

1 business in the County of Los Angeles, State of California. Plaintiff is further informed and believes,
2 and based thereon alleges, that Vivid is an adult film studio.

3 3. Plaintiff is ignorant of the true names and capacities, whether individual, corporate,
4 associate or otherwise, of defendants named herein as DOES 1 through 20, inclusive, and therefore
5 sues said defendants by their fictitious names. Plaintiff will amend this complaint to assert the true
6 names of said DOE Defendants when their names, capacities and acts giving rise to their liability
7 become known. Plaintiff is informed and believes, and thereon alleges, that DOE Defendants 1
8 through 20 are responsible in some manner for the acts or omissions herein alleged.

9 4. Plaintiff is informed and believes, and based thereon alleges, that at all times herein
10 mentioned, each of the defendants was the agent, servant, and employee of each of the other
11 defendants, and in doing the things hereinafter mentioned, was acting within the course and scope of
12 his, her or its authority as such agent, servant and employee, and with the ratification and consent of
13 each of them.

14 **FACTS COMMON TO ALL CAUSES OF ACTION**

15 5. This case arises from Defendants' egregious commercial exploitation and violation of
16 Plaintiff's most personal and intimate sexual relations with her former boyfriend of three years, Willy
17 Ray Norwood, Jr. ("Ray J"). Between approximately 2003 and 2005, Plaintiff, who is now a
18 television host, model, stylist, celebrity, and successful fashion retailer, and Ray J, who had already
19 been dating exclusively for several years, videotaped themselves while engaging in sexual relations
20 with each other, with the express understanding and agreement that the videotape was for their own
21 personal enjoyment, and not to be disclosed or disseminated to other third persons. Plaintiff did not
22 intend, authorize or consent to the distribution of the videotape or any reproduction thereof to any
23 other person, and Plaintiff certainly never intended or expected the videotape of her most intimate
24 acts to be made a product of commercial exploitation and mass public distribution.

25 ~~6. In or about January of 2007, Defendants announced that they had "acquired" Plaintiff's~~
26 ~~videotape for \$1 million from an unidentified third party, and that the videotape, which they have~~

1 titled "Kim Kardashian Superstar," would be available for purchase in stores and on Defendants'
 2 website on February 28, 2007. However, Defendants have already accepted "preorders" and
 3 displayed and publicized still photographs and "trailers" from the videotape on their website.
 4 Defendants have and are continuing to misappropriate and use Plaintiff's name, without her consent,
 5 as a domain name, www.kimkardashiansuperstar.com, including various permutations such as
 6 www.kimksuperstar.com and www.kimsuperstar.com, and as links to their website in an effort to
 7 confuse and mislead consumers into believing that Plaintiff has endorsed or otherwise sponsored
 8 Defendants' website and the disclosure and/or reproduction of her videotape. Furthermore,
 9 Defendants have and are continuing to exploit Plaintiff's notoriety and popularity in order to generate
 10 interest and attention to their website and to promote their sales of Plaintiff's videotape.

11 7. Despite Defendants' knowledge that Plaintiff did not consent to or authorize the
 12 disclosure or reproduction of Plaintiff's videotape, Defendants have failed and refused to return the
 13 videotape to Plaintiff and to halt its public dissemination, in violation of Plaintiff's right to privacy.
 14 Moreover, Defendants' misappropriation of Plaintiff's name and likeness as well as the associated
 15 false advertising also constitute unfair business practices. Defendants' offensive publicity,
 16 exploitation of Plaintiff's notoriety and sensational prying into Plaintiff's private life serves no
 17 legitimate interest and is not deserving of protection.

18 FIRST CAUSE OF ACTION

19 (Violation of Right to Privacy Against All Defendants)

20 8. Plaintiff hereby refers to and incorporates by this reference each and every allegation
 21 contained in paragraphs 5 through 8 of this Complaint as though set forth in full hereat.

22 9. Defendants have "acquired" a videotape depicting Plaintiff's most private and intimate
 23 sexual relations with a former boyfriend, and have already begun promoting and advertising the same
 24 on their website for commercial gain, including accepting preorders and publicizing footage from the
 25 videotape in order to generate interest and attention to their website prior to releasing the videotape
 26 on February 28, 2007, without Plaintiff's consent or authorization. Defendants have and are

1 continuing to misappropriate and use Plaintiff's name, without her consent, as a domain name,
2 www.kimkardashiansuperstar.com, including various permutations such as www.kimksuperstar.com
3 and www.kimsuperstar.com, and as links to their website in an effort to confuse and mislead
4 consumers into believing that Plaintiff had endorsed or otherwise sponsored Defendants' website and
5 the disclosure and/or reproduction of her videotape.

6 10. Despite Defendants' knowledge that Plaintiff did not consent to or authorize the
7 disclosure of Plaintiff's videotape or the use of her name and likeness, Defendants have failed and
8 refused to return the videotape to Plaintiff and to halt its public dissemination, in violation of
9 Plaintiff's right to privacy. Defendants' offensive publicity, exploitation of Plaintiff's notoriety and
10 sensational prying into Plaintiff's private life is objectionable to the reasonable person and serves no
11 legitimate public interest or concern.

12 11. As a proximate and legal result of Defendants' conduct herein alleged, Plaintiff has
13 suffered damages, including but not limited to suffering, loss of reputation and commercial value of
14 Plaintiff's name and likeness, in an amount presently unknown, but believed to be within this Court's
15 jurisdiction and will be established at trial according to proof.

16 12. Defendants' conduct, acts and/or omissions as described hereinabove were despicable,
17 offensive, outrageous, oppressive, and malicious, thereby entitling Plaintiff to recover punitive or
18 exemplary damages, in an amount to be proven at trial

19 **SECOND CAUSE OF ACTION**

20 (Common Law Right of Publicity Against All Defendants)

21 13. Plaintiff hereby refers to and incorporates by this reference each and every allegation
22 contained in paragraphs 5 through 8 and 10 through 13 of this Complaint as though set forth in full
23 hereat.

24 14. Defendants have "acquired" a videotape depicting Plaintiff's most private and intimate
25 ~~sexual relations with a former boyfriend, and have already begun promoting and advertising the same~~
26 on their website for commercial gain, including accepting preorders and publicizing footage from the

1 videotape in order to generate interest and attention to their website prior to releasing the videotape
2 on February 28, 2007, without Plaintiff's consent or authorization. Defendants have and are
3 continuing to misappropriate and use Plaintiff's name, without her consent, as a domain name,
4 www.kimkardashiansuperstar.com, including various permutations such as www.kimksuperstar.com
5 and www.kimsuperstar.com, and as links to their website in an effort to confuse and mislead
6 consumers into believing that Plaintiff has endorsed or otherwise sponsored Defendants' website and
7 the disclosure and/or reproduction of her videotape.

8 15. Despite Defendants' knowledge that Plaintiff did not consent to or authorize the
9 disclosure of Plaintiff's videotape or the use of her name and likeness, Defendants have failed and
10 refused to return the videotape to Plaintiff and to halt its public dissemination, in violation of
11 Plaintiff's right to privacy. Defendants' offensive publicity, exploitation of Plaintiff's notoriety and
12 sensational prying into Plaintiff's private life is objectionable to the reasonable person and serves no
13 legitimate public interest or concern. Furthermore, Defendants' conduct interferes with Plaintiff's
14 right to exclusive use of her name and likeness.

15 16. As a proximate and legal result of Defendants' conduct hereinabove alleged, Plaintiff
16 has suffered damages, including but not limited to suffering, loss of reputation and commercial value
17 of Plaintiff's name and likeness, in an amount presently unknown, but believed to be within this
18 Court's jurisdiction and will be established at trial according to proof.

19 17. Defendants' conduct, acts and/or omissions as described hereinabove were despicable,
20 offensive, outrageous, oppressive, and malicious, thereby entitling Plaintiff to recover punitive or
21 exemplary damages, in an amount to be proven at trial

22 **THIRD CAUSE OF ACTION**

23 (Violation of California Civil Code Section 3344 Against All Defendants)

24 18. Plaintiff hereby refers to and incorporates by this reference each and every allegation
25 contained in paragraphs 5 through 8, 10 through 13, and 15 through 18 of this Complaint as though
26 set forth in full hereat.

1 19. Defendants have knowingly and intentionally used Plaintiff's name and likeness in
2 promoting and advertising on their website in order to promote and solicit sales of Plaintiff's
3 videotape, without Plaintiff's consent, for Defendants' own commercial gain. Defendants have and
4 are continuing to misappropriate and use Plaintiff's name, without her consent, as a domain name,
5 www.kimkardashiansuperstar.com, including various permutations such as www.kimksuperstar.com
6 and www.kimsuperstar.com, and as links to their website in an effort to confuse and mislead
7 consumers into believing that Plaintiff has endorsed or otherwise sponsored Defendants' website and
8 the disclosure and/or reproduction of her videotape.

9 20. Despite Defendants' knowledge that Plaintiff did not consent to or authorize the
10 disclosure of Plaintiff's videotape or use of her name and likeness, Defendants have failed and
11 refused to return the videotape to Plaintiff and to halt its public dissemination. Defendants' offensive
12 publicity, exploitation of Plaintiff's notoriety and sensational prying into Plaintiff's private life is
13 objectionable to the reasonable person and serves no legitimate public interest or concern.

14 21. As a proximate and legal result of Defendants' conduct hereinabove alleged, Plaintiff
15 has suffered damages, including but not limited to suffering, loss of reputation and commercial value
16 of Plaintiff's name and likeness, in an amount presently unknown, but believed to be within this
17 Court's jurisdiction and will be established at trial according to proof.

18 22. Defendants' knowing and intentional misappropriation of Plaintiff's name and likeness
19 was conducted with malice, oppression and fraud, and in conscious disregard of Plaintiff's rights. As
20 such, Plaintiff is entitled to punitive damages in an amount to be proven at trial.

21 23. Plaintiff is also entitled to Defendants' profits from the unauthorized use of Plaintiff's
22 name and likeness as well as her attorney's fees and costs incurred.

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COMPLAINT

1283-00203316

LEVINSON ARSHONSKY & KURTZ, LLP

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FOURTH CAUSE OF ACTION

(Unfair Competition Against All Defendants)

24. Plaintiff hereby refers to and incorporates by this reference each and every allegation contained in paragraphs 5 through 8, 10 through 13, 15 through 18, and 20 through 24 of this Complaint as though set forth in full hereat.

25. Defendants' egregious violation of Plaintiff's right to privacy, knowing and intentional misappropriation of Plaintiff's name and likeness in publicizing and promoting Plaintiff's private sexual relations without her consent, which are among the most personal and intimate of acts, and exploiting Plaintiff's notoriety to attract attention to Defendants' website constitutes unfair business practices in violation of California Business and Professions Code Sections 17200, *et seq.*

26. Furthermore, Defendants' use of Plaintiff's name as a domain name in order to falsely suggest and advertise to consumers that Plaintiff has endorsed or otherwise sponsored Defendants' website has caused confusion in the marketplace and constitutes false advertising in violation of Business and Professions Code section 17500.

27. As a result of Defendants' unfair business practices, including exploitation of Plaintiff's name, likeness and privacy rights as well as false advertising, Plaintiff has suffered injury and damage to her reputation and commercial value of her name and likeness in amounts presently unascertained, but within the jurisdiction of this Court. Furthermore, Defendants have reaped unfair benefits and illegal profits at Plaintiff's expense. Defendants should be made to disgorge their ill-gotten gains to Plaintiff.

28. Unless restrained, Defendants will continue to so act with said intent and to Plaintiff's further injury and damages. Thus, Plaintiff is entitled to preliminary and permanent injunctive relief including, but not limited to, orders that Defendants cease all further use and exploitation of Plaintiff's name and likeness, and that Defendants account for and disgorge the unlawfully gained profits relating to such unauthorized use.

COMPLAINT

LEVINSON ARSHONSKY & KURTZ, LLP

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

- 2 1. For general damages according to proof;
- 3 2. For exemplary and punitive damages according to proof;
- 4 3. For attorney's fees according to proof;
- 5 4. For all profits attributable to Defendants' authorized use of Plaintiff's name and
- 6 likeness;
- 7 5. For a temporary restraining order and preliminary and permanent injunctions
- 8 restraining and enjoining Defendants, and each of them, and their agents, servants, employees, and all
- 9 persons acting in concert or in participation with them, and each of them, during the pendency of this
- 10 action, and permanently thereafter:
- 11 (a) From disclosing or using Plaintiff's name and likeness in any manner for any purpose;
- 12 (b) From unfairly competing with Plaintiff with the commercial use of her name and likeness by
- 13 deceiving or confusing the public or by any other means; and
- 14 (c) From representing that Defendants had or ever obtained Plaintiff's authorization or consent for
- 15 the use of her name and likeness, or sale of her videotape.
- 16 6. For costs of suit incurred herein; and
- 17 7. For such other relief as this Court deems just and proper.

18 Dated: February 21, 2007 LEVINSON ARSHONSKY & KURTZ, LLP

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 20 By: *Karol H. Ingber*
 21 STEVEN N. KURTZ
 22 KAROL H. INGBER
 23 Attorneys for Plaintiff KIMBERLY KARDASHIAN
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