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8 Complainants

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

11
12 MGA Entertainment Inc.,

13 Plaintiff,

14 vs.
15

16 Clifford “T.I.” Harris, Tameka “Tiny”
17 Harris, and OMG Girlz LLC, and Does
18 1-10 inclusive,

19 Defendants.

20
21 Grand Hustle, LLC, Pretty Hustle, LLC
22 and OMG Girlz LLC,

23 Counterclaimants,

24 MGA Entertainment Inc., Isaac Larian,
25 and Does 1-10 inclusive,

26 Counterdefendants.
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CASE NO. 2:20-cv-11548-JVS-AGR

**DEFENDANTS’ ANSWER TO
COMPLAINT AND
COUNTERCLAIM**

DEMAND FOR JURY TRIAL

1 **PRELIMINARY STATEMENT TO ANSWER AND COUNTER-CLAIM**

2 1. Defendants Grand Hustle LLC, incorrectly sued as Clifford “T.I.”
3 Harris, and Pretty Hustle LLC, also doing business as the OMG Girlz LLC,
4 incorrectly sued as Tameka “Tiny” Harris, answer and counter-claim against MGA
5 Entertainment Inc., a toy and doll producer -- and its controlling owner, Isaac
6 Larian.¹

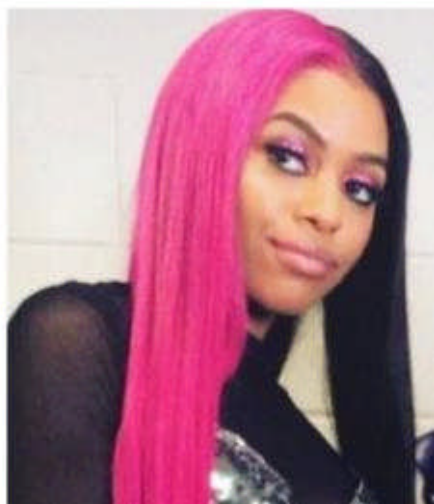
7 2. Larian and MGA (“MGA”) have engaged in both cultural
8 appropriation and outright theft of the intellectual property, brand and image of a
9 musical recording group of young multicultural women known as the OMG Girlz.
10 After MGA announced years ago that they would create a line of dolls modelled
11 after the OMG Girlz, MGA has now done so, advertising its toys as “OMG” Dolls.
12 But MGA has released the OMG Dolls with no compensation or recognition to the
13 OMG Girlz’ creators.

14 3. A comparison of examples of the images of the young multicultural
15 women who comprise the OMG Girlz with photos of the OMG Dolls modelled
16 after them makes clear that the OMG Dolls were intentionally designed to trade on
17 the OMG Girlz likeness and brand.



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28 ¹ Named Defendants “Clifford “T.I.” Harris, Tameka “Tiny” Harris and the “OMG Girlz LLC”, to avoid waiver of any rights despite being incorrectly named, join in this answer and mandatory counterclaim while not conceding personal jurisdiction.

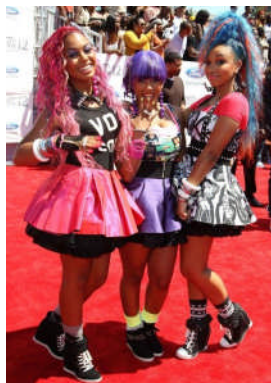
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1 4. In a vast advertising campaign on You Tube and other social media
2 outlets, animated OMG Dolls – sometimes also identified as “L.O.L. Dolls” – sing
3 and perform as young musical artists strikingly similar to the OMG Girlz. The
4 animated OMG Dolls copy the OMG Girlz’ distinctive hair styles and hair colors,
5 fashion dresses and outfits, and musical recordings in hip-hop genre released by the
6 OMG Girlz. By this marketing, MGA drives consumers to purchase its OMG Dolls
7 on-line and at retail outlets—toys which similarly merchandise and copy the trade
8 dress, name and brand of the OMG Girlz without consent. A Google search for
9 “OMG Girlz dolls” directs consumers to MGA “L.O.L” and “OMG” products and
10 videos.

11 5. In or around 2009, Grand Hustle LLC and Pretty Hustle LLC also
12 doing business as OMG Girlz LLC (“Grand Hustle and Pretty Hustle”) developed a
13 recording and performance group of three young women of color that they named
14 the OMG Girlz.

15 6. Grand Hustle and Pretty Hustle released OMG Girlz musical
16 recordings and promoted OMG Girlz music performance tours. Recordings and
17 performances by the OMG Girlz are currently publicly available through all Digital
18 Music platforms including, but not limited to, Spotify, Apple Music, Soundcloud,
19 Amazon, Music, YouTube, and all social media platforms. The OMG Girlz brand
20 has received widespread recognition through their performances, which
21 prominently feature unique fashion design, visual image and hair styling blatantly
22 copied by MGA’s OMG Dolls.



1 7. The OMG Girlz have been featured on both Black Entertainment
2 Television’s (“BET”) “The Tiny & Toya Show,” where they first appeared in 2009,
3 and VH1’s “T.I. & Tiny: The Family Hustle.” Their release of the single, “GUCCI
4 THIS (GUCCI THAT),” and their performance on the “SCREAM Tour,” garnered
5 them nationwide popularity.

6 8. The OMG Girlz’ first video, “GUCCI THIS (GUCCI THAT),”
7 received 15,504,509 views, was an instant hit on the Top 10 list of BET’s 106 &
8 Park <http://www.vevo.com/watch/the-omg-girlz/gucci-this-gucci->
9 [that/USUV71200123](http://www.vevo.com/watch/the-omg-girlz/gucci-this-gucci-that/USUV71200123)). Their viral video for the song, “Pretty Girl Bag,” also
10 gained 6,083,206 million views on YouTube. Lady Gaga proclaimed to her 20
11 million- plus followers via twitter that she was “obsessed with these little cuties.”

12 9. “Tiny and Toya,” an American reality series featured the OMG Girlz
13 and drew in more than three million viewers for its debut episode, the highest-rated
14 series debut in BET history.

15 10. “T.I. & Tiny: The Family Hustle,” which premiered on VH1 on
16 December 5, 2011, also featured the OMG Girlz and had aired more than 100
17 episodes as of May of 2017.

18 11. MGA noted the commercial success of the OMG Girlz. At a “Saving
19 our Daughters Bratz Toy Giveaway” held at Radio One Atlanta on December 18,
20 2010, MGA publicly announced MGA’s specific intention to launch a line of dolls
21 modelled on the OMG Girlz.

22 12. Grand Hustle and Pretty Hustle did not object to merchandising the
23 OMG Girlz with OMG dolls pursuant to an industry-standard licensing agreement.
24 Grand Hustle and Pretty Hustle believed that all children could benefit from
25 exposure to dolls resembling the OMG Girlz and the positive image of girls of
26 color they represented.

27 13. But no agreement was reached between MGA and Grand Hustle and
28 Pretty Hustle in 2010 or thereafter.

1 APPROPRIATION 1, 1 (Bruce Ziff & Pratima V. Rao eds., 1997) (quotation
2 omitted).)

3 20. In its broadest sense, “cultural appropriation” means “taking an
4 existing cultural form from one social group and replaying it in another with
5 different meanings or practices: perhaps taking the tune and playing it in a different
6 key or at a different tempo so that it becomes something different, yet still the
7 same.” (Sally Engle Merry, *New Direction: Law, Culture, and Cultural*
8 *Appropriation*, 10 YALE J.L. & HUMAN. 575, 585 (1998).) “The concept of
9 cultural appropriation has been developed in the field of intellectual property to
10 refer to processes by which dominant groups take, and often profit from, the
11 artistic, musical, and knowledge productions of subordinate groups. (*Id.* at 585-86.)

12 21. “Cultural appropriation . . . is harmful to the source community whose
13 cultural product is appropriated by another group.” (Sari Sharoni, *The Mark of a*
14 *Culture: The Efficacy and Propriety of Using Trademark Law to Deter Cultural*
15 *Appropriation*, 26 FED. CIR. B.J. 407, 413 (2016).) “[D]ominant cultures’
16 appropriation of non-disparaging cultural products often causes source
17 communities to suffer an economic harm because they are generally not
18 compensated for the commercial use of their product, and they may even be
19 disabled from using their own cultural product in commerce.” (*Ibid.* (footnote
20 omitted).) “When the appropriator is a dominant group in society, and the source
21 community is subordinate, the appropriator’s assumption of control over the
22 meaning of the source community’s product is said to entrench ‘systems of
23 dominance and control that have been used to colonize, subdue and destroy’ the
24 source community.” (*Id.* at 414 (quotation omitted).) “The ‘taking of a peoples’
25 cultural symbols is akin to a taking of control over the people’ because the people is
26 no longer able to define itself and establish its own identity.” (*Ibid.* (footnote
27 omitted).)

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1 22. “[T]he process of cultural appropriation as it relates to Black music
2 involves not so much a ‘borrowing’ as a virtual ‘strip-mining’ of Black musical
3 genius and esthetic innovation.” (Perry A. Hall, *African-American Music*
4 *Dynamics of Appropriation and Innovation*, in *BORROWED POWER* at 33.)

5 23. MGA’s stealing from, rather than collaborating with the Black creators
6 who over many years worked to develop the OMG Girlz brand, is a classic example
7 of cultural appropriation. This conduct is legally actionable for MGA’s unlawful
8 copying and dilution of the OMG Girlz brand, misappropriation of name and
9 likeness, unfair competition and fraud.

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ANSWER TO COMPLAINT

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1. Defendants deny with respect to each and every allegation of MGA’s complaint that Clifford “T.I.” Harris and Tameka “Tiny” Harris individually are proper parties to this action, but otherwise:

2. Admit that MGA has filed suit claiming intellectual property rights to the OMG Dolls but otherwise deny every allegation in paragraph 1.

3. Admit the allegations in paragraph 2.

4. Deny the allegations in paragraph 3.

5. Deny the allegations in paragraph 4.

6. Lack information sufficient to form a belief and on that basis deny the allegations in paragraph 5.

7. Admit that Counterclaimants Grand Hustle, LLC, Pretty Hustle, LLC also doing business as OMG Girlz LLC hold the intellectual property (and all related rights) to the OMG Girlz but otherwise deny the allegations in paragraph 6.

8. Admit that OMG GIRLZ LLC is a Delaware limited liability company but otherwise deny the allegations of paragraph 7.

9. Deny the allegations in paragraph 8.

10. Deny the allegations in paragraph 9.

1 11. Deny the allegations in paragraph 10.

2 12. Lack information sufficient to form a belief and on that basis deny the
3 allegations in paragraph 11.

4 13. Lack information sufficient to form a belief and on that basis deny the
5 allegations in paragraph 12.

6 14. Lack information sufficient to form a belief and on that basis deny the
7 allegations in paragraph 13.

8 15. Lack information sufficient to form a belief and on that basis deny the
9 allegations in paragraph 14.

10 16. Lack information sufficient to form a belief and on that basis deny the
11 allegations in paragraph 15.

12 17. Lack information sufficient to form a belief and on that basis deny the
13 allegations in paragraph 16.

14 18. Lack information sufficient to form a belief and on that basis deny the
15 allegations in paragraph 17.

16 19. Lack information sufficient to form a belief and on that basis deny the
17 allegations in paragraph 18.

18 20. Lack information sufficient to form a belief and on that basis deny the
19 allegations in paragraph 19.

20 21. Lack information sufficient to form a belief and on that basis deny the
21 allegations in paragraph 20.

22 22. Lack information sufficient to form a belief and on that basis deny the
23 allegations in paragraph 21.

24 23. Lack information sufficient to form a belief and on that basis deny the
25 allegations in paragraph 22.

26 24. Lack information sufficient to form a belief and on that basis deny the
27 allegations in paragraph 23.

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1 25. Lack information sufficient to form a belief and on that basis deny the
2 allegations in paragraph 24.

3 26. Admit that Defendants’ counsel sent a confidential letter plainly
4 marked “PRIVILEGED AND CONFIDENTIAL, FOR SETTLEMENT
5 PURPOSES ONLY” to Isaac Larian and MGA seeking a response concerning,
6 *inter alia*, a licensing agreement. Defendants otherwise object to the
7 characterization of words taken out of context from the settlement letter, and on
8 that basis deny the allegations in paragraph 25.

9 27. Deny the allegations in paragraph 26.

10 28. Admit that Defendants’ counsel sent a confidential letter plainly
11 marked “PRIVILEGED AND CONFIDENTIAL, FOR SETTLEMENT
12 PURPOSES ONLY” to Isaac Larian and MGA seeking a response concerning,
13 *inter alia*, a licensing agreement. Defendants otherwise object to the
14 characterization of words taken out of context from the settlement letter, and on
15 that basis deny the allegations of paragraph 27.

16 29. Admit that Defendants’ counsel sent a confidential letter plainly
17 marked “PRIVILEGED AND CONFIDENTIAL, FOR SETTLEMENT
18 PURPOSES ONLY” to Isaac Larian and MGA seeking a response concerning,
19 *inter alia*, a licensing agreement. Defendants otherwise object to the
20 characterization of words taken out of context from the settlement letter, and on
21 that basis deny the allegations in paragraph 28.

22 30. Deny the allegations in paragraph 29.

23 31. Deny the allegations in paragraph 30.

24 32. Deny the allegations in paragraph 31.

25 33. Deny OMG Girlz are popularly known as “Officially Miss Guided”
26 and deny the remaining allegations of paragraph 32.

27 34. Deny the allegations in paragraph 33.

28 35. Deny the allegations in paragraph 34.

1 36. Deny the allegations in paragraph 35.

2 37. Lack information sufficient to form a belief and on that basis deny the
3 allegations in paragraph 36.

4 38. Deny the allegations in paragraph 37.

5 39. Lack information sufficient to form a belief and on that basis deny the
6 allegations in paragraph 38.

7 40. Lack information sufficient to form a belief and on that basis deny the
8 allegations in paragraph 39.

9 41. Deny the allegations in paragraph 40.

10 42. Deny the allegations in paragraph 41.

11 43. Lack information sufficient to form a belief and on that basis deny the
12 allegations in paragraph 42.

13 44. Admit the allegations in paragraph 43.

14 45. Deny the allegations in paragraph 44.

15 46. Deny the allegations in paragraph 45.

16 47. Deny the allegations in paragraph 46.

17 48. Deny the allegations in paragraph 47.

18 49. Incorporate paragraphs 1-24 of the Preliminary Statement and their
19 responses to paragraphs 1 through 48 of the Complaint.

20 50. Admit that Counterclaimants Grand Hustle and Pretty Hustle also
21 doing business as OMG Girlz LLC hold the intellectual property (and all related
22 rights) to the well-known OMG Girlz name and the distinctive style and visual
23 appearance of the OMG Girlz members and the trade dress associated with the
24 OMG Girlz name, brand, image and style.

25 51. Admit that counsel for the Defendants sent a confidential letter plainly
26 marked "PRIVILEGED AND CONFIDENTIAL, FOR SETTLEMENT
27 PURPOSES ONLY" to Isaac Larian and MGA seeking a response concerning,
28 *inter alia*, a licensing agreement. Defendants otherwise object to the

1 characterization of words taken out of context from the settlement letter, and on
2 that basis deny the allegations of paragraph 50.

3 52. Admit that MGA asserts the denial stated in paragraph 51.

4 53. Admit that counsel for the Defendants sent a confidential letter plainly
5 marked “PRIVILEGED AND CONFIDENTIAL, FOR SETTLEMENT
6 PURPOSES ONLY” to Isaac Larian and MGA seeking a response concerning,
7 *inter alia*, a licensing agreement. Defendants otherwise object to the
8 characterization of words taken out of context from the settlement letter, and on
9 that basis deny the allegations of paragraph 52.

10 54. Lack information sufficient to form a belief and on that basis deny.

11 55. Admit that MGA seeks the declaration it asserts in Paragraph 54.

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AFFIRMATIVE DEFENSES

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Defendants allege the following affirmative defenses to the claim set forth in
15 MGA’s Complaint.

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FIRST AFFIRMATIVE DEFENSE

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(Failure to State a Claim)

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1. Plaintiff’s claim is barred in whole or in part because the Complaint
19 fails to state a claim upon which relief can be granted.

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SECOND AFFIRMATIVE DEFENSE

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(Priority)

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2. Plaintiff’s claim is barred by Defendants’ senior rights.

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THIRD AFFIRMATIVE DEFENSE

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(Statute of Limitations and/or Laches)

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3. Plaintiff’s claim is barred, in whole or in part, by the applicable statute
26 of limitations and/or the doctrine of laches.

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FOURTH AFFIRMATIVE DEFENSE

(Estoppel)

4. Plaintiff's claim is barred, in whole or in part, by the doctrine of estoppel.

FIFTH AFFIRMATIVE DEFENSE

(Waiver)

5. Plaintiff's claim is barred, in whole or in part, by the doctrine of waiver.

SIXTH AFFIRMATIVE DEFENSE

(Unclean Hands)

6. Plaintiff's claim is barred, in whole or in part, by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

(Standing)

7. Plaintiff's claim is barred, in whole or in part, because Plaintiff lacks standing.

EIGHTH AFFIRMATIVE DEFENSE

(Failure to name necessary parties)

8. Plaintiff has sued the incorrect parties and has failed to include necessary parties.

NINTH AFFIRMATIVE DEFENSE

(Lack of Personal Jurisdiction)

9. Plaintiff's claims are barred by lack of personal jurisdiction over the named Defendants.

RESERVATION OF RIGHTS

10. Defendants reserve their right to assert additional affirmative defenses in the event Defendants learn, obtain, or discovers facts or information upon which

1 such affirmative defenses may be based, including information learned or obtained
2 through discovery or further investigation.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Defendants pray for judgment as follows:

- 5 1. That Plaintiff take nothing by reason of its Complaint.
6 2. That judgment be rendered in favor of Defendants;
7 3. That Defendants recover their reasonable costs of suit, fees, interest,
8 and attorneys' fees incurred in defending this action; and
9 4. For such other and further relief as the Court deems just and proper.

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COUNTERCLAIMS

1. Counterclaimants GRAND HUSTLE, LLC (sued incorrectly as Clifford “T.I.” Harris) and PRETTY HUSTLE, LLC also doing business as OMG Girlz LLC (sued incorrectly as Tameka “Tiny” Harris), (collectively “Grand Hustle and Pretty Hustle” or the “OMG Parties”) incorporate by reference paragraphs 1-23 of the “Preliminary Statement” in this pleading, and additionally allege as follows.

NATURE OF THE ACTION

2. Through hard work and creativity, Grand Hustle and Pretty Hustle created and developed a unique, distinctive and original musical performing group called the “OMG Girlz”. The OMG Girlz have released music singles, music videos, performed live on tour and made television appearances. They continue to enjoy a significant fan base. Grand Hustle and Pretty Hustle hold the intellectual property rights, and all related rights, to the well-known name and striking visual image and likeness of the OMG Girlz.

3. Counterdefendant MGA Entertainment Inc. (“MGA”) is a multi-billion dollar, privately-held corporation controlled by counterdefendant Isaac Larian, which manufactures toys, including dolls. (MGA and Larian are collectively referenced herein as “MGA”).

4. In 2010, MGA publicly announced that it would launch a line of dolls modelled on the OMG Girlz. MGA never entered into a licensing agreement with Grand Hustle and Pretty Hustle and has refused even to discuss any form of compensation for this misappropriation.

5. Instead, in 2019, MGA unilaterally launched its infringing OMG Dolls. MGA’s OMG Dolls bear an unmistakable likeness to the OMG Girlz in name, visual appearance, depiction of the girl dolls as musical performers and imitation of the OMG Girlz’ musical songs in animated videos songs and in certain OMG Dolls toys that can play recorded songs.

1 Counterdefendants were acting at all times with the knowledge, consent, and
2 authorization of each of the other Counterdefendants.

3 13. Upon information and belief, at all times relevant herein,
4 Counterdefendants, including Does 1 through 10, inclusive, and each of them, are
5 the alter egos of each other; are characterized by a unity of interest in ownership
6 and control among themselves such that any individuality and separateness between
7 them have ceased; are a mere shell instrumentality and conduit through which
8 Counterdefendants carried on their business by use of each other's names;
9 completely controlled, dominated, managed, and operated each other's business to
10 such an extent that any individuality or separateness of the Counterdefendants does
11 not and did not exist; completely failed to observe any corporate formalities; and
12 intermingled the assets of each other, and other entities affiliated with them, to suit
13 the convenience of themselves and in order to evade legal obligations and liability.

14 **JURISDICTION AND VENUE**

15 14. This Court has federal subject matter jurisdiction pursuant to 28
16 U.S.C. sections 1331 and 1338(a) because it involves claims arising under the
17 Lanham Act, 15 U.S.C. section 1051 et seq.

18 15. The Court has personal jurisdiction over the Counterdefendants
19 because each of them is domiciled in and/or regularly transacts or solicits business
20 in the State of California.

21 16. Pursuant to 28 U.S.C. section 1391, venue is proper in this district
22 because: (1) all Counterdefendants reside in this State and one Counterdefendant
23 resides in this District; and/or (2) a substantial part of the events or omissions
24 giving rise to the claim occurred in this District.

25 **FIRST COUNTERCLAIM**

26 **(Violation of the Lanham Act, 15 U.S.C. § 1125)**

27 17. Counterclaimants repeat and reallege paragraphs 1 through 23 of the
28 "Preliminary Statement" in this pleading as if fully set forth herein.

1 18. Grand Hustle and Pretty Hustle created and developed the OMG Girlz
2 as a unique, distinctive and original musical performing group and the OMG Girlz
3 have achieved nationwide fame and popularity.

4 19. Grand Hustle and Pretty Hustle hold the intellectual property rights
5 (and all related rights) to the well-known OMG Girlz name, the distinctive style
6 and visual appearance of the OMG Girlz, and the trade dress associated with the
7 OMG Girlz name, brand, image and style. The trade dress includes the names and
8 images associated by fans with the OMG Girlz, including, without limitation:
9 (i) the acronym “OMG” combined with “Girlz”, a name trademarked to identify a
10 young, female (“girls”) musical recording and performance group; (ii) unique hair
11 colors, hair styling and wardrobes creating a distinctive image for the multicultural
12 OMG girls; (iii) music with female vocals and unique rhythm and cadence recorded
13 and released in songs by the OMG Girlz; (iv) images of the OMG Girlz on musical
14 performance tours and in celebrity events as depicted in their television
15 performances and social media releases.

16 20. MGA’s infringing OMG Dolls copy this trade dress in physical toys
17 and animated videos which MGA has widely disseminated and continues to
18 disseminate.

19 21. MGA’s infringing OMG Dolls have commercially exploited the
20 existing trade dress, name, image and brand popularity of the OMG Girlz.

21 22. On information and belief, Isaac Larian is the principal owner of
22 privately-owned MGA, and Larian is principally responsible as the driving force
23 for making the decisions to distribute OMG Dolls that infringe on the OMG Girlz
24 brand. On information and belief, Isaac Larian is also principally responsible and
25 the driving force for deciding not to grant any license or recognition to the Black
26 creators of the OMG Girlz brand. Accordingly, on information and belief, Larian
27 has personal liability for the unlawful acts alleged here, which he has personally
28 authorized and directed.

1 distinctive style and visual appearance of each OMG Girlz member and the trade
2 dress associated with the OMG Girlz name, brand, image and style.

3 31. MGA has knowingly sold, offered for sale and manufactured the
4 infringing OMG Dolls which bear the names and/or likenesses of the OMG Girlz.
5 MGA has also used said names and/or likenesses in advertising for MGA's goods.

6 32. MGA acted without consent to use the names and/or likenesses of the
7 OMG Girlz on any items and/or in connection with advertising for any goods.

8 33. MGA has violated California Civil Code section 3344 by knowingly
9 appropriating, using and exploiting the names and/or likenesses of the OMG Girlz
10 on the infringing OMG Dolls which MGA has sold, offered for sale, manufactured
11 and/or distributed or in advertising for any goods for MGA's commercial benefit
12 without the consent of the OMG Parties.

13 34. As a result of the infringing activities, MGA has deprived the OMG
14 Parties of the right to control the time, place, terms and manner by which to
15 publicize said parties' special talents.

16 35. MGA has acted willfully, with malice and in conscious disregard of
17 the OMG Parties.

18 36. The OMG Parties will suffer irreparable harm and injury as a result of
19 MGA's infringing activities.

20 37. The OMG Parties also seek reasonable attorneys' fees and costs.

21 **THIRD COUNTERCLAIM**

22 **(Common Law Misappropriation of Name or Likeness)**

23 38. Counterclaimants repeat and reallege paragraphs 1 through 23 of the
24 Preliminary Statement and 1 through 37 of this Counterclaim as if fully set forth
25 herein.

26 39. The OMG Parties hold the intellectual property rights (and all related
27 rights) to the well-known OMG Girlz name and likeness and the distinctive style
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1 and visual appearance of each OMG Girlz member and the trade dress associated
2 with the OMG Girlz name, brand, image and style.

3 40. MGA has knowingly sold, offered for sale and/or manufactured the
4 infringing OMG Dolls which bear the names and/or likenesses of the OMG Girlz.
5 MGA has also used said names and/or likenesses in advertising for MGA's goods.

6 41. MGA has used these likenesses without consent.

7 42. MGA has violated California Civil Code section 3344 by knowingly
8 appropriating, using and exploiting the names and/or likenesses of the OMG Girlz
9 on the infringing OMG Dolls which MGA sold, offered for sale, manufactured
10 and/or distributed or in advertising for any goods for MGA's commercial benefit
11 without the consent of the OMG Parties.

12 43. As a result of the infringing activities, MGA has deprived the OMG
13 Parties of the right to control the time, place, terms and manner by which to
14 publicize said parties' special talents.

15 44. MGA acted willfully, with malice and in conscious disregard of the
16 OMG Parties.

17 45. Due to MGA's conduct, the OMG Parties have suffered and continue
18 to suffer irreparable harm. Unless this Court enjoins MGA's activities, the OMG
19 Parties will continue to suffer irreparable harm and injury and accordingly seek to
20 enjoin MGA, absent an appropriate licensing agreement, from further acts as
21 alleged herein, and seek all available damages, fees and costs.

22 **FOURTH COUNTERCLAIM**

23 **(Unfair Competition, *Cal. Bus. & Prof. Code* § 17200 et seq.)**

24 46. Counterclaimants repeat and reallege paragraphs 1 through 23 of the
25 Preliminary Statement and 1 through 45 of this Counterclaim as if fully set forth
26 herein.

27 47. California's Statutory Unfair Competition Law, Business &
28 Professions Code section 17200, et seq. ("UCL") proscribes any unlawful, unfair or

1 fraudulent business act or practice and unfair, deceptive, untrue or misleading
2 advertising.

3 48. An unlawful business practice includes anything that can properly be
4 called a business practice and that at the same time is forbidden by law. A business
5 practice is fraudulent within the meaning of section 17200 if members of the public
6 are likely to be deceived.

7 49. The UCL protects the public's right to protection from fraud, deceit,
8 and unlawful conduct.

9 50. MGA's willful, knowing and unauthorized promotion, advertisement,
10 sale and offering for sale of the infringing OMG Dolls is causing confusion as to
11 the source of the goods; is causing harm to the OMG Parties' goodwill; and is an
12 unlawful appropriation of the OMG Parties' exclusive rights in the OMG mark and
13 trade dress.

14 51. MGA's conduct constitutes unfair trade practices and unfair
15 competition under the UCL.

16 52. MGA acted willfully, with malice and in conscious disregard of the
17 OMG Parties. As such, the OMG Parties are entitled to appropriate damages in an
18 amount to be proven at trial.

19 53. Due to MGA's conduct, the OMG Parties have suffered and continue
20 to suffer irreparable harm. Unless this Court enjoins MGA's activities, the OMG
21 Parties will continue to suffer irreparable harm and injury and accordingly seek an
22 injunction, absent an appropriate licensing agreement, against MGA from
23 committing future unlawful acts as alleged here.

24 **FIFTH COUNTERCLAIM**

25 **(Common Law Unfair Competition)**

26 54. Counterclaimants repeat and reallege paragraphs 1 through 23 of the
27 Preliminary Statement and 1 through 53 of this Counterclaim as if fully set forth
28 herein.

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, demand is hereby made for a trial by jury in the above-styled action of all issues triable by jury.

DATED: February 22, 2021

Peter L. Haviland

By: /s/ Peter L. Haviland
Attorneys for Defendants and Cross-Complainants