed “the [Ingmar] Bergman of the [surf]boards” by Time magazine.

22 17. Mr. Brown’s 1966 motion picture, *The Endless Summer*, which follows
23 two surfers on their trip around the world in search of the perfect wave is considered
24 to be one of the most influential films to depict surfing and the surfing lifestyle. The
25 title of the film, coined by Mr. Brown, refers to the idea that one could surf
26 throughout the year if they were able to follow the summer season by traveling
27 around the world, thereby making the summer endless.

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1 18. The Endless Summer film has been hailed as “the most important and
2 influential statement on surfing” by the Washington Post, “perfectly expressing the
3 surfing spirit,” by the New Yorker magazine, and “The greatest surf film ever
4 made,” by Surfer Magazine.

5 19. In addition, the movie posters from The Endless Summer film, are also
6 considered iconic and world famous. The film poster at issue in this case was
7 designed by Bruce Brown and consists of a series of stylized blue waves with a
8 large orange sun (the “Film Poster”). A true and correct copy of the Film Poster is
9 attached at Exhibit A.

10 20. As a result of the success and popularity of The Endless Summer film
11 and Film Poster and the substantial time, money and effort that has been expended
12 to promote them, goods and services based on The Endless Summer film and poster
13 image has been widely sold and distributed in the United States and elsewhere. Such
14 goods and services have been identified and distinguished in various ways,
15 including through the use of the words “Endless Summer,” the slogans “In Search
16 of the Perfect Wave,” and “Search for the Perfect Wave” (collectively the
17 “Slogans”), various images and compositional elements from the film and
18 emblematic of the film poster, and combinations of the words “Endless” and/or
19 “Summer,” plus the Slogans and images and elements from the film and film poster.

20 21. Plaintiff, Bruce Brown Films, LLC, was organized to manage the
21 merchandising and licensing of distinctive trademarks and copyrights associated
22 with the success and renown of the Endless Summer film and poster.

23 22. Plaintiff is the legal and beneficial owner of multiple federal trademark
24 registrations (the “Trademarks”), for the brand name ENDLESS SUMMER, THE
25 ENDLESS SUMMER, and the Endless Summer design mark, true and correct
26 copies of which are attached hereto at Exhibit B, for a wide variety of merchandise
27 and services, as follows:
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Mark	Reg. Date	Reg. or Serial Number	Classes
The Endless Summer	July 28, 1992	1703373	25
Endless Summer	Sept. 25, 2007	3298604	6; 9; 11; 14; 16; 18; 21; 24; 25; 28; 32
Endless Summer	Jan. 15, 2008	3369887	25; 28
Endless Summer	Dec. 21, 2010	3894999	39; 43
Endless Summer	Oct. 30, 2012	4232348	35
Endless Summer	Jan. 15, 2013	4276188	35; 42; 43
Endless Summer	Sept. 17, 2013	4403128	25
Endless summer	Dec. 19, 2017	5358587	33
Endless summer	March 5, 2019	5690612	6
Endless Summer	May 21, 2019	5754259	41
Endless Summer	June 18, 2019	5780572	9

23. The Endless Summer Brand has been the subject of authorized, licensed use for various goods and services for at least 35 years, and Plaintiff has granted licensing rights to the Trademarks and Film Poster for use on, and in, merchandise, goods and services.

24. The Film Poster has been used in connection with The Endless Summer film for over fifty years, and appears on various Endless Summer branded merchandise. As a result, consumers associate the Film Poster with the Endless Summer Brand and film.

25. The Endless Summer Brand continues to be a highly profitable property for purposes of licensing goods and services. Under applicable licensing agreements, many different products featuring Endless Summer Brand are available to the public, including, without limitation, apparel, accessories, stationery, mugs, posters, signs, collectibles, jewelry, alcohol, beer, wine and numerous other

1 products. These products are manufactured under strict quality control and style
2 approval.

3 26. Plaintiff has also licensed the use of the Endless Summer brands in
4 connection with promotional and media uses, including retail services and media
5 promotion rights.

6 27. The products and services licensed by authority of Plaintiff have
7 become, and are, well known to the American public, and products based on Endless
8 Summer have generated wide consumer appeal.

9 28. As a result of the above-described actions, the Endless Summer
10 Trademarks as well as images from and emblematic of the Endless Summer film and
11 poster possess valuable goodwill and are well known to the public as identifying
12 products and services which are authorized by Plaintiff, and which originate from
13 Plaintiff. For this reason, Plaintiff possesses common law trademark rights in the
14 names Endless Summer and in images from and emblematic of the Endless Summer
15 film and film poster, in addition to the registered Trademarks.

16 29. Plaintiff's Trademarks are all valid, extant and in full force and effect.
17 The Trademarks are all exclusively owned by Plaintiff. Plaintiff has continuously
18 used each of the Trademarks from the registration date, or earlier, until the present
19 time and at all times relevant to the claims alleged in this Complaint.

20 30. As a result of advertising and sales, together with longstanding
21 consumer acceptance, the Trademarks identify Plaintiff's products and services, and
22 the authorized sales of these products and services. The Trademarks have each
23 acquired secondary meaning in the minds of consumers throughout the United
24 States and the world.

25 31. The revenue from goods and services sold in the United States which
26 use the Trademarks is substantial. The appearance and other features of the
27 Trademarks are inherently distinctive and serve to identify Plaintiff, and its licensees
28 as the source of products bearing the Trademarks.

1 32. Plaintiff's Intellectual Property is well known to the American public,
2 and is permanently intertwined with the motion picture The Endless Summer, and as
3 such, Endless Summer and the images emblematic of the Endless Summer film
4 poster have become famous and distinctive brands.

5 **Defendants' Infringing Acts**

6 33. On information and belief, Footlocker is engaged in the business of
7 selling merchandise, including footwear, clothing and headwear, through their
8 Champs retail and online stores ("Champs"). Nike is a major supplier of footwear,
9 clothing and related products that Champs sells.

10 34. On information and belief, in or about May of 2019, Defendants
11 launched a marketing campaign that used the words "Endless Summer" and
12 distinctive and recognizable elements of the Film Poster (the "Endless Summer
13 Campaign").

14 35. The Endless Summer Campaign was used to promote the sales of at
15 least six styles of Nike shoes, including those in the Nike React Presto and Nike Air
16 Max styles, in addition to Nike shirts, hats, and shorts both online and in Champs
17 retail stores.

18 36. The Endless Summer Campaign appeared multiple times online on
19 Champs' Facebook account pages from at least May 12, 2019 until August 20, 2019.

20 37. The Endless Summer Campaign appeared multiple times online on
21 Champs' Twitter account pages from at least May 30, 2019 until August 20, 2019.

22 38. The Endless Summer Campaign appeared online on Champs' online
23 retail website from at least June 13, 2019 until August 20, 2019.

24 39. The Endless Summer Campaign appeared in Champs' retail stores
25 throughout the United States from at least June 5, 2019 until June 25, 2019.

26 40. Defendant's unauthorized use of the Trademarks in Defendant's
27 Endless Summer Campaign creates confusion as to Plaintiff's authorization,
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1 association with or endorsement of Defendants' goods, retail stores and online
2 stores.

3 41. Defendants knowingly intended to impermissibly trade on the fame and
4 goodwill associated with Plaintiff's intellectual property in its unauthorized use of
5 Plaintiff's Intellectual Property.

6 **COUNT ONE**

7 **Trademark Infringement, 15 U.S.C. §1114 *et seq.***

8 **Against All Defendants and Does 1-10 (Collectively "Defendants")**

9 42. Plaintiff realleges and incorporates by reference, the full text of all of
10 the foregoing paragraphs and exhibits as though fully set forth herein.

11 43. Plaintiff holds valid and subsisting trademark registrations for the
12 Trademarks and has used them extensively and continuously in interstate commerce
13 throughout the United States.

14 44. The Endless Summer marks are arbitrary and fanciful and have attained
15 secondary meaning. Registration numbers 1703373, 3298604, 3369887, 4232348,
16 and 4403128 have all been deemed incontestable, pursuant to the filing of affidavits
17 under 15 USC §§ 1058 and 1065.

18 45. As a direct and proximate result of Defendants' use of the Trademarks
19 and other indicia identifying Plaintiff on and/ or in connection with the Infringing
20 Conduct, the public has been and/or is likely to be confused, deceived and/ or to
21 falsely believe that there is an association between Plaintiff on the one hand, and
22 Footlocker's Champs stores and Nike, on the other.

23 46. Defendants' distribution, sale and offer of sale of goods in connection
24 with Plaintiffs' Trademarks in California and interstate commerce has, and will,
25 cause the likelihood of confusion, deception, and mistake in that the public will
26 conclude that the goods sold, offered or distributed by the Defendants are
27 authorized, sponsored, approved, or associated with the Plaintiff.

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1 47. As a direct and proximate result of Defendants' actions as above-
2 described, the public is likely to be confused as to the origin or source of Plaintiff's
3 goods and services, i.e., the public is likely to believe that Footlocker's Champs
4 retail and online stores, merchandise or goods as well as Nike's footwear promoted
5 via the Endless Summer Campaign are associated with Plaintiff's and/or its
6 licensees' goods and services bearing the Endless Summer Marks, when in truth and
7 in fact they are not.

8 48. Plaintiff is informed and believes that Defendants currently operate,
9 manufacture, distribute, offer to sell and/or sell merchandise throughout the United
10 States in interstate commerce.

11 49. Because of Defendants' use of the Trademarks in connection with its
12 Champs' stores and merchandise, Defendants' sales have had and will have an
13 adverse effect upon Plaintiff's and its licensees' business in this District, the State of
14 California and throughout the United States.

15 50. In addition, the continued distribution of Defendants' merchandise
16 under and/or in connection with the Trademarks will cause the Trademarks to lose
17 their distinctive qualities and will erode Plaintiff's selling power.

18 51. Because Plaintiff cannot control the nature and quality of Defendants'
19 Champs stores or Nike merchandise, Defendants' infringing activities have had and
20 will have an adverse effect on Plaintiff's business and reputation in this District, the
21 State of California and throughout the United States. Said acts of infringement will
22 cause irreparable injury to the Plaintiff if the Defendants are not restrained by the
23 Court from further violation of the Plaintiffs' rights as the Plaintiffs have no
24 adequate remedy at law.

25 52. As a direct and proximate result of Defendants' intentional actions,
26 Plaintiff has suffered and will continue to suffer damages in an amount presently
27 unknown and to be determined at time of trial.

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1 60. As the Infringing Conduct was conducted over the Internet, Defendants
2 sale of, and offering to sell, merchandise is targeted to the same consumers as
3 Plaintiff and its licensees target their Endless Summer related merchandise in
4 interstate commerce throughout the United States.

5 61. Defendant's sales, and offers to sell, merchandise in Champs stores
6 using Plaintiff's Trademark and other indicia associated with Plaintiff in the Endless
7 Summer Campaign is likely to cause confusion, cause mistake, or deceive
8 consumers as to the affiliation, connection, or association of Defendants with
9 Plaintiff, or as to the origin, sponsorship, or approval by Plaintiff of Defendant's
10 commercial activities.

11 62. Defendant's sales, and offers to sell, merchandise in Champs stores
12 using Plaintiff's Trademark and other indicia associated with Plaintiff in the Endless
13 Summer Campaign enables Defendants to benefit unfairly from Plaintiff's
14 reputation and success, thereby giving Defendants stores and merchandise
15 commercial value they would not otherwise enjoy.

16 63. Prior to Defendant's infringing use of Plaintiff's Trademarks in
17 connection with the Infringing Conduct, Defendants were aware of Plaintiff's
18 business, Trademarks, Trade Dress and the Copyright as a result of the popularity of
19 Plaintiff's Endless Summer films and licensed merchandise, including clothing and
20 related items, sold throughout the United States. Accordingly, Defendants use of
21 Plaintiff's Trademarks was intentional, willful and without regard to Plaintiff's
22 rights in its Trademarks.

23 64. Defendants' sales, and offers to sell, merchandise online through the
24 Infringing Conduct and in its Champs stores with the Endless Summer Campaign, is
25 intentionally designed to deceive and has deceived viewers and prospective
26 advertising customers into believing that the Infringing Conduct was authorized,
27 licensed or otherwise approved by Plaintiff.

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1 72. Plaintiff's claim arises under Section 43(c) of the Lanham Act, 15
2 U.S.C. § 1125(c).

3 73. As stated above, Plaintiff is the owner of all rights in and to the Endless
4 Summer Trademarks which are inherently distinctive and are not merely functional.

5 74. Plaintiff has used its Trademarks on and in connection with a wide
6 variety of goods and services, including but not limited to consumer goods, films,
7 promotions, media, entertainment, retail business, advertising and events, in
8 interstate commerce throughout the United States and indeed, worldwide.

9 75. Through Plaintiff's extensive advertising and promotional activities and
10 merchandising and licensing activities, the Trademarks have acquired secondary
11 meaning and are famous marks. Plaintiff has established extensive goodwill in the
12 Trademarks and they are uniquely associated with Plaintiff in the minds of the
13 general public.

14 76. Defendants' above-described infringing uses of the Endless Summer
15 Trademarks began after Plaintiff's Endless Summer Trademarks had become
16 famous.

17 77. Defendants' above-described infringing uses cause actual dilution of
18 Plaintiff's famous Endless Summer Trademarks in that they are likely to lessen the
19 capacity of the aforesaid trademarks and trade dress to identify and distinguish
20 Plaintiff's or its licensees' goods and services as defined in 15 U.S.C. § 1127.

21 78. As a direct and proximate result thereof, Plaintiff is entitled to
22 injunctive relief enjoining and restraining Defendants from use of the Trademarks,
23 and other Endless Summer Marks throughout the United States.

24 79. As Defendant's actions have been willfully committed with intent to
25 damage Plaintiff and to confuse and deceive the public, Plaintiff is entitled to
26 Defendant's profits, treble Plaintiff's actual damages, an award of costs, and this
27 being an exceptional case, reasonable attorneys' fees pursuant to 15 U.S.C. §
28 1117(a).

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COUNT FOUR

Common Law Trademark Infringement

80. Plaintiff realleges and incorporates by reference, the full text of all of the foregoing paragraphs and exhibits as though fully set forth herein.

81. Plaintiff's claim arises under the common law of California for trademark and trade dress infringement.

82. The use by Defendants of the Trademarks in connection with the Infringing Conduct is in violation of Plaintiff's common law rights to the exclusive use of its Endless Summer Trademarks throughout California and the United States.

83. As a direct and proximate result of Defendants' infringing conduct, Plaintiff is entitled to injunctive relief enjoining and restraining Defendants' from use of the Trademarks throughout the United States.

84. As a direct and proximate result of Defendants' infringing conduct, Plaintiff has suffered and will continue to suffer lost licensing profits and damage to its business reputation and goodwill in this District, the State of California and throughout the United States, providing no adequate remedy at law.

85. As a direct and proximate result of Defendants' infringing conduct, Plaintiff has been injured and will continue to suffer damages in this District, the State of California and throughout the United States in an amount presently unknown and to be determined at trial.

COUNT FIVE

Common Law Unfair Competition

86. Plaintiff realleges and incorporates by reference, the full text of all of the foregoing paragraphs and exhibits as though fully set forth herein.

87. Plaintiff's claim arises under California Business & Professions Code § 17200 for unfair competition.

88. Plaintiff is informed and believes that with full knowledge of the existence and fame of the Trademarks, Defendants have attempted to trade upon the

1 goodwill and fame of the Trademarks, and have misled and will mislead the public
2 into assuming a connection or association between Defendants and Plaintiff.

3 89. Defendants' use of the Trademarks and Trade Dress has caused and/or is
4 likely to cause damage to Plaintiff in this District, the State of California and
5 throughout the United States by tarnishing the valuable reputation and goodwill
6 Plaintiff has established in the Trademarks and Trade Dress and diluting the
7 distinctiveness of the Trademarks and Trade Dress.

8 90. The aforesaid acts by Defendants in falsely suggesting a connection
9 with Plaintiff, in tarnishing the reputation of Plaintiff and its products, and in
10 diluting the distinctive nature of Plaintiff's Endless Summer Trademarks constitute
11 acts of unfair competition in violation of Cal. Bus. & Prof. Code § 17200 and the
12 common law.

13 91. As a direct and proximate result of Defendants' infringing conduct,
14 Plaintiff is entitled to injunctive relief enjoining and restraining Defendants from use
15 of the Trademarks throughout the United States.

16 92. As a direct and proximate result of the willful and wanton acts of
17 Defendants, Plaintiff has been and will continue to be irreparably injured in this
18 District, the State of California and throughout the United States with no adequate
19 remedy at law.

20
21 **WHEREFORE**, Plaintiff respectfully prays for Judgment to be entered
22 against Defendants as follows:

23 1. That the Court enter a judgment against each Defendant that each
24 Defendant has willfully infringed Plaintiff's rights in the common law and federally
25 registered Trademarks referenced herein.

26 2. That the Court issue temporary, preliminary and permanent injunctive
27 relief against each Defendant, their officers, agents, representatives, servants,
28 employees, attorneys, successors and assigns, and all others in active concert and/or

1 participating with Defendants, so that all such persons be enjoined and restrained
2 from using Plaintiff's Trademarks and any colorable imitations of Plaintiff's
3 Trademarks on and in connection with the distribution, and or sale of any goods or
4 services.

5 3. Directing that the Defendants deliver for destruction all Infringing
6 Merchandise including goods, labels, signs, prints, packages, dyes, wrappers,
7 receptacles, and advertisements in their possession or under their control bearing
8 any of Plaintiff's Trademarks, Trade Dress, Copyright or any simulation,
9 reproduction, counterfeit, copy, or colorable imitation thereof, and all plates, molds,
10 heat transfers, screens, matrices, and other means of making the same.

11 4. For an award of actual damages Plaintiff sustained as a result of
12 Defendants' acts of infringement, unfair competition and dilution of the Trademarks
13 pursuant to 15 U.S.C. § 1117(a) and the common law, and a trebling of such
14 damages.

15 5. For an order requiring Defendants to account for and pay over to
16 Plaintiff all gain, profits and advantages derived by Defendant from its acts of
17 infringement, unfair competition and dilution of the Trademarks pursuant to 15
18 U.S.C. § 1117(a) and the common law.

19 6. That the Court order each Defendant to pay Plaintiff both the costs of
20 this suit and the reasonable attorneys fees incurred by Plaintiff in investigating and
21 prosecuting this action.

22 7. That the Court award Plaintiff on his state law claims compensatory
23 damages in an amount to be determined at trial.

24 8. That the Court award Plaintiff punitive damages in such amounts as
25 may be determined at trial.

26 9. That the Court award Plaintiff prejudgment interest according to law.

27 10. That the Court grants to Plaintiff such other and additional relief as is
28 just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

DATED: March 17, 2020

NIK Nia LAW FIRM
BAHRAM NIKNIA

By: /s/ Bahram Niknia

BAHRAM NIKNIA

*Attorneys for Plaintiff
Bruce Brown Films, LLC*