

1 VICTOR K. SAPHIRE (SBN 218634)
2 Email: vsapphire@mrlp.com
3 MICHELMAN & ROBINSON, LLP
4 10880 Wilshire Blvd., 19th Floor
5 Los Angeles, CA 90024
6 Telephone: (310) 564-2670
7 Facsimile: (310) 564-2671

8 Attorneys for Plaintiffs
9 OLIVIA IRENE GONZALES p/k/a
10 CHACHI GONZALES, and THE CHACHI
11 GONZALES BRANDS LLC.

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 OLIVIA IRENE GONZALES, a United
15 States individual, THE CHACHI
16 GONZALES BRANDS LLC, a Texas
17 limited liability company,

18 Plaintiffs,

19 v.

20 GUADALUPE GONZALES, an
21 individual, and CHACHIMOMMA INC.,
22 an unincorporated Texas company by its
23 agent GUADALUPE GONZALES; and
24 DOES 1-10, inclusive,

25 Defendants.

CASE NO. _____

COMPLAINT AND DEMAND FOR
INJUNCTIVE RELIEF AND
DAMAGES FOR:

1. TRADEMARK INFRINGEMENT – 15 U.S.C. § 1114;
2. FALSE DESIGNATION OF ORIGIN AND/OR UNFAIR COMPETITION – 15 U.S.C. § 1125(a) AND COMMON LAW;
3. MISREPRESENTATION AND PASSING OFF – 15 U.S.C. § 1125(a) AND COMMON LAW;
4. TRADEMARK INFRINGEMENT – AT COMMON LAW;
5. UNFAIR COMPETITION – CAL. BUS. AND PROF. CODE §§ 17200 ET SEQ. AND COMMON LAW;
6. MISAPPROPRIATION OF NAME AND LIKENESS – CAL CIV. CODE § 3344 ET SEQ.;
7. VIOLATION OF RIGHT OF PUBLICITY – CAL. CIV. CODE § 3344 ET SEQ.;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 8. VIOLATION OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT – TEX. BUS. & COM. CODE § 17.46
- 9. FALSE ADVERTISING – CAL. BUS. & PROF. CODE §§ 17500 ET SEQ.

JURY TRIAL DEMANDED

1 Plaintiffs Olivia Gonzales p/k/a Chachi Gonzales (“CHACHI”), and The
2 Chachi Gonzales Brands, LLC (“CGB”) (collectively, “Plaintiffs”) complain and
3 allege as follows:

4 **PARTIES**

5 1. Plaintiff CHACHI is a United States individual, with her principal
6 place of residence located in Los Angeles County, California.

7 2. Plaintiff CGB is a Texas limited liability company authorized to do
8 business and currently doing business in the State of California, with its principal
9 place of business located at 645 W. 9th Street 110-124, Los Angeles, California
10 90015.

11 3. Plaintiffs are informed and believe, and thereupon allege, that
12 defendant GUADALUPE GONZALES is a United States individual, with her
13 principal place of residence located in Harris County, Texas.

14 4. Plaintiffs are informed and believe, and thereupon allege, that
15 defendant CHACHIMOMMA INC. ("CMI") is an unincorporated business currently
16 doing business in California, with a principal place of business located at 4103
17 Norfolk St., Houston, Texas 77027. GUADALUPE GONZALES and CMI are
18 hereafter collectively referred to as "CMI" and/or Defendants.

19 5. Plaintiffs are unaware of the actions, names and/or true capacities of
20 Defendants, whether individual, corporate and/or partnership entities, named herein
21 as DOES 1 through 10, inclusive (the "DOE Defendants"), and therefore sue them
22 by their fictitious names. Plaintiffs will seek leave to amend this complaint when
23 their actions and/or true names and capacities are ascertained. Plaintiffs are
24 informed and believe, and thereupon allege, that said Defendants and the DOE
25 Defendants are in some manner responsible for the wrongs alleged herein, and that
26 at all times referenced each was the agent and servant of the other Defendants and
27 was acting within the course and scope of said agency and service.
28

1 6. Plaintiffs are informed and believe, and thereupon allege, that at all
2 relevant times herein, each of the Defendants herein, including the DOE Defendants
3 (collectively, "Defendants"), directed, knew or reasonably should have known of the
4 acts and behavior alleged herein and the damages caused thereby, and by their
5 actions and/or inactions directed, ratified and encouraged such acts and behavior.
6 Plaintiffs further allege that Defendants had a non-delegable duty to prevent or cure
7 such acts and the behavior described herein, which duty Defendants failed and/or
8 refused to perform.

9 **JURISDICTION AND VENUE**

10 7. This is a civil action for trademark infringement, misrepresentation,
11 passing off, false designation of origin and unfair competition arising under the
12 United States Trademark Act of 1946, as amended, 15 U.S.C. §§ 1051, *et seq.* (the
13 "Lanham Act") and the common law; for unfair competition under California
14 Business and Professions Code §§ 17200 *et seq.* and violation of Plaintiff
15 CHACHI's right of publicity under California Civil Code § 3344, and the unlawful
16 misappropriation of Plaintiff CHACHI's identity under California common law and
17 other related rights under the statutory and common law of the State of California.

18 8. This Court has subject matter jurisdiction of this action pursuant to 15
19 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338 as it involves claims arising under
20 the Lanham Act. This Court has supplemental subject matter jurisdiction over all
21 other claims pursuant to 28 U.S.C. § 1367 because they are so related that they form
22 part of the same case or controversy.

23 9. This Court has personal jurisdiction over the Defendants in that they
24 are doing business in the State of California and the Central District of California,
25 and they are committing the acts hereinafter alleged in this State and the Central
26 District of California.

27 10. Venue for this action is proper in the Central District of California
28 pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(a) in that Plaintiffs reside in this

1 District, Defendants are doing business in and are committing the acts hereinafter
2 alleged in this District and the events giving rise to the claim occurred in the Central
3 District of California.

4 **BACKGROUND FACTS**

5 11. Plaintiff OLIVIA “CHACHI” GONZALES is a 19 year-old dance
6 sensation whose work as a dancer and dance choreographer is widely revered
7 throughout America and the world. She rose to wide renown through her
8 appearances on the popular nationally televised dance show, MTV’s “America’s
9 Best Dance Crew” (the “MTV Show”), in 2011 as the season’s show winner. Her
10 renown has continued to increase with the success of her career as a dancer,
11 choreographer and actress, and as a result of an active schedule of public and
12 broadcast appearances as a soloist and as part of the I.aM.mE dance group.

13 12. Her nickname, “CHACHI”, which she has had since before she attained
14 professional renown, quickly became the popular professional name by which she is
15 known to audiences in the dance and television entertainment worlds. Her
16 professional appearances as an entertainer on and off television have been seen by
17 hundreds of thousands, if not millions of consumers throughout the United States
18 and North America. As a result, the CHACHI name and mark has become indelibly
19 associated with Plaintiff CHACHI GONZALES.

20 13. In or about 2011, CHACHI designed her own dance apparel items,
21 namely, stylized pants that she wore on the MTV Show. She called the pants
22 “Chachimomma pants” (the “Pants”). She brought the idea and design to her
23 mother, defendant GUADALUPE GONZALES, who sewed the pants at and
24 according to CHACHI’s direction.

25 14. CHACHI and GUADALUPE GONZALES began manufacturing and
26 selling the Pants at CHACHI’s workshop after one of CHACHI’s fellow students
27 saw her wearing a pair of them.
28

1 15. As a result of their exposure via the MTV Show and other public events
2 where they were worn by CHACHI, and due to Plaintiff's growing renown, the
3 Pants became wildly popular, which was reflected in online sales.

4 16. On March 19, 2011, GUADALUPE GONZALES filed a federal
5 trademark application to register the mark CHACHIMOMMA (later amended to
6 "CHACHI MOMMA") in the United States Patent and Trademark office in
7 connection with "Athletic apparel, namely, shirts, pants, jackets, footwear, hats and
8 caps, athletic uniforms".

9 17. In the CHACHIMOMMA application, she declared under oath that,
10 "being hereby warned that willful false statements and the like so made are
11 punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that
12 such willful false statements, and the like, may jeopardize the validity of the
13 application or any resulting registration," that "[she] believe[d] the applicant to be
14 the owner of the trademark/service mark sought to be registered" and that, "to the
15 best of his/her knowledge and belief no other person, firm, corporation, or
16 association has the right to use the mark in commerce, either in the identical form
17 thereof or in such near resemblance thereto as to be likely, when used on or in
18 connection with the goods/services of such other person, to cause confusion, or to
19 cause mistake, or to deceive; and that all statements made of his/her own knowledge
20 are true; and that all statements made on information and belief are believed to be
21 true." However, nowhere in the application materials did she reference her daughter
22 CHACHI GONZALES or her daughter's rights in the subject mark.

23 18. GUADALUPE GONZALES knew at the time of signing the foregoing
24 application that her daughter, CHACHI GONZALES, had a claim of ownership to
25 the subject mark and the subject mark's component term "CHACHI", which had by
26 then for several years already been CHACHI GONZALES' professional name.

27 19. GUADALUPE GONZALES has since that time continuously traded
28 off the name and identity of Plaintiffs in connection with the sale of the Pants

1 through her unincorporated retail business operating under the misleading name
2 “CHACHIMOMMA INC.”, using the marks CHACHI, CHACHIMOMMA, and
3 CHACHI PANTS in connection with the marketing and sale of the Pants and other
4 dance-related merchandise.

5 20. Around the same time, and also without the authorization or
6 involvement of CHACHI GONZALES, GUADALUPE GONZALES entered into a
7 licensing arrangement with Infusion, Inc., a marketing services company based in
8 Michigan, in connection with certain products and services associated with
9 CHACHI GONZALES, including the Pants.

10 21. Infusion claimed to have the resources and capacity necessary to
11 market the Pants and other CHACHI-related products, as well as to produce, sell
12 and distribute the Pants, which had become popular items.

13 22. On or about January 9, 2012, GUADALUPE GONZALES and CMI
14 executed an exclusive license agreement (the “Licensing Agreement”).

15 23. CHACHI GONZALES was an unemancipated minor at the time of
16 execution of the Licensing Agreement and was identified as a party thereto, despite
17 being unaware of the existence of the agreement. She did not review nor sign the
18 document.

19 24. Rather, and without CHACHI GONZALES’ consent, authorization, or
20 knowledge, GUADALUPE GONZALES signed as “Olivia Gonzales, a minor”, and
21 as “providing consent to this agreement as mother and legal guardian of Olivia
22 Gonzales”.

23 25. Infusion had made payments pursuant to the terms of the Licensing
24 Agreement of at least \$90,000.00 as of November 2012, by Infusion’s own
25 allegation.

26 26. Under the express terms of the Licensing Agreement, Infusion paid
27 Defendants \$10,000.00 per month for an extendable term of 24 months.
28

1 27. Even though they were California residents at the time of execution of
2 the Licensing Agreement, GUADALUPE GONZALES did not obtain approval of
3 the California Courts as required by California Family Code 6750 *et. seq.*, nor did
4 she set aside required funds in trust for the benefit of the then-minor CHACHI
5 GONZALES.

6 28. As a result of Defendants' conduct described herein, CHACHI
7 GONZALES has never received any portion of the compensation and/or revenues
8 resulting from the Licensing Agreement, nor was any of the revenue put into trust
9 on her behalf.

10 29. After learning of the Licensing Agreement, CHACHI GONZALES
11 confronted her mother GUADALUPE GONZALES concerning the matters herein
12 described. As a result of the confrontation they became estranged, and CHACHI
13 GONZALES shortly thereafter was adjudicated an emancipated minor.

14 30. Defendants have made no effort to seek Plaintiff's consent for the use
15 of the CHACHI mark and CHACHI GONZALES' name and likeness, nor have
16 Defendants compensated Plaintiffs for their unauthorized use of the foregoing
17 properties.

18 31. GUADALUPE GONZALES has now filed several additional United
19 States federal trademark applications for the marks CHACHI, CHACHIMOMMA
20 and CHACHIPANTS in connection with a range of apparel and merchandise goods
21 and associated retail services (collectively, the "Applications"). Said Applications
22 include United States Application Serial Nos. 86490519, 86490522, 86590548,
23 86590576, 86590857, and 86590858.

24 32. The CHACHI mark and name is owned by OLIVIA "CHACHI"
25 GONZALES and has been used professionally by her in connection with her
26 activities as a dancer, performer, choreographer, designer and actress since at least
27 as early as 2010.
28

1 33. Plaintiffs are marketing their own brand of apparel and the presence of
2 the misleading CHACHI MOMMA branded goods of Defendants are causing
3 confusion among consumers in the market, who mistakenly believe that Defendants'
4 goods are sponsored, authorized, endorsed, affiliated and/or otherwise associated
5 with Plaintiffs, which is not the case.

6 34. Plaintiffs and their associates working on Plaintiffs' behalf have
7 expended great effort and substantial sums of money in making and overseeing
8 performances and merchandise under the officially licensed/endorsed imprimatur of
9 CHACHI GONZALES, which has become well-known to relevant audiences
10 throughout the United States and the world. In so doing, the CHACHI mark has
11 come to symbolize a certain level of quality and consistency in connection with all
12 products bearing, sold under, and/or in conjunction with the mark. The CHACHI
13 mark symbolizes the goodwill created by Plaintiffs' creative endeavors in dance and
14 entertainment and associated ancillary merchandise.

15 35. As a result of the high quality of products sold under and/or in
16 conjunction with CHACHI GONZALES, and as a result of the subsequent success
17 of advertising, sale and consumer acceptance of those products, consumers have
18 come to view the CHACHI mark as exclusively identifying products associated with
19 the group comprising Plaintiff CHACHI GONZALES.

20 36. Plaintiff's success in her entertainment endeavors has resulted in
21 significant audience curiosity and excitement for the CHACHI name and mark,
22 leading to interest in ancillary merchandise including apparel associated with or
23 authorized by Plaintiffs.

24 37. CHACHI GONZALES and THE CHACHI GONZALES BRANDS, an
25 entity of which CHACHI GONZALES is a principal member and which she
26 controls, have the sole and exclusive worldwide rights to use and/or to control the
27 use of the CHACHI marks, and colorable imitations thereof, in connection with
28 dance-related goods and services including live performances, audiovisual

1 recordings and ancillary merchandise such as dance apparel like the Pants, in order
2 to prevent the infringement, disparagement, dilution and/or other misappropriation
3 thereof.

4 38. Neither the CHACHI mark nor any derivative thereof has been
5 assigned or licensed to the Defendants for any purpose, and Defendants use the
6 CHACHI marks without the consent or authorization of Plaintiffs.

7 39. Defendants have appropriated Plaintiff CHACHI GONZALES' name
8 and likeness in adopting and marketing products popularized by Plaintiff under the
9 name CHACHI MOMMA.

10 40. Said appropriation, being in connection with the commercial sale of
11 apparel, was and is to Defendants' commercial and other advantage.

12 41. Defendants' unauthorized and misleading use of the CHACHI marks
13 has and will continue to cause great injury to Plaintiffs.

14 **DEFENDANTS' UNLAWFUL ACTIVITIES**

15 42. Plaintiffs are informed and believe, and thereupon allege, that each of
16 the foregoing actions of the Defendants will falsely mislead and/or confuse
17 consumers about the source of origin, association, sponsorship, approval or other
18 business relationship between the Plaintiffs on the one hand, and the Defendants'
19 goods and services on the other.

20 43. Defendants' use of the CHACHI mark, or colorable or confusingly
21 similar imitations thereof like CHACHI MOMMA, is unfair, unlawful, and is likely
22 to lead consumers to mistakenly and/or falsely believe that Defendants' goods are
23 associated with, or made, sponsored, or approved by CHACHI GONZALES and/or
24 THE CHACHI GONZALES BRANDS, which is not the case. Defendants will
25 likely unfairly benefit from Plaintiffs' valuable goodwill and hard-earned reputation
26 for excellence, quality and consistency.

27 44. As a result, Defendants have acquired a cachet and salability for their
28 products which they would not otherwise have had. These consequences were

1 foreseeable at the time Defendants adopted the name CHACHI MOMMA and filed
2 applications to register the marks CHACHIMOMMA, CHACHIPANTS, and of
3 course, CHACHI.

4 45. Plaintiffs are informed and believe, and thereupon allege, that as a
5 proximate result of the advantage accruing to Defendants' business as a proximate
6 result of confusion, deception and/or mistake caused by Defendants' wrongful
7 conduct as alleged herein, Defendants have received illicit profits and wrongful
8 gains, and Plaintiffs have suffered damages.

9 46. Plaintiffs are further informed and believe, and thereupon allege, that
10 Defendants' actions alleged above are willful, intentional, objectively unreasonable
11 and malicious. Given the nature and extent of the unauthorized use and attempted
12 registration of the CHACHI Trademarks, Plaintiffs are further informed and believe,
13 and thereupon allege that Defendants' actions and infringements are willful and
14 objectively unreasonable, such that Plaintiffs are entitled to recover enhanced
15 damages and attorneys' fees.

16 **FIRST CAUSE OF ACTION**
17 **TRADEMARK INFRINGEMENT**

18 (15 U.S.C. § 1114)

19 47. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 46
20 as though fully set forth herein.

21 48. Plaintiffs have been selling products under the CHACHI marks,
22 directly and through licensees, continuously since prior to Defendants' first
23 commercial use of the mark, and Plaintiffs own a protectable interest in the
24 CHACHI trademark.

25 49. Defendants' use of the mark is likely to cause consumer confusion,
26 thereby infringing upon Plaintiffs' rights to the mark.

1 50. The aforesaid acts of Defendants constitute infringement and/or
2 contributory infringement of the CHACHI trademark, in violation of Section 32(l)
3 of the Trademark Act of 1946, as amended, 15 U.S.C. § 1114(1)

4 51. Said acts, including the filing of applications to register and the
5 registration of “CHACHI” trademarks, have also prevented Plaintiffs from the
6 ability to register the CHACHI mark.

7 52. As a result of the foregoing infringement, Plaintiffs have been injured,
8 and Defendants have received illicit profits and wrongful gains.

9 53. Defendants' conduct has caused, and if not enjoined, will continue to
10 cause additional harm to Plaintiffs amounting to irreparable injury in a manner that
11 cannot be calculated or compensated in money damages. Plaintiffs have no
12 adequate remedy at law for such harm.

13 **SECOND CAUSE OF ACTION**

14 **FALSE DESIGNATION OF ORIGIN**

15 (15 U.S.C. § 1125(a) and Common Law)

16 54. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 53
17 as though fully set forth herein.

18 55. With knowledge of Plaintiffs' rights in the CHACHI name (the
19 “Name”), Defendants continue to make use of a colorable imitation of the Name,
20 including without limitation through the sale of apparel, including without limitation
21 pants designed by CHACHI GONZALES and marketed using a variant of the
22 CHACHI name and mark, in order to capitalize on the good name, notoriety,
23 reputation and goodwill of CHACHI GONZALES and the other Plaintiffs.

24 56. Defendants' acts as alleged above are unlawful by, *inter alia*, creating
25 and/or by permitting others to create a false designation of origin and/or to unfairly
26 compete in a manner which is likely to cause confusion, or cause mistake, or
27 deceive consumers as to the affiliation, connection, or association between
28 Defendants and Plaintiffs, in particular CHACHI GONZALES, or as to the origin,

1 sponsorship, or approval by Plaintiffs, in particular CHACHI GONZALES, of
2 Defendants' goods, services, and/or activities, in violation of the Lanham Act, 15
3 U.S.C. § 1125(a)(1)(A) and/or common law.

4 57. Defendants' acts as alleged above misrepresent the nature,
5 characteristics and/or qualities of Defendants' goods, services, activities or
6 information in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B) and/or
7 common law.

8 58. Defendants' misrepresentations and false designation as alleged herein
9 are likely to cause have a substantial economic impact on interstate commerce, and
10 interfere with and affect Plaintiffs' ability to license and profit from Plaintiffs'
11 CHACHI name and mark, as well as from the Pants.

12 59. As a result of the foregoing, Plaintiffs have been injured, and
13 Defendants have received illicit profits and wrongful gains.

14 60. Defendants' conduct has also caused, and if not enjoined, will continue
15 to cause, irreparable damage to the Name, as well as to CHACHI GONZALES'
16 good name, reputation and goodwill, in a manner that cannot be calculated or
17 compensated in money damages. Plaintiffs have no adequate remedy at law.

18 **THIRD CAUSE OF ACTION**

19 **MISREPRESENTATION AND PASSING OFF**

20 (15 U.S.C. § 1125(a) and Common Law)

21 61. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 60
22 as though fully set forth herein.

23 62. With knowledge of Plaintiffs' rights in the Name, Defendants continue
24 to make use of a colorable imitation of the Name, including without limitation
25 through the sale of apparel, including without limitation pants designed by CHACHI
26 GONZALES, in order to capitalize on the good name, notoriety, reputation and
27 goodwill of Plaintiffs in connection with the Name, and CHACHI GONZALES
28 individually.

1 63. Defendants' acts as alleged above are unlawful by, *inter alia*, passing
2 themselves off and/or permitting others to pass Defendants off as the provider of
3 dance apparel endorsed, authorized, sponsored, affiliated or otherwise associated
4 with CHACHI GONZALES, in a manner which is likely to cause confusion, or
5 cause mistake, or deceive consumers as to the affiliation, connection, or association
6 between Defendants and Plaintiffs, or as to the origin, sponsorship, or approval by
7 Plaintiffs of Defendants' goods, services and/or activities, in violation of the Lanham
8 Act, 15 U.S.C. § 1125(a)(1)(A) and/or common law.

9 64. Defendants' acts as alleged above misrepresent the nature,
10 characteristics, qualities, or geographic origin of Defendants' goods, services,
11 activities or information in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B)
12 and/or common law.

13 65. As a result of the foregoing, Plaintiffs have been injured, and
14 Defendants have received illicit profits and wrongful gains.

15 66. Defendants' conduct has also caused, and if not enjoined, will continue
16 to cause, irreparable damage to the Name and thus to Plaintiffs, as well as to
17 Plaintiffs' good name, reputation and goodwill, in a manner that cannot be
18 calculated or compensated in money damages. Plaintiffs have no adequate remedy
19 at law.

20 **FOURTH CAUSE OF ACTION**

21 **COMMON LAW TRADEMARK INFRINGEMENT**

22 (Common Law)

23 67. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 66
24 as though fully set forth herein.

25 68. The aforesaid acts of Defendants constitute infringement and/or
26 contributory infringement under common law of the CHACHI Mark owned by the
27 Plaintiff CHACHI GONZALES.
28

1 69. As a result of the foregoing infringement, Plaintiffs have been injured,
2 and Defendants have received illicit profits and wrongful gains.

3 70. By reason of Defendants' acts as alleged herein, Plaintiffs have also
4 suffered, are suffering, and will continue to suffer irreparable damage and, unless
5 Defendants are restrained from continuing their wrongful acts, the damage to
6 Plaintiffs will increase. Plaintiffs have no adequate remedy at law for such harm.

7 **FIFTH CAUSE OF ACTION**

8 **UNFAIR COMPETITION**

9 (California Business and Professions Code §§ 17200 *et seq.* and at Common Law)

10 71. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 70
11 as though fully set forth herein.

12 72. Defendants, by virtue of their unlawful, unfair, and/or fraudulent acts as
13 alleged above, have willfully, knowingly and intentionally engaged in acts of unfair
14 competition under California Business and Professions Code § 17200 *et seq.*,
15 including without limitation, palming off, and/or attempting to palm off, and/or
16 enabling others to palm off their goods and services as products and performances
17 made by, sponsored by, or authorized by the Plaintiffs, including CHACHI
18 GONZALES.

19 73. As a result of the foregoing, Plaintiffs have been injured, and
20 Defendants have received illicit profits and wrongful gains.

21 74. Defendants' conduct has also caused, and if not enjoined, will continue
22 to cause irreparable damage to Plaintiffs in a manner that cannot be calculated or
23 compensated in money damages. Plaintiffs have no adequate remedy at law for
24 such harm.

1 **SIXTH CAUSE OF ACTION**

2 **MISAPPROPRIATION OF NAME AND LIKENESS**

3 (Cal Civ. Code § 3344 *et seq.*)

4 75. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 74
5 as though fully set forth herein.

6 76. Defendants, by virtue of their acts as alleged above, have willfully,
7 knowingly, maliciously, and intentionally misappropriated Plaintiff CHACHI
8 GONZALES' name and likeness in adopting and marketing products under the
9 name CHACHIMOMMA and/or CHACHI MOMMA, to Defendants' commercial
10 and other advantage, in violation of the statutory and common law of the State of
11 California.

12 77. As a result of the foregoing, Plaintiffs have been injured, and
13 Defendants have received illicit profits and wrongful gains.

14 78. Defendants' conduct has also caused, and if not enjoined, will continue
15 to cause irreparable damage to Plaintiffs in a manner that cannot be calculated or
16 compensated in money damages. Plaintiffs have no adequate remedy at law for
17 such harm.

18 79. Defendants' conduct has been willful, deliberate and malicious.

19 **SEVENTH CAUSE OF ACTION**

20 **VIOLATION OF RIGHT OF PUBLICITY**

21 (Cal Civ. Code § 3344 *et seq.*)

22 80. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 79
23 as though fully set forth herein.

24 81. Defendants, by virtue of their acts as alleged above, have willfully,
25 knowingly, maliciously, and intentionally violated Plaintiff CHACHI GONZALES'
26 right of publicity in using without authorization her name and likeness in adopting
27 and marketing products under the name CHACHIMOMMA and/or CHACHI
28 MOMMA, to Defendants' commercial and other advantage, including without

1 limitation seeking federal trademark registration of CHACHI GONZALES’
2 professional name CHACHI as well as other “CHACHI” marks without her consent,
3 in violation of the statutory and common law of the State of California.

4 82. As a result of the foregoing, Plaintiffs have been injured, and
5 Defendants have received illicit profits and wrongful gains.

6 83. Defendants' conduct has also caused, and if not enjoined, will continue
7 to cause irreparable damage to Plaintiffs in a manner that cannot be calculated or
8 compensated in money damages. Plaintiffs have no adequate remedy at law for
9 such harm.

10 84. Defendants' conduct has been willful, deliberate and malicious.

11 **EIGHTH CAUSE OF ACTION**

12 **TEXAS DECEPTIVE TRADE PRACTICES ACT**

13 (Tex. Bus. & Com. Code § 17.46)

14 85. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 84
15 as though fully set forth herein

16 86. By the conduct alleged herein, Defendants have willfully, knowingly,
17 maliciously, and intentionally committed false, misleading and deceptive practices
18 including, without limitation, use of the term "corporation," "incorporated," or an
19 abbreviation of either of those terms in the name of a business entity that is not
20 incorporated under the laws of the state of Texas or another jurisdiction, in unlawful
21 violation of the Texas Deceptive Trade Practices Act.

22 87. As a result of the foregoing, the consuming public, as well as Plaintiffs,
23 have been injured, and Defendants have received illicit profits and wrongful gains.

24 88. Defendants' conduct has also caused, and if not enjoined, will continue
25 to cause irreparable damage to Plaintiffs and the broader consuming public in a
26 manner that cannot be calculated or compensated in money damages. Plaintiffs
27 have no adequate remedy at law for such harm.
28

1 **NINTH CAUSE OF ACTION**

2 **FALSE ADVERTISING**

3 (California Business & Professions Code §§17500 et seq. and Common Law)

4 89. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 88
5 as though fully set forth herein.

6 90. In engaging in the aforesaid fraudulent acts, Defendants have acted and
7 are continuing to act, directly or indirectly, with the intent to sell and/or induce the
8 public to purchase and/or disseminate and/or cause to be disseminated before the
9 public, by way of publications or other advertising devices, statements concerning
10 Defendants' goods and services which are untrue and/or misleading, and which
11 Defendants know, or upon exercise of reasonable care should know, are untrue
12 and/or misleading. Such false advertising has caused and is likely to continue to
13 cause confusion, or to cause mistake, or to deceive the consuming public.

14 91. By the aforesaid acts, Defendants have engaged in and are engaging in
15 false advertising in violation of California Business and Business Code §17500
16 *et seq.*

17 92. If Defendants are permitted to continue with the aforesaid acts and
18 conduct, Plaintiffs will continue to be irreparably injured by reason of Defendants'
19 false advertising. Defendants have proceeded and are proceeding with the aforesaid
20 acts deliberately and willfully. Unless enjoined by this Court, Plaintiffs are
21 informed and believe, and thereon allege, that there is a substantial possibility and
22 threat of ongoing false advertisement by Defendants for which Plaintiffs are without
23 adequate remedy at law.

24 93. In addition, Plaintiffs are informed and believe, and thereon allege, that
25 Defendants' acts have resulted and will continue to result in substantial profits to
26 Defendants to which they are not entitled. Disgorgement of all money and property,
27 including profits, illegally obtained by Defendants by means of such unfair business
28

1 acts and practices should be ordered by this Court pursuant to California Business
2 and Professions Code §17535.

3
4 **PRAAYER FOR RELIEF**

5 WHEREFORE, PLAINTIFFS pray for judgment against Defendants as
6 follows:

7 **INJUNCTIVE RELIEF:**

8 For preliminary and permanent injunctive relief that:

9 1. Defendants, their officers, agents, servants, employees, attorneys,
10 parents, subsidiaries and related companies and all persons acting for, with, by,
11 through or under them, and each of them, be temporarily restrained from, and
12 preliminarily and thereafter permanently enjoined and restrained from:

13 a. seeking to register and/or using in any manner the CHACHI
14 mark, or any word, words, packaging or trade dress likely to cause confusion
15 therewith, including without limitation the marks CHACHI, CHACHIMOMMA,
16 CHACHI MOMMA and/or CHACHI PANTS, in connection with the sale,
17 manufacture, distribution, advertising or promotion of their goods and services,
18 including but not limited to wearing apparel and ancillary merchandise such as the
19 Pants, so long as such goods and/or services do not emanate from, do not originate
20 with, or are not licensed by the Plaintiffs; or,

21 b. using any false designation of origin or false description that can,
22 or is likely to, lead the public, or individual members thereof, to believe that any
23 goods and services created, distributed, or sold by Defendants, including but not
24 limited to retail services, apparel and other merchandise, is in any manner associated
25 or connected with the Plaintiffs, or is sold, manufactured, licensed, sponsored, or
26 approved or authorized by the Plaintiffs; or,

27 c. doing or causing to be done any further acts in violation of
28 California Business and Professions Code § 17500 *et seq.*; or,

1 d. using in any manner the name, likeness, and/or other publicity
2 rights of Plaintiffs; or,

3 e. using the false and misleading “INC.” designation in connection
4 with any unincorporated business entity, including without limitation
5 “CHACHIMOMMA INC.”

6 f. otherwise engaging in any other activity constituting an
7 infringement of the CHACHI name and mark, any other trademark owned by or
8 associated with Plaintiffs, any name, likeness, and/or publicity rights belonging to
9 Plaintiffs, and/or from unfairly competing with Plaintiffs in any way.

10 2. Defendants file with the Court and serve upon Plaintiffs’ counsel
11 within thirty (30) days after entry of Judgment a report in writing under oath setting
12 forth in detail the manner and form in which Defendants have complied with the
13 requirements of the Injunction and Order.

14 **DAMAGES:**

15 3. Defendants be required to account for and pay over to Plaintiffs all
16 damages sustained by Plaintiffs and any and all profits realized by Defendants by
17 reason of their unlawful acts alleged herein, in an amount to be proven at trial, and
18 that such amounts be trebled, as and where provided by law.

19 4. Defendants be required to disgorge all money and property, including
20 profits, illegally obtained by Defendants as a result of their false advertising acts and
21 practices pursuant to all applicable statutes and common law including, without
22 limitation, California Business and Professions Code § 17535 *et seq.*

23 5. Defendants pay Plaintiffs increased, enhanced, and/or punitive damages
24 to the fullest extent authorized by law for their oppression, fraud, and malice for
25 their violation of Plaintiffs’ rights under common law.

26 6. Defendants be required to pay to Plaintiffs all of Plaintiffs’ costs,
27 disbursements and attorneys’ fees in this action.
28

OTHER RELIEF:

1
2 7. Cancellation of U.S. Trademark Registration No. 4220215, pursuant to
3 15 U.S.C. § 1119.

4 8. Express abandonment/cancellation of United States Application Serial
5 Nos. 86490519, 86490522, 86590548, 86590576, 86590857, and 86590858.


6 9. Plaintiffs have such other and further relief as the Court may deem
7 appropriate to prevent the infringement of the CHACHI mark, and to prevent further
8 and/or additional acts of unfair competition, and each of them.

9 10. For prejudgment interest.

10 11. Plaintiffs have such other relief as the Court deems proper.

11
12 DATED: July 20, 2015

MICHELMAN & ROBINSON, LLP

13
14
15 By: 
16 Victor K. Sapphire
17 Attorneys for Plaintiffs
18 CHACHI GONZALES
19 THE CHACHI GONZALES BRANDS
20
21
22
23
24
25
26
27
28


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiffs Olivia Gonzales p/k/a Chachi Gonzales and The Chachi Gonzales Brands hereby demand a jury trial in this action.

DATED: July 20, 2015

MICHELMAN & ROBINSON, LLP

By: 
Victor K. Sapphire
Attorneys for Plaintiffs
CHACHI GONZALES
THE CHACHI GONZALES BRANDS