

1 **MARTIN D. SINGER (BAR NO. 78166)**

mdsinger@lavelysinger.com

2 **T. WAYNE HARMAN (BAR NO. 254089)**

wharman@lavelysinger.com

3 **JAKE A. CAMARA (BAR NO. 305780)**

jcamara@lavelysinger.com

4 **LAVELY & SINGER, P.C.**

2049 Century Park East, Suite 2400

5 Los Angeles, California 90067-2906

Telephone: (310) 556-3501

6 Facsimile: (310) 556-3615

7 Attorneys for Plaintiff

8 JEFF DUNHAM

9 **UNITED STATES DISTRICT COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

11
12 JEFF DUNHAM, as an individual and
13 in his capacity as TRUSTEE OF THE
14 JEFF DUNHAM TRUST DATED
15 MARCH 24, 2010,

16 Plaintiff,

17 v.

18
19 **RAYMOND LEI**, an individual;
20 **OOSHIRTS, INC.**, d/b/a **TEECHIP** and
21 **TEECHILI**; and DOES 1-50,

22 Defendants.

CASE NO.: 2:20-CV-03716

COMPLAINT FOR:

1. **COPYRIGHT INFRINGEMENT**
(17 U.S.C. §§ 101 *et seq.*)
2. **TRADEMARK AND TRADE DRESS INFRINGEMENT AND COUNTERFEITING** (15 U.S.C. § 1114)
3. **TRADEMARK AND TRADE DRESS DILUTION** (15 U.S.C. §1125(c))
4. **FALSE DESIGNATION OF ORIGIN** (15 U.S.C. §1125(a))
5. **COMMON LAW UNFAIR COMPETITION**
6. **CONTRIBUTORY COPYRIGHT INFRINGEMENT**
7. **CONTRIBUTORY TRADEMARK AND TRADE DRESS INFRINGEMENT AND COUNTERFEITING**
8. **VICARIOUS COPYRIGHT INFRINGEMENT**
9. **VICARIOUS TRADEMARK AND TRADE DRESS INFRINGEMENT AND COUNTERFEITING**
10. **VIOLATION OF CALIFORNIA CIVIL CODE § 3344**
11. **COMMON LAW MISAPPROPRIATION OF THE RIGHT OF PUBLICITY**

DEMAND FOR JURY TRIAL

1 Plaintiff Jeff Dunham, individually and as trustee of The Jeff Dunham Trust Dated
2 March 24, 2010 (“Plaintiff”), by his attorneys Lavelly & Singer, P.C. for its Complaint
3 against Defendants Raymond Lei (“Lei”), Ooshirts, Inc. d/b/a Teechip and Teechili
4 (“Ooshirts”), and DOES 1-50 (collectively, “Defendants”), alleges as follows:

5
6 **NATURE OF THE ACTION**

7 1. The current COVID-19 pandemic is one of the deadliest and most far-
8 reaching tragedies in modern times, and individuals and entities who have attempted to
9 profit off of this disaster have been universally condemned and reviled. This case arises
10 out of the outrageous, blatant, and malicious campaign of Defendants Raymond Lei and
11 his company, Ooshirts, to fraudulently profit off of this tragedy through the indisputable
12 infringement and misappropriation of the intellectual property and persona of Jeff
13 Dunham, one of the most successful comedians of all time, by selling counterfeit t-shirts
14 and other consumer products.

15 2. This case is simple and the facts are indisputable: Defendants are marketing,
16 advertising, promoting, manufacturing, selling, and profiting off of consumer products,
17 including COVID-19 face masks and t-shirts, that clearly incorporate and exploit the
18 world-famous ventriloquism characters that Plaintiff Jeff Dunham spent years to develop,
19 which are protected by registered copyrights and trademarks owned by the Plaintiff, and
20 which contain protectable trade dress. To add insult to injury, in order to attract
21 consumers to their websites and help sell their counterfeit products, Defendants have
22 exploited the name, photograph, image and/or likeness of Jeff Dunham himself, which
23 has caused significant consumer confusion and led fans of the Plaintiff to ask him
24 whether he was improperly trying to profit off of the COVID-19 pandemic by selling
25 these COVID-19 products. This confusion has caused, and continues to cause, great harm
26 to Plaintiff’s reputation and brand.

27 3. While Defendants’ attempt to profit off the COVID-19 pandemic is
28 particularly reprehensible, it is just the most recent example of their ongoing campaign of

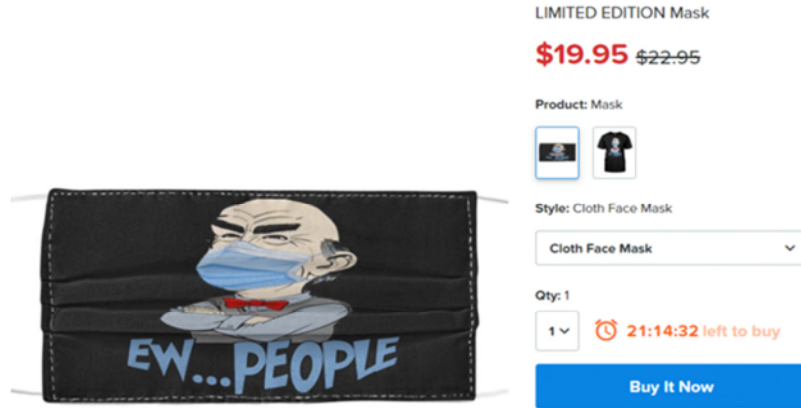
1 illegal conduct. Defendants have been engaging in this same conduct for years, which can
2 be equated to a game of “whack-a-mole”: i) Dunham identifies infringing products on
3 Defendants’ websites and sends a DMCA Notice demanding that they be taken down, (ii)
4 Defendants take down the infringing products, and (iii) Defendants then put up for sale
5 new infringing products, and continue to misappropriate Dunham’s name, photograph,
6 image and likeness to sell those products, starting the process all over again. Enough is
7 enough.

8 4. Ripping off and exploiting the intellectual property of third parties, and
9 duping customers into believing that they are purchasing legitimate merchandise when
10 they’re actually getting counterfeits, is, upon information and belief, Defendants’
11 *business model*. Defendant Ooshirts, for example, has been sued on multiple occasions
12 for the same conduct (including by HBO for selling knock off *Game of Thrones*
13 merchandise), thus further evidencing that Defendants’ illegal acts are knowing and
14 willful.

15 5. As an example of Defendants’ most recent unlawful conduct, one of
16 Dunham’s earliest, most beloved, and most well-known characters is Walter, a crotchety
17 old man, who has a brash and sarcastic view of the world. Walter’s grumpy nature is
18 immediately evident from the physical persona of the character, as seen in this picture:



25 6. In a shameful effort to profit off the COVID-19 pandemic, Defendants have
26 sold and continue to sell overpriced face masks that display a counterfeited image of
27 Walter wearing a blue hospital face mask, as seen in this screenshot from the
28 www.teechip.com website on which Defendants have sold the infringing products:



7. This is just the tip of the iceberg. Defendants’ websites have listed *over 1000* different infringing products for sale (including t-shirts, sweatshirts, blankets, mugs, and other consumer products) that feature Jeff Dunham’s beloved characters, including Achmed, Bubba J, Peanut, and Jose Jalapeno on a Stick, and Defendants have even set up a *separate section of one of their websites* for all of their Jeff Dunham related-products. Upon information and belief, Defendants have even cropped photographs of Dunham’s face onto other individuals in order to sell their counterfeited products.

8. Accordingly, through this action, Plaintiff seeks to recover the substantial compensatory, punitive, and statutory damages to which he is entitled as a result of Defendants’ intentional and wrongful conduct, which includes the blatant and pervasive infringement of his intellectual property and misappropriation of his valuable publicity rights.

THE PARTIES

9. Plaintiff Jeff Dunham is an individual residing in the County of Los Angeles, State of California, and conducting business in the County of Los Angeles, State of California. Plaintiff is the Trustee of The Jeff Dunham Trust Dated March 24, 2010 (the “Trust”). The Trust is organized according to California law whose situs is within this District.

1 10. Plaintiff is informed and believes, and thereon alleges, that Defendant Lei is
2 an individual residing in the County of Santa Clara, State of California, and conducting
3 business in the County of Los Angeles, State of California.

4 11. Plaintiff is informed and believes, and thereon alleges, that Defendant
5 Ooshirts is a California Corporation with its principal place of business at 39899
6 Balentine Drive, Suite 220, Newark CA 94560, and conducting business in the County of
7 Los Angeles, State of California. Plaintiff is further informed and believes, and on that
8 basis alleges, that Ooshirts is doing business as www.teechip.com and www.teechili.com,
9 and that they are not separate legal entities. Plaintiff is further informed and believes, and
10 on that basis alleges, that, at all times relevant hereto, Defendant Lei directly owned,
11 controlled, dominated, used, managed and/or operated Ooshirts, www.teechip.com, and
12 www.teechili.com.

13 12. Plaintiff is informed and believes and based thereon alleges that the
14 fictitiously named defendants sued herein as Does 1 through 50, inclusive, and each of
15 them, were in some manner responsible or legally liable for the events, actions,
16 transactions, and circumstances alleged herein. The true names and capacities of said
17 fictitiously named defendants, whether individual, corporate, associate, or otherwise, are
18 presently unknown to Plaintiff, and Plaintiff will seek leave of this Court to amend this
19 Complaint to assert the true names and capacities of said fictitiously named defendants
20 when same have become known to Plaintiff. Hereinafter all defendants, including the
21 Doe Defendants, will sometimes be referred to collectively as “Defendants.”

22 13. Plaintiff is informed and believes and based thereon alleges that Defendants,
23 and each of them, were the agents, employees, partners, joint-venturers, co-conspirators,
24 owners, principals and employers of the remaining Defendants, and each of them, and
25 are, and at all times herein mentioned were, acting within the course and scope of that
26 agency, partnership, employment, conspiracy, ownership or joint venture. Plaintiff is
27 further informed and believes and based thereon alleges that the acts and conduct herein
28

1 alleged of each such Defendant were known to, authorized by, and/or ratified by the other
2 Defendants, and each of them.

3 14. Plaintiff is informed and believes and based thereon alleges that Lei and one
4 or more of Doe Defendants 1 through 50 are, and at all times material hereto were, the
5 principal members, managers, shareholders, officers, directors and/or owners of Ooshirts,
6 Inc. in that Lei and the applicable Doe Defendants at all times relevant hereto directly
7 owned, controlled, dominated, used, managed and operated Ooshirts, Inc. Plaintiff is
8 further informed and believes and based thereon alleges that at all times material hereto,
9 Ooshirts, Inc. failed to follow corporate formalities and maintain a corporate identity
10 separate and distinct from Lei and the applicable Doe Defendants, and Ooshirts, Inc. has
11 been a business conduit and alter ego of Lei and the applicable Doe Defendants.
12 Adherence to the fiction of the separate legal existence of Ooshirts, Inc., on the one hand,
13 and Lei and the applicable Doe Defendants, on the other hand, as entities distinct from
14 one another would permit abuse of the corporate privilege, would promote injustice, and
15 would sanction a fraud upon Plaintiff.

16 15. Plaintiff is informed and believes and thereupon alleges that at all relevant
17 times, Defendants acted in concert, conspired and agreed among themselves to commit
18 the wrongful acts and practices alleged in this Complaint, and that such wrongful acts and
19 practices were committed pursuant to and in furtherance of such conspiracy and
20 agreement, and with the consent and approval of each of the Defendants. Plaintiff is
21 informed and believes, and thereupon alleges, that each of the Defendants are liable as a
22 direct participant, co-conspirator and/or aider and abettor of the wrongful acts and
23 practices alleged herein.

24
25 **JURISDICTION AND VENUE**

26 16. This Court has subject matter jurisdiction over this action pursuant to 28
27 U.S.C. sections 1331 and 1338 because this action arises under the federal Lanham Act,
28 15 U.S.C. §§ 1051, *et seq.*, and the United States Copyright Act, 17 U.S.C. §§ 101, *et*

1 *seq.*

2 17. This Court has personal jurisdiction over Defendants because they regularly
3 transact, do and solicit business in this District, including by: using or causing to be used,
4 offering to sell or causing to be offered for sale, manufacturing, and/or selling directly a
5 variety of products that infringe Plaintiff's copyrights and trademarks to customers in the
6 United States, including in California and in this District. Defendants have committed
7 tortious acts within the state, including this District, causing injury to Plaintiff as alleged
8 further herein. Upon information and belief, Defendants derive substantial revenue from
9 interstate commerce.

10 18. This Court has supplemental jurisdiction over Plaintiff's claims arising
11 under the laws of California pursuant to 28 U.S.C. § 1367(a) because these claims are so
12 related to Plaintiff's claims under federal law that they form part of the same case or
13 controversy and derive from a common nucleus of operative fact.

14 19. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because
15 Defendants are persons over whom this Court has personal jurisdiction and because a
16 substantial part of the claims arose in this District.

17
18 **GENERAL ALLEGATIONS**

19 **A. Jeff Dunham Is an Award-Winning Ventriloquist and Comedian**

20 20. Jeff Dunham is one of the most popular and successful ventriloquists and
21 stand-up comedians in the world. He regularly tours and performs live, and has appeared
22 in both television programs and feature films. He is perhaps best known for his DVD
23 comedy specials, which have sold tens of millions of copies and were written and
24 executive produced by Dunham and feature Dunham's comedic performances as a
25 ventriloquist. These specials include *Arguing With Myself*, *Spark of Insanity*, *Minding the*
26 *Monsters* and a *Very Special Christmas Special*. His 2015 stand-up special, *Unhinged in*
27 *Hollywood*, debuted on NBC Primetime and ranked as the time period's top non-sports
28

1 program on the Big 4 in every key measure. The special was re-broadcast on Comedy
2 Central and was the top rated special of the year for the entire network.

3 21. Dunham's contribution to the world of show business and comedy was
4 recognized in 2017 when he received a star on the "Hollywood Walk of Fame,"
5 commemorating over two decades of superstardom. He has 10 million followers on
6 Facebook and over 2.1 million YouTube subscribers, amassing well over a billion views.
7 Dunham has also been awarded "Billboard's Top Comedy Tour" for three years based on
8 box office sales. Accordingly, Dunham has developed sufficient skills, reputation, and
9 talent to create considerable commercial value in his identity, and it there is substantial
10 consumer recognition, good will and monetary value in the Jeff Dunham brand.

11 22. As a result of Dunham's hard-earned fame and success, his name,
12 photograph, image and/or likeness have the ability to attract substantial consumer
13 attention and evoke a desired response in a particular consumer audience. Such
14 commercial value in his identity permits him to receive an economic return from the use
15 of his name, photograph, image and/or likeness, and, as a result, he has a well-established
16 value for and is highly paid for his select endorsement or sponsorship of products
17 (including of apparel and other consumer products).

18 23. The commercial value and marketability of Dunham's identity can be
19 diminished by the improper and inappropriate use of his image, and/or by an
20 unauthorized commercial use of his name, photograph, image and/or likeness. As such,
21 to limit the potential harmful consequences to his commercial value caused by improper
22 and inappropriate use of his image and to ensure that the product, medium and mode of
23 promotion are consistent and compatible with his persona, Dunham and his
24 representatives are understandably careful in choosing which products he will endorse.

25 24. Dunham became known to relevant consumers and the public at large in
26 large part through his inherently distinctive characters, the use of which forms the
27 bedrock of Dunham's performances and persona. These include, without, limitation, the
28 following, which shall be referred to herein as the "Characters":

1 a. **Walter (“Walter”)**: Walter is a retired, crotchety old man, who has a
2 brash and sarcastic view of the world. Walter has been part of Dunham’s performance for
3 over 30 years and has appeared in every one of Dunham’s Comedy Central specials.



9 b. **Achmed the Dead Terrorist (“Achmed”)**: Achmed is the skeletal
10 corpse of an incompetent suicide bomber, who is known for his catch phrase, “Silence! I
11 keel you!” Achmed first appeared in the 2007 *Spark of Insanity* special, and has appeared
12 in every Dunham special since then.



18
19 c. **Bubba J (“Bubba J”)**: Bubba J is a beer-drinking hillbilly whom
20 Dunham uses for humor centered on “redneck” stereotypes, and has appeared in Dunham
21 specials since 2006.



1 d. **Peanut (“Peanut”)**: Peanut is a purple-skinned monster with white
2 fur covering most of his body and a tuft of green hair on the top of his head, and has
3 appeared in Dunham specials since 2003.



9 e. **Jose Jalapeno on a Stick (“Jose”)**: Jose is a talking jalapeno pepper
10 on a stick who wears a small sombrero and speaks in a thick Spanish accent. Jose was the
11 first character that Dunham made himself and has appeared in Dunham specials since
12 2003.



17 25. Dunham has marketed, promoted, licensed, and sold products (including t-
18 shirts) worldwide under his name and brand, featuring the Characters, for over a decade.

19 26. Dunham has taken a number of steps to protect the Characters, including
20 their names and overall appearances. Dunham and/or the Trust are the sole and exclusive
21 owners of all relevant intellectual property rights in and to the Characters’ names,
22 images, and likenesses, specifically including the copyrights, trademarks, and trade dress
23 forming the basis of this action. As a result of their calculated handling of the Dunham
24 brand (including the Characters), Dunham and the Trust have realized millions of dollars
25 in sales of a wide range of goods and services incorporating the Dunham brand and the
26 Characters, including, without limitation, t-shirts and other apparel.

27 27. Dunham and/or the Trust are the sole and exclusive owners of the copyrights
28 in and to the Characters and other Dunham-related intellectual property, which are

1 protected by the following U.S. Copyright Registration Numbers, among others
2 (collectively, the “Dunham Copyrights”):

- 3 a. ACHMED: U.S. Copyright Reg. No. VA 1-723-423 (Reg. June 14,
4 2010);
- 5 b. BUBBA J: U.S. Copyright Reg. No. VA0001789343 (Reg. March 17,
6 2011);
- 7 c. JOSE JALAPENO ON A STEEK!: U.S. Copyright Reg. No. VAu 1-
8 081-316 (Reg. June 14, 2010);
- 9 d. PEANUT: U.S. Copyright Reg. No. VAu 1-081-417 (Reg. March 17,
10 2011);
- 11 e. WALTER: U.S. Copyright Reg. No. VAu 001081315 (Reg. June 14,
12 2010).

13 Attached hereto as **Exhibit A** are true and correct copies of the above-referenced
14 registrations. The Dunham Copyrights, including all rights to enforce the Dunham
15 Copyrights, have been assigned to the Trust.

16 28. Dunham and/or the Trust are the sole and exclusive owners of all federal and
17 common law rights in and to the following trademarks (collectively, the “Dunham
18 Trademarks”):

- 19 a. “ACHMED” as used and registered in, *inter alia*, International Class
20 028 (games and playthings) (protected by U. S. Trademark Reg. No. 3,685,560 issued by
21 the United States Patent and Trademark Office (the “USPTO”) on February 22, 2009),
22 025 (t-shirts and hooded sweatshirts) (protected by U. S. Trademark Reg. No. 3,889,166
23 issued by the USPTO on December 14, 2010), and 024 (blanket throws) (protected by U.
24 S. Trademark Reg. No. 4,564,283 issued by the USPTO on July 8, 2014);
- 25 b. “I KEEL YOU!” as used and registered in, *inter alia*, International
26 Class 025 (clothing, including t-shirts) (protected by U. S. Trademark Reg. No. 3,676,291
27 issued by the USPTO on September 1, 2009), 025 (clothing, including caps and hooded
28 sweatshirts) (protected by U. S. Trademark Reg. No. 3,916,359 issued by the USPTO on

1 February 8, 2011), and 024 (blanket throws) (protected by U. S. Trademark Reg. No.
2 4,564,284 issued by the USPTO on July 8, 2014);

3 c. “JEFF DUNHAM” as used and registered in, *inter alia*, International
4 Class 025 (clothing, including t-shirts) (protected by U. S. Trademark Reg. No. 3,889,473
5 issued by the USPTO on December 14, 2010), 09 (CDs and DVDs) (protected by U. S.
6 Trademark Reg. No. 3,896,678 issued by the USPTO on December 28, 2010), 018
7 (reusable shopping bags) (protected by U. S. Trademark Reg. No. 4,564,159 issued by
8 the USPTO on July 8, 2014), and 024 (blanket throws) (protected by U. S. Trademark
9 Reg. No. 4,564,285 issued by the USPTO on July 8, 2014);

10 d. “BUBBA J” as used and registered in, *inter alia*, International Class
11 025 (t-shirts) (protected by U. S. Trademark Reg. No. 3,872,850 issued by the USPTO on
12 November 9, 2010);

13 e. “JOSE JALAPENO ON A STEEK” as used and registered in, *inter*
14 *alia*, International Class 028 (dolls) (protected by U. S. Trademark Reg. No. 4,484,865
15 issued by the USPTO on February 18, 2014);

16 f. “PEANUT” as used and registered in, *inter alia*, International Class
17 025 (clothing, including t-shirts and hooded sweatshirts) (protected by U. S. Trademark
18 Reg. No. 3,882,782 issued by the USPTO on November 30, 2010) and 028 (dolls)
19 (protected by U. S. Trademark Reg. No. 3,870,713 issued by the USPTO on November 2,
20 2010);

21 g. “WALTER” as used and registered in, *inter alia*, International Class
22 025 (clothing, including t-shirts) (protected by U. S. Trademark Reg. No. 3,870,490
23 issued by the USPTO on November 2, 2010) and 028 (dolls) (protected by U. S.
24 Trademark Reg. No. 3,870,714 issued by the USPTO on November 2, 2010);

25 Attached hereto as **Exhibit B** are true and correct copies of the above-referenced
26 registrations. The Dunham Trademarks, including all rights to enforce the Dunham
27 Trademarks, have been assigned to the Trust.

1 29. The Dunham Trademarks are distinctive, have been continually used
2 throughout the United States, as well as worldwide, and are well known to the trade and
3 members of the purchasing public.

4 30. The Characters' appearance also includes protectable trade dress. For
5 example, (i) Walter's protectable trade dress includes his facial scowl, folded arms, bow
6 tie, sweater vest, buttoned down, long-sleeved shirt, dress pants, and dress shoes; (ii)
7 Achmed's protectable trade dress includes his skeletal body and head, bulging, bloodshot
8 yellow eyes, and dirtied turban; (iii) Bubba J's protectable trade dress includes his
9 bucktooth smile, worn t-shirt, exposed beer belly, blue jeans, cowboy boots, and baseball
10 cap; (iv) Peanut's protectable trade dress includes his primate-like body with purple skin
11 and tan fur, tuft of green hair, green eyes, one shoe, and oversized red lips; and (v) Jose
12 Jalapeno on a Steek's protectable trade dress includes a jalapeno pepper on a stick, with a
13 mustache, sombrero, and sad, droopy eyes (collectively, the "Dunham Trade Dress"). The
14 Dunham Trade Dress is owned by Plaintiff, and is distinctive and non-functional.

15 31. Dunham has continuously advertised, distributed, and sold merchandise that
16 incorporates the Dunham Copyrights, Dunham Trademarks, and Dunham Trade Dress
17 through a wide variety of distribution channels, including, but not limited to, through
18 retail stores, Dunham's website, and at his live shows.

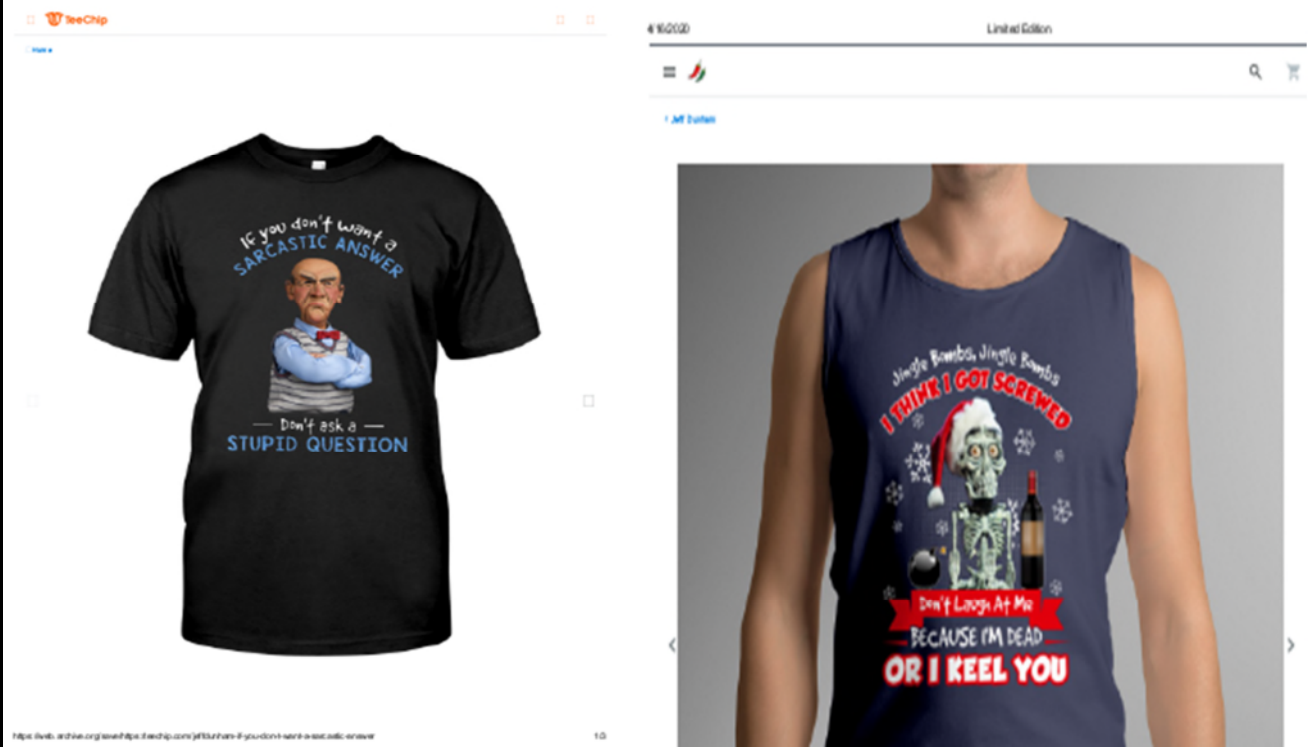
19 **B. Defendants Knowingly Infringe Upon Plaintiff's Intellectual Property**
20 **Rights by Creating, Manufacturing, and Distributing Large Quantities**
21 **of Counterfeit Dunham Clothing and Printed Material.**

22 32. Defendants are in the business of operating online platforms, including,
23 without limitation, the websites www.teechip.com and www.teechili.com (the "Infringing
24 Websites"), which offer for sale a variety of consumer products, including apparel
25 (including t-shirts and hooded sweatshirts) and other merchandise.

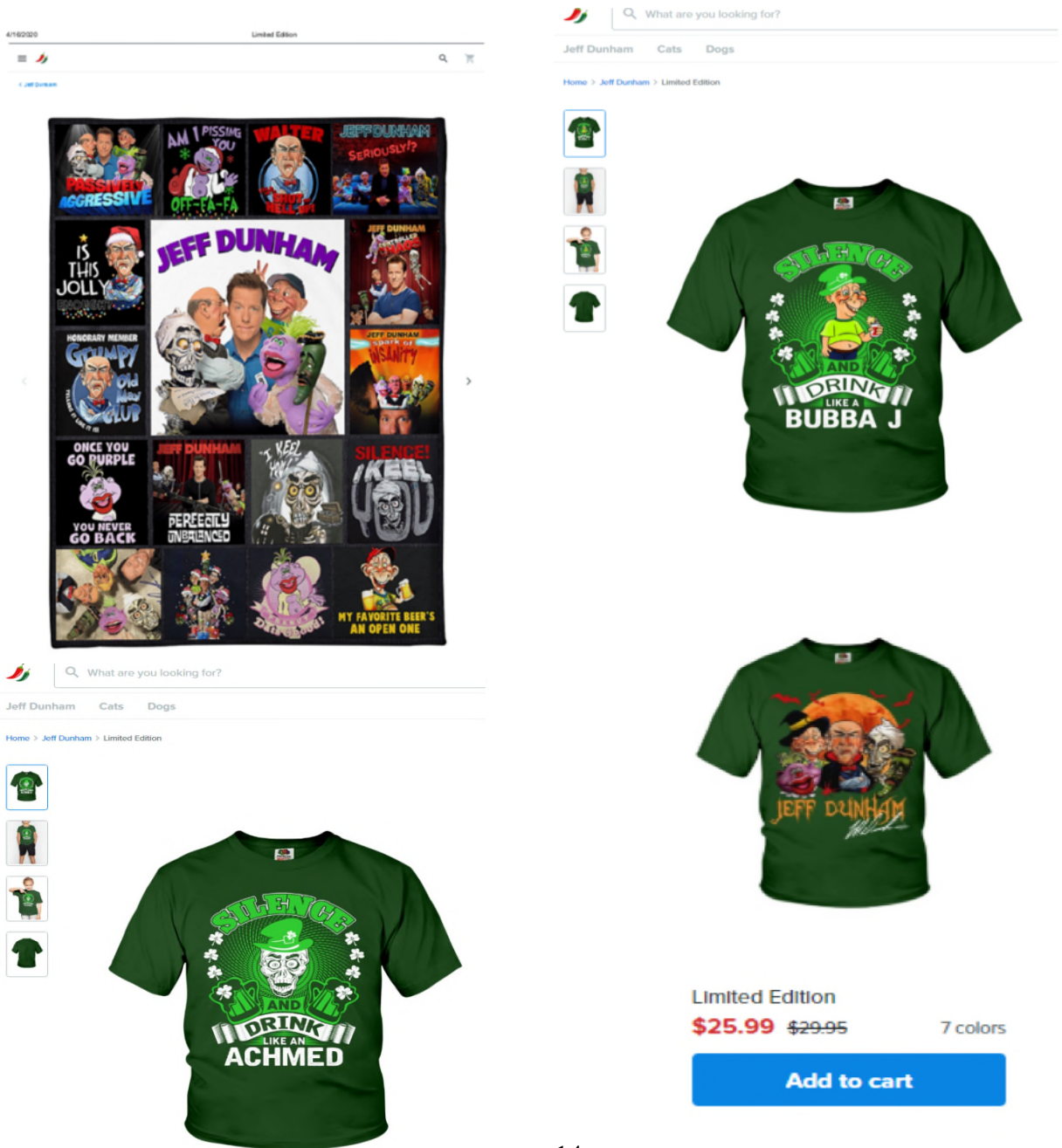
26 33. Upon information and belief, once a visitor to one of the Infringing Websites
27 places an order for a product, Defendants manufacture the product, ship it to the
28 customer, process the payment, and retain profits from the sale.

1 34. Upon information and belief, Defendants, with locations in California,
2 Indiana, and Pennsylvania, own their own printing facilities and ship to over two hundred
3 (200) countries.

4 35. Defendants are advertising, marketing, creating, displaying, offering for sale,
5 selling, distributing, and profiting from products incorporating works protected by the
6 Dunham Copyrights, including Walter, Achmed, Peanut, Bubba J, and Jose (the
7 “Copyright Infringing Products”). A few examples are depicted below. Many more are
8 attached hereto as **Exhibits C** (providing examples of the infringing conduct on
9 www.teechili.com) and **D** (providing examples of the infringing conduct on
10 www.teechip.com).



1 36. In addition, Defendants are advertising, marketing, creating, displaying,
2 offering for sale, selling, distributing, and profiting from massive quantities of counterfeit
3 Dunham products. Many of the counterfeit products incorporate exact replicas of the
4 Dunham Trade Dress and Trademarks on products in the classes for which the marks are
5 registered, including the names of the Characters and their catch phrases (the “Trademark
6 and Trade Dress Infringing Products;” together with the Copyright Infringing Products,
7 the “Infringing Products”). A few examples are depicted below, and many are attached
8 hereto as **Exhibits C and D.**



1 37. Further, Defendants have commercially exploited Dunham's name and
2 likeness in connection with their advertisement, marketing, promotion, manufacture, and
3 sale of Infringing Products (some of which also exploit Dunham's name and likeness on
4 the Infringing Product itself), without his knowledge and consent. See this image from
5 www.teechili.com, which will take the consumer to Infringing Products for sale when
6 they click on it:



13 38. Consequently, Dunham's name, photograph, image and/or likeness have
14 been used without his authorization to attract and captivate the attention of consumers in
15 connection with the promotion of the Infringing Products. Such use falsely implies and
16 was obviously intended to cause potential consumers to mistakenly believe that Dunham
17 has endorsed and is affiliated with Defendants, when, in fact, he has not and is not.

18 39. Defendants' infringement is knowing and willful, as evidenced by (a) the
19 sheer quantity of different counterfeit designs and Infringing Products being sold by
20 Defendants, (b) the exact duplication of a variety of iconic Dunham designs, and (c)
21 Defendants' pattern and practice of infringing upon the intellectual property rights of
22 well-known brands. For example, Ooshirts has been sued multiple times for the same
23 type of infringing conduct. *See, e.g., Home Box Office, Inc. v. Ooshirts, Inc.*, Civ. Action
24 No. 18-CV-4645 (S.D.N.Y. 2018); *Atari Interactive, Inc. v. Ooshirts, Inc.*, Case No. 3:19-
25 CV-00264-WHO (N.D. Cal. 2019); *Hoelck v. Ooshirts, Inc. et al*, 1:18-cv-00062-AT
26 (S.D.N.Y. 2018).

27 40. In fact, the Infringing Websites are configured so that a search for
28 "Dunham" or other Dunham trade names will lead directly to the Infringing Products.

1 Further, the www.teechili.com website (which, upon information and belief, is run and
2 managed by www.teechip.com), actually has an *entire section of its site* devoted to “Jeff
3 Dunham” products, which is found under the header “Jeff Dunham.”

4 41. Defendants have profited from their unauthorized use of Dunham’s
5 intellectual property through the sale of the infringing goods, and Defendants’
6 infringement has harmed Dunham by cheapening and diluting the Dunham brand,
7 diverting profits from the sale of authentic Dunham goods, and causing Dunham and the
8 Trust to lose profits and licensing fees from the authorized use of their intellectual
9 property.

10 42. As a direct consequence of Defendants’ intentional and outrageous
11 misconduct, Dunham’s representatives have been informed by multiple fans and
12 consumers that they believe Dunham is selling the Infringing Products and that he is
13 wrongfully attempting to profit from the COVID-19 pandemic (he is not), which is
14 causing material harm to his brand and reputation every single day.

15
16 **FIRST CLAIM FOR RELIEF**

17 **(Copyright Infringement 17 U.S.C §§ 101, et seq.)**

18 **(Against All Defendants)**

19 43. Plaintiff repeats and realleges each and every allegation contained in
20 paragraphs 1 through 42 of the Complaint as if set forth in full herein.

21 44. As alleged, Plaintiff is the exclusive owner of the Dunham Copyrights, and
22 has registered its copyright interests therein with the United States Copyright Office.

23 45. By engaging in the conduct described herein, including by reproducing,
24 and/or otherwise exploiting the Dunham Copyrights in connection with the infringing
25 products and by advertising, distributing, and/or selling the infringing products to unwary
26 consumers both in the State of California and throughout the United States, Defendants
27 have infringed Plaintiff’s exclusive rights under the Copyright Act in and to the Dunham
28 Copyrights.

1 46. Defendants infringed Plaintiff's copyrights willfully.

2 47. At no time has Plaintiff authorized or consented to Defendants' infringing
3 conduct described herein.

4 48. Each reproduction, advertisement, distribution, dissemination, and/or other
5 unauthorized exploitation of the Dunham Copyrights by Defendants constitutes a separate
6 and distinct and continuing act of infringement.

7 49. As a direct and proximate result of Defendants' infringement of Plaintiff's
8 copyrights and exclusive rights under the Copyright Act, Dunham has been damaged in
9 an amount not yet fully ascertainable but which is believed to be in excess of Ten Million
10 (\$10,000,000) Dollars. Plaintiff is entitled to damages as well as Defendants' profits
11 pursuant to 17 U.S.C. § 504(b) for each infringement.

12 50. Alternatively, Plaintiff is entitled to the maximum statutory damages,
13 pursuant to 17 U.S.C. § 504(c), in the amount of One Hundred Fifty Thousand Dollars
14 (\$150,000) for each of the individual infringements forming the basis of this action, or for
15 such other amount as may be proper pursuant to 17 U.S.C. § 504(c).

16 51. Plaintiff is further entitled to its attorneys' fees and full costs pursuant to 17
17 U.S.C. § 505.

18 52. Defendants' conduct threatens to cause, is causing, and unless enjoined and
19 restrained by this Court will continue to cause Plaintiff great and irreparable injury that
20 cannot fully be compensated for or measured in monetary damages alone. Plaintiff has
21 no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to
22 preliminary and permanent injunction prohibiting further infringements of its exclusive
23 copyrights.

24 **SECOND CLAIM FOR RELIEF**

25 **(Trademark and Trade Dress Infringement and Counterfeiting 15 U.S.C. § 1114)**

26 **(Against All Defendants)**

27 53. Plaintiff repeats and realleges each and every allegation contained in
28 paragraphs 1 through 42 of the Complaint as if set forth in full herein.

1 54. Plaintiff is the owner of the Dunham Trademarks, which are registered for
2 the categories of goods on which Defendants are using the trademarks, as well as the
3 Dunham Trade Dress.

4 55. The Dunham Trademarks are valid, protectable marks.

5 56. The Dunham Trade Dress is distinctive and non-functional, has been used
6 throughout the United States and worldwide, and is well known to the trade and members
7 of the purchasing public.

8 57. Through their above-described actions, Defendants have used and continue
9 to use in commerce a reproduction or copy of the Dunham Trade Dress and the Dunham
10 Trademarks and/or colorable imitations thereof that are confusingly similar to those
11 marks in connection with the sale, offering for sale, distribution, or advertising of goods,
12 which use is likely to cause consumer confusion, or to cause mistake, or to deceive.

13 58. The aforesaid conduct of Defendants is without the consent or permission of
14 Plaintiff.

15 59. Defendants infringed upon the Dunham Trade Dress and Dunham
16 Trademarks and engaged in trademark counterfeiting willfully.

17 60. As a proximate result of Defendants' infringement, Plaintiff has suffered and
18 continues to suffer monetary damages in an amount not yet fully ascertainable but which
19 is believed to be in excess of Ten Million (\$10,000,000) Dollars, and Defendants have
20 unlawfully profited, in an amount which cannot be accurately computed at this time but
21 will be proven at trial.

22 61. Defendants' acts were committed, and continue to be committed, with actual
23 notice of Plaintiff's exclusive rights and with the intent to cause confusion, to cause
24 mistake, and/or to deceive, and to cause injury to the reputation and goodwill associated
25 with Plaintiff and his products. Pursuant to 15 U.S.C. section 1117, Plaintiff is therefore
26 entitled to recover three times its actual damages or three times Defendants' profits,
27 whichever is greater. Plaintiff is also entitled to statutory damages of \$2 million per
28 registered mark. In addition, pursuant to 15 U.S.C. section 1118, Plaintiff is entitled to an

1 order requiring destruction of all infringing products and promotional materials in
2 Defendants' possession.

3 62. Plaintiff is further entitled to injunctive relief because the conduct of
4 Defendants has caused and will continue to cause Plaintiff irreparable harm for which
5 there is no adequate remedy at law.

6 63. This case qualifies as an "exceptional case" within the meaning of 15 U.S.C.
7 § 1117(a) in that Defendants' actions have been malicious, fraudulent, deliberate, willful,
8 and taken in bad faith with full knowledge and in conscious disregard of Plaintiff's rights.
9 As such, Plaintiff is entitled to recover its attorneys' fees pursuant to 15 U.S.C. § 1117(a).

10 **THIRD CLAIM FOR RELIEF**

11 **(Trademark and Trade Dress Dilution 15 U.S.C. §1125(c))**

12 **(Against All Defendants)**

13 64. Plaintiff repeats and realleges each and every allegation contained in
14 paragraphs 1 through 42 of the Complaint as if set forth in full herein.

15 65. The Dunham Trademarks are each distinctive, famous, and widely
16 recognized by the general consuming public of the United States, and were so prior to the
17 date of Defendants' conduct alleged herein.

18 66. The Dunham Trade Dress is distinctive and non-functional, has been used
19 throughout the United States and worldwide, and is well known to the trade and members
20 of the purchasing public.

21 67. Defendants' unauthorized use of the Dunham Trade Dress and Dunham
22 Trademarks is likely to dilute and is diluting the distinctive quality of the famous
23 Dunham Trade Dress and Dunham Trademarks, in that Defendants' conduct is likely to
24 create and has created an association between the Infringing Products and the Dunham
25 Trade Dress and Dunham Trademarks, which impairs the distinctiveness of those famous
26 marks and lessens the capacity of those famous marks to identify and distinguish
27 products marketed and sold by Plaintiff and/or his authorized licensees under those
28 marks.

1 68. On information and belief, Defendants' acts of trade dress and trademark
2 dilution have been done willfully and deliberately and Defendants have profited and been
3 unjustly enriched by sales that Defendants would not otherwise have made but for their
4 unlawful conduct. As such, Plaintiff is entitled to the disgorgement of Defendants'
5 profits under 15 U.S.C. § 1117(a)

6 69. Plaintiff is further entitled to recover treble damages pursuant to 15 U.S.C. §
7 1117(a).

8 70. Plaintiff has no adequate remedy at law. Plaintiff is entitled to injunctive
9 relief because the conduct of Defendants described above has caused and, if not enjoined,
10 will continue to cause irreparable damage to the rights of Plaintiff in its trade dress,
11 trademarks, and to the business, reputation, and goodwill of Plaintiff.

12 71. As a proximate result of Defendants' conduct, Plaintiff has suffered and
13 continues to suffer monetary damages in an amount not yet fully ascertainable but which
14 is believed to be in excess of Ten Million (\$10,000,000) Dollars, and Defendants have
15 unlawfully profited, in an amount which cannot be accurately computed at this time but
16 will be proven at trial.

17 72. This case qualifies as an "exceptional case" within the meaning of 15 U.S.C.
18 § 1117(a) in that Defendants' actions have been malicious, fraudulent, deliberate, willful,
19 and taken in bad faith with full knowledge and in conscious disregard of Plaintiff's rights.
20 As such, Plaintiff is entitled to recover its attorneys' fees pursuant to 15 U.S.C. § 1117(a).

21 **FOURTH CLAIM FOR RELIEF**

22 **(False Designation of Origin 15 U.S.C. §1125(a))**

23 **(Against All Defendants)**

24 73. Plaintiff repeats and realleges each and every allegation contained in
25 paragraphs 1 through 42 of the Complaint as if set forth in full herein.

26 74. The Dunham Trademarks have tremendous good will, are distinctive, have
27 been used throughout the United States and worldwide, and are well known to the trade
28

1 and members of the purchasing public. The public associates and identifies the Dunham
2 Trademarks with Plaintiff.

3 75. The Dunham Trade Dress is distinctive and non-functional, has been used
4 throughout the United States and worldwide, and is well known to the trade and members
5 of the purchasing public.

6 76. Without Plaintiff's authorization or consent, Defendants have used the
7 Dunham Trade Dress and Dunham Trademarks to advertise and sell, without limitation,
8 the Infringing Products.

9 77. Defendants' distribution, advertisement, sale, offer for sale, and/or other sale
10 of the Infringing Products constitutes false designation of origin or sponsorship of said
11 product and tends falsely to represent that the product originates from Plaintiff or has
12 been sponsored, approved, or licensed by Plaintiff or is in some way affiliated or
13 connected with Plaintiff. Such conduct of Defendants is likely to confuse, mislead, and
14 deceive Defendants' customers, purchasers, and members of the public as to the origin of
15 the Infringing Products or cause said persons to believe that the Infringing Products
16 and/or Defendants' infringing conduct have been sponsored, approved, authorized, or
17 licensed by Plaintiff or are in some way affiliated or connected with Plaintiff, all in
18 violation of 15 U.S.C. § 1125(a).

19 78. Defendants' actions were done willfully with full knowledge of the falsity of
20 such designations of origin and false descriptions or representations, and with the express
21 intent to cause confusion, and to mislead and deceive the purchasing public.

22 79. This case qualifies as an "exceptional case" within the meaning of 15 U.S.C.
23 § 1117(a) in that Defendants' actions have been malicious, fraudulent, deliberate, willful,
24 and taken in bad faith with full knowledge and in conscious disregard of Plaintiff's rights.
25 As such, Plaintiff is entitled to recover its attorneys' fees pursuant to 15 U.S.C. § 1117(a).

26 80. Plaintiff is also entitled to the disgorgement of Defendants' profits pursuant
27 to 15 U.S.C. § 1117(a).

28

1 81. Plaintiff is further entitled to recover treble damages pursuant to 15 U.S.C. §
2 1117(a).

3 82. Plaintiff has no adequate remedy at law. Plaintiff is entitled to injunctive
4 relief because the conduct of Defendants described above, has caused and, if not
5 enjoined, will continue to cause irreparable damage to the rights of Plaintiff in its
6 trademarks, and to the business, reputation, and goodwill of Plaintiff.

7 83. As a proximate result of Defendants' conduct, Plaintiff has suffered and
8 continues to suffer monetary damages in an amount not yet fully ascertainable but which
9 is believed to be in excess of Ten Million (\$10,000,000) Dollars, and Defendants have
10 unlawfully profited, in an amount which cannot be accurately computed at this time but
11 will be proven at trial.

12 **FIFTH CLAIM FOR RELIEF**
13 **(Common Law Unfair Competition)**
14 **(Against All Defendants)**

15 84. Plaintiff repeats and realleges each and every allegation contained in
16 paragraphs 1 through 42 of the Complaint as if set forth in full herein.

17 85. Defendants have committed acts of unfair competition, proscribed by
18 California Business and Professions Code § 17200 *et seq.*, including the practices and
19 conduct referred to above. These actions constitute unlawful, unfair, and/or fraudulent
20 business acts or practices.

21 86. Plaintiff has been, and will continue to be, damaged and irreparably harmed
22 by Defendants' actions unless they are enjoined by this Court.

23 87. By reason of such wrongful acts, Plaintiff is and was, and will be in the
24 future, deprived of, among others, the profits and benefits of business relationships,
25 agreements, and transactions with various existing fans and/or prospective fans and
26 customers. Defendants have wrongfully obtained said profits and benefits. Plaintiff is
27 entitled to compensatory damages and disgorgement of Defendants' said profits, in an
28 amount to be proven at trial.

1 88. Plaintiff is informed and believes, and thereon alleges, that Defendants
2 committed the foregoing acts with the intention of depriving Plaintiff of his legal rights,
3 with oppression, fraud, and/or malice, and in conscious disregard of Plaintiff's rights.
4 Plaintiff is therefore entitled to an award of exemplary and punitive damages.

5 **SIXTH CLAIM FOR RELIEF**

6 **(Contributory Copyright Infringement)**

7 **(Against All Defendants)**

8 89. Plaintiff repeats and realleges each and every allegation contained in
9 paragraphs 1 through 42 of the Complaint as if set forth in full herein.

10 90. Defendants have been, and continue to be aware of and contributing to, the
11 infringement of the Dunham Copyrights on Defendants' websites. The Infringing
12 Products are prominently displayed and promoted on Defendants' websites. The
13 Infringing Websites are configured so that a search for "Dunham" or other Dunham trade
14 names will lead directly to the Infringing Products. Defendants create and distribute the
15 Infringing Products to the end consumers and facilitate the financial transactions. Further,
16 Plaintiff has sent DMCA notices to Defendants (including to one or more of the
17 Infringing Websites) on multiple occasions over the past two years, and while infringing
18 products have been taken down, the same and new infringing products have been put
19 back up on the Infringing Websites, in what amounts to a never-ending game of "whack-
20 a-mole."

21 91. Alternatively, Defendants have been (and continue to be) willfully blind to
22 the infringement of the Dunham Copyrights on the Infringing Websites and on the
23 products that Defendants create and distribute to the end consumer.

24 92. As a proximate result of Defendants' contributory infringement, Plaintiff has
25 suffered and continues to suffer monetary damages in an amount not yet fully
26 ascertainable but which is believed to be in excess of Ten Million (\$10,000,000) Dollars,
27 and Defendants have unlawfully profited, in an amount which cannot be accurately
28 computed at this time but will be proven at trial.

1 93. Plaintiff is entitled to all of the remedies set forth above for direct copyright
2 infringement.

3 **SEVENTH CLAIM FOR RELIEF**

4 **(Contributory Trademark and Trade Dress Infringement and Counterfeiting)**

5 **(Against All Defendants)**

6 94. Plaintiff repeats and realleges each and every allegation contained in
7 paragraphs 1 through 42 of the Complaint as if set forth in full herein.

8 95. Defendants have been, and continue to be aware of and contributing to, the
9 infringement of the Dunham Trademarks and Dunham Trade Dress on Defendants'
10 websites. The counterfeit and Infringing Products are prominently displayed and
11 promoted on Defendants' websites. The Infringing Websites are configured so that a
12 search for "Dunham" or other Dunham trade names will lead directly to the counterfeit
13 and Infringing Products. Defendants create and distribute the counterfeit and Infringing
14 Products to the end consumers and facilitate the financial transactions. Further, Plaintiff
15 has sent DMCA notices to Defendants (including to one or more of the Infringing
16 Websites) on multiple occasions over the past two years, and while infringing products
17 have been taken down, the same and new infringing products have been put back up on
18 the Infringing Websites, in what amounts to a never-ending game of "whack-a-mole."

19 96. Alternatively, Defendants have been (and continue to be) willfully blind to
20 the infringement and/or counterfeiting of the Dunham Trademarks and Dunham Trade
21 Dress on the Infringing Websites and on the products that Defendants create and
22 distribute to the end consumer.

23 97. As a proximate result of Defendants' contributory infringement and
24 counterfeiting, Plaintiff has suffered and continues to suffer monetary damages in an
25 amount not yet fully ascertainable but which is believed to be in excess of Ten Million
26 (\$10,000,000) Dollars, and Defendants have unlawfully profited, in an amount which
27 cannot be accurately computed at this time but will be proven at trial.
28

1 98. Plaintiff is entitled to all of the remedies set forth above for direct trademark
2 and trade dress infringement and counterfeiting.

3 **EIGHTH CLAIM FOR RELIEF**
4 **(Vicarious Copyright Infringement)**
5 **(Against All Defendants)**

6 99. Plaintiff repeats and realleges each and every allegation contained in
7 paragraphs 1 through 42 of the Complaint as if set forth in full herein.

8 100. Defendants directly benefit financially from the infringing activity of third
9 parties who design and upload infringing designs to the Infringing Websites. Upon
10 information and belief, Defendants get paid a percentage of every sale of every product
11 displayed on the Infringing Websites. The availability of the Infringing Products also
12 draws customers to the Infringing Websites, which causes Defendants to make money
13 both through the sale of the Infringing Products and through the sale of all goods
14 displayed on the Infringing Websites.

15 101. Defendants have the legal right to stop or limit the copyright infringement
16 on the Infringing Websites and the practical ability to do so. Defendants have the ability
17 and means to monitor the Infringing Websites and the right to remove the Infringing
18 Products. Further, Plaintiff has sent DMCA notices to Defendants (including to one or
19 more of the Infringing Websites) on multiple occasions over the past two years, and
20 while infringing products have been taken down, the same and new infringing products
21 have been put back up on the Infringing Websites, in what amounts to a never-ending
22 game of “whack-a-mole.”

23 102. As a proximate result of Defendants’ vicarious infringement, Plaintiff has
24 suffered and continues to suffer monetary damages in an amount not yet fully
25 ascertainable but which is believed to be in excess of Ten Million (\$10,000,000) Dollars,
26 and Defendants have unlawfully profited, in an amount which cannot be accurately
27 computed at this time but will be proven at trial.

1 103. To remedy Defendants' vicarious copyright infringement, Plaintiff is entitled
2 to all of the remedies set forth above for direct copyright infringement.

3 **NINTH CLAIM FOR RELIEF**

4 **(Vicarious Trademark and Trade Dress Infringement)**

5 **(Against All Defendants)**

6 104. Plaintiff repeats and realleges each and every allegation contained in
7 paragraphs 1 through 42 of the Complaint as if set forth in full herein.

8 105. Defendants, and each of them, and the third parties who are in an actual
9 and/or apparent partnership, have the authority to bind one another in transactions with
10 third parties, and/or exercise joint control or ownership over the Infringing Products.
11 Defendants are thus vicariously liable for the trademark and trade dress infringement of
12 the third parties who design and upload infringing and counterfeit designs onto the
13 Infringing Websites. Further, Plaintiff has sent DMCA notices to Defendants (including
14 to one or more of the Infringing Websites) on multiple occasions over the past two years,
15 and while infringing products have been taken down, the same and new infringing
16 products have been put back up on the Infringing Websites, in what amounts to a never-
17 ending game of "whack-a-mole."

18 106. As a proximate result of Defendants' vicarious infringement and
19 counterfeiting, Plaintiff has suffered and continues to suffer monetary damages in an
20 amount not yet fully ascertainable but which is believed to be in excess of Ten Million
21 (\$10,000,000) Dollars, and Defendants have unlawfully profited, in an amount which
22 cannot be accurately computed at this time but will be proven at trial.

23 107. To remedy Defendants' vicarious trademark and trade dress infringement
24 and counterfeiting, Plaintiff is entitled to all of the remedies set forth above for direct
25 trademark infringement and counterfeiting.

TENTH CLAIM FOR RELIEF

(Violation of California Civil Code § 3344)

(Against All Defendants)

1
2
3
4 108. Plaintiff repeats and realleges each and every allegation contained in
5 paragraphs 1 through 42 of the Complaint as if set forth in full herein.

6 109. At all times relevant hereto, Plaintiff had, and still has, the sole and
7 exclusive right to authorize and license the use of his name, image, photograph, and
8 likeness. Plaintiff never consented to the use of his name, image, photograph, or likeness
9 for any purpose or in any manner by any of the Defendants, and specifically never
10 consented to the use of his name, image, photograph, or likeness to endorse, promote,
11 advertise, sponsor or recommend in any manner the products of Defendants.

12 110. Plaintiff is informed and believes and based thereon alleges that Defendants,
13 and each of them, intentionally, negligently and/or knowingly and fraudulently caused
14 Plaintiff's name, image, photograph, and likeness to be utilized in connection with the
15 promotion or advertising of the Defendants' products.

16 111. Plaintiff is informed and believes and based thereon alleges that the manner
17 in which the Defendants' advertisements were depicted to the public was grossly
18 misleading and deceptive in that it appears that Plaintiff agreed to permit the use of his
19 name, photograph, image and likeness in the manner herein alleged or promotes and/or
20 endorses the products and/or the Defendants in the manner described when, in fact, he
21 does not consent to any of the foregoing.

22 112. Plaintiff has developed and cultivated his image and persona to create his
23 celebrity and universal recognition and Defendants, and each of them, have, without any
24 right, title or authorization, misappropriated Plaintiff's valuable publicity rights and the
25 resulting success and popularity of Plaintiff by illegally using his name, photograph,
26 image and likeness for the aforesaid commercial purpose.

27 113. The conduct of Defendants, and each of them, as alleged hereinabove,
28 constitutes a violation of California Civil Code §3344 due to the knowing and

1 unauthorized use by Defendants, and each of them, of Plaintiff's name, photograph,
2 image and likeness for commercial purposes. Plaintiff's name, photograph, image and
3 likeness have substantial commercial value and Plaintiff has received substantial monies
4 and recognition therefrom.

5 114. As a direct and proximate result of the aforesaid wrongful acts of
6 Defendants, and each of them, Plaintiff has been damaged in an amount that is not yet
7 fully ascertainable, but which is believed to be in excess of Ten Million Dollars
8 (\$10,000,000). When Plaintiff has ascertained the full amount of damages, he will seek
9 leave of Court to amend this Complaint accordingly.

10 115. As a direct and proximate result of the aforesaid wrongful acts of
11 Defendants, and each of them, Plaintiff has incurred and will continue to incur substantial
12 attorney fees and costs. Plaintiff is entitled to an award of his attorney fees and costs
13 incurred in connection with this litigation pursuant to Section 3344 of the California Civil
14 Code.

15 116. By reason of the aforesaid wrongful acts of Defendants, and each of them, in
16 addition to the relief sought hereinabove, Plaintiff is entitled to an accounting of all gross
17 revenues and profits received, directly and indirectly, by Defendants, and each of them,
18 as a result of the unauthorized use of his photograph, image and likeness and to an award
19 of all such sums. By reason of Defendants', and each of their, wrongful acts as alleged
20 hereinabove, Defendants, and each of them, are involuntary trustees holding all such
21 sums in their possession under a constructive trust for the benefit of Plaintiff with a duty
22 to transfer the same to Plaintiff forthwith.

23 117. Plaintiff is informed and believes and based thereon alleges that Defendants,
24 and each of them, in doing the things herein alleged, acted willfully, maliciously,
25 oppressively, and despicably, with fully knowledge of the adverse effect of their actions
26 on Plaintiff and with willful and deliberate disregard of the consequences to Plaintiff. By
27 reason thereof, Plaintiff is entitled to recover punitive and exemplary damages from
28 Defendants in an amount to be determined at the time of trial.

ELEVENTH CLAIM FOR RELIEF

(For Common Law Misappropriation of The Right of Publicity)

(Against All Defendants)

1
2
3
4 118. Plaintiff repeats and realleges each and every allegation contained in
5 paragraphs 1 through 42 of the Complaint as if set forth in full herein.

6 119. As alleged, Defendants have usurped, tarnished and exploited Dunham's
7 celebrity for their own wrongful purposes. Defendants have, without any right, title or
8 authorization, misappropriated Dunham's valuable publicity rights for the aforesaid
9 commercial purposes, by illegally exploiting and purporting to sell the right to exploit
10 Dunham's name, photograph, image, and likeness, with the knowledge that Dunham did
11 not authorize, approve of, or consent to such exploitation.

12 120. Defendants' conduct constitutes a violation and commercial
13 misappropriation of Dunham's common law right of publicity, in that Defendants
14 misappropriated Dunham's name, photograph, image, and likeness for the purpose of
15 commercial gain, without Dunham's knowledge or consent, knowing that Dunham would
16 strongly object.

17 121. Dunham is informed and believes and based thereon alleges that
18 Defendants' alleged misappropriation was for their financial advantage in that (1)
19 Defendants received substantial sums of money for the sale of Infringing Products that
20 exploited Dunham's name, photograph, image and likeness, (2) Defendants received
21 substantial sums of money for the sale of Infringing Products that Defendants sold due to
22 their use of Dunham's name, photograph, image, and likeness in connection with the
23 promotion, marketing, and/or advertising of the Infringing Products, and (3) Defendants'
24 unauthorized use of Dunham's name, photograph, image, and likeness were intended to
25 increase sales of all products on the Infringing Websites.

26 122. As a direct and proximate result of the aforementioned acts by Defendants,
27 Dunham has been damaged in an amount not yet fully ascertainable but which is believed
28 to be in excess of Ten Million (\$10,000,000) Dollars, including damage to the value of

1 Dunham's name, photograph, image, likeness and goodwill, and the loss of the monetary
2 consideration that would customarily be paid by Defendants to Dunham to license his
3 name, photograph, image, and likeness in connection with his endorsement or
4 sponsorship.

5 123. As a direct and proximate result of the aforementioned acts by Defendants,
6 they have earned profits attributable to the unauthorized and wrongful exploitation of
7 Dunham's name, photograph, image, and likeness and/or purported affiliation or
8 endorsement, and have thereby been unjustly enriched. The amount of said ill-gotten
9 gains and profits has yet to be ascertained. Dunham is entitled to disgorge and recover all
10 said unjust enrichments, including all revenues and profits earned by Defendants as a
11 result of their unauthorized commercial exploitation of Dunham's name, photograph,
12 image and/or likeness in violation of his right of publicity.

13 124. Based on the foregoing, the Court should require Defendants to render an
14 accounting to Dunham and the Court should impose a constructive trust on all said
15 revenues obtained directly or indirectly by Defendants resulting from the unauthorized
16 commercial exploitation of Dunham's name, photograph, image and/or likeness in
17 violation of his right of publicity. Defendants are constructive trustees holding said funds
18 in trust for Dunham.

19 125. Dunham is informed and believes and based thereon alleges that the
20 aforementioned acts of Defendants were done intentionally or with a conscious and
21 reckless disregard of Dunham's rights, and with the intent to vex, injure or annoy him,
22 such as to constitute oppression, fraud, or malice, thus entitling Dunham to exemplary
23 and punitive damages in an amount appropriate to punish or set an example of
24 Defendants and to deter such conduct in the future, the exact amount of such damages
25 subject to proof at the time of trial.

26 126. Defendants' conduct threatens to cause, is causing, and unless enjoined and
27 restrained by this Court will continue to cause Dunham great and irreparable injury that
28 cannot fully be compensated for or measured in monetary damages alone. By reason of

1 the foregoing, Dunham is entitled to temporary, preliminary and permanent injunctive
2 relief, enjoining Defendants' unauthorized exploitation of his name, photograph, image
3 and/or likeness in violation of his right of publicity.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them,
6 as follows:

7 1. For preliminary and permanent injunctions enjoining and restraining
8 Defendants, their agents, employees, representatives, partners, joint venturers, and
9 anyone acting on behalf of, or in concert with Defendants, from:

10 a. designing, manufacturing, importing, shipping, delivering, selling,
11 marketing, displaying, advertising, or promoting any product that incorporates
12 designs substantially similar to Plaintiff's copyrighted works;

13 b. designing, manufacturing, importing, shipping, delivering, selling,
14 marketing, displaying, advertising, or promoting any product that incorporates or is
15 marketed in conjunction with any Dunham Trademark or Dunham Trade Dress;

16 c. designing, manufacturing, importing, shipping, delivering, selling,
17 marketing, displaying, advertising, or promoting any product that incorporates or is
18 marketed in conjunction with Plaintiff's name, voice, image, and/or likeness.

19 d. representing or implying, directly or indirectly, to retailers, customers,
20 distributors, licensees, or any other customers or potential customers of
21 Defendants' products that Defendants' products originate with or are sponsored,
22 endorsed, or licensed by, or are otherwise associated or affiliated with, Plaintiff.

23 2. For an order requiring the destruction of all of Defendants' infringing
24 products and all marketing, advertising, or promotional materials depicting Defendants'
25 infringing products;

26 3. For an accounting of all profits obtained by Defendants from sales of the
27 infringing products and an order that Defendants hold all such profits in a construct trust
28 for the benefit of Plaintiff.

1 4. For an award to Plaintiff of all profits earned by Defendants from their
2 infringing acts;

3 5. For compensatory damages according to proof;

4 6. For statutory damages of no less than \$150,000 per registered copyright and
5 no less than \$2 Million per registered trademark;

6 7. For general and special damages for Defendants' violation of Dunham's
7 common law and statutory publicity rights, in an amount not yet fully ascertainable but
8 which is believed to be in excess of Ten Million (\$10,000,000) Dollars;

9 8. For pre-judgment and post-judgment interest on all damages awarded by this
10 Court;

11 9. For reasonable attorney's fees and costs of suit incurred herein; and

12 10. For such other and further relief as the Court deems just and proper.
13

14 Dated: April 23, 2020

LAVELY & SINGER
PROFESSIONAL CORPORATION
MARTIN D. SINGER
T. WAYNE HARMAN
JAKE A. CAMARA

15
16
17
18
19 By: /s/ Martin D. Singer
MARTIN D. SINGER
Attorneys for Plaintiff
JEFF DUNHAM
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff, individually and as Trustee of The Jeff Dunham Trust Dated March 24, 2010, respectfully requests a jury trial on all issues triable set forth in this Complaint.

Dated: April 23, 2020

LVELY & SINGER
PROFESSIONAL CORPORATION
MARTIN D. SINGER
T. WAYNE HARMAN
JAKE A. CAMARA

By: /s/ Martin D. Singer
MARTIN D. SINGER
Attorneys for Plaintiff
JEFF DUNHAM