

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**JAIME FAITH EDMONSON, et al,**

**Plaintiffs,**

v.

**Case No.: 1:15-CV-24442-JAL**

**VELVET LIFESTYLES, LLC, et al,**

**Defendants.**

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**VELVET LIFESTYLES, LLC, f/k/a VELVET  
LIFESTYLES, INC., d/b/a MIAMI VELVET,  
JOY DORFMAN, a/k/a JOY ZIPPER,  
PRESIDENT OF VELVET LIFESTYLES, LLC,  
and MY THREE YORKIES, LLC,**

**Third Party Plaintiffs,**

v.

**JLFL CONCEPTS, LLC, a Florida Limited  
Liability Company, JESSICA L. SWINGER,  
An individual, and JESSE SWINGER, an  
Individual,**

**Third Party Defendants.**

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**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO THE PLAINTIFF'S  
FIRST AMENDED COMPLAINT AND THIRD PARTY COMPLAINT**

COMES NOW the Defendants, VELVET LIFESTYLES, LLC, f/k/a VELVET LIFESTYLES, INC., d/b/a MIAMI VELVET, a Florida limited liability company, JOY DORFMAN, a/k/a JOY ZIPPER, an individual, PRESIDENT OF VELVET LIFESTYLES, LLC, an individual, and MY THREE YORKIES, LLC, a Florida limited liability company, by and

through the undersigned attorney, and hereby file this Answer and Affirmative Defenses to the Plaintiffs' First Amended Complaint for Damages as follows:

**INTRODUCTION**

1. Denied.
2. Denied.
3. Denied.
4. Unknown, therefore denied.
5. Unknown, therefore denied.
6. Unknown, therefore denied.
7. Unknown, therefore denied.
8. Denied.
9. Denied.
10. Denied.
11. Denied.
12. Denied.
13. Denied.
14. Denied.
15. Denied.
16. Denied.
17. Denied.
18. Denied.
19. Denied.
20. Denied.

21. Denied.

**PARTIES**

**A. Plaintiffs**

22. Denied.

23. Unknown, therefore denied.

24. Unknown, therefore denied.

25. Unknown, therefore denied.

26. Unknown, therefore denied.

27. Unknown, therefore denied.

28. Unknown, therefore denied.

29. Unknown, therefore denied.

30. Unknown, therefore denied.

31. Unknown, therefore denied.

32. Unknown, therefore denied.

33. Unknown, therefore denied.

34. Unknown, therefore denied.

35. Unknown, therefore denied.

36. Unknown, therefore denied.

37. Unknown, therefore denied.

38. Unknown, therefore denied.

39. Unknown, therefore denied.

40. Unknown, therefore denied.

41. Unknown, therefore denied.

42. Unknown, therefore denied.

43. Unknown, therefore denied.

44. Unknown, therefore denied.

45. Unknown, therefore denied.

46. Unknown, therefore denied.

47. Unknown, therefore denied.

48. Unknown, therefore denied.

49. Unknown, therefore denied.

50. Unknown, therefore denied.

51. Unknown, therefore denied.

52. Unknown, therefore denied.

53. Unknown, therefore denied.

54. Unknown, therefore denied.

**B. Defendant, Velvet Lifestyles, LLC, f/k/a Velvet Lifestyles, Inc. d/b/a Miami Velvet**

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

**C. Defendant, Joy Dorfman, a/k/a Joy Zipper**

65. Denied.

66. Denied.

67. Denied.

68. Denied.

69. Denied.=

**D. Defendant, "My Three Yorkies, LLC"**

70. Admitted for jurisdictional purposes only.

71. Denied.

**E. The Miami Velvet Websites and Business Model**

72. Denied.

73. Denied.

74. Denied.

**JURISDICTION AND VENUE**

75. The statutes speak for themselves, otherwise denied.

76. Denied.

77. Denied.

78. Denied.

**FACTUAL BACKGROUND**

**A. Standard and Customary Business Practices in the Modeling Industry Require Arms-Length Negotiations over the Terms and Conditions of Usage and Remuneration for any Modeling Images**

79. Unknown, therefore denied.

80. Unknown, therefore denied.

81. Unknown, therefore denied.

82. Unknown, therefore denied.

83. Unknown, therefore denied.

84. Denied.

85. Unknown, therefore denied.

86. Unknown, therefore denied.

87. Unknown, therefore denied.

a. Unknown, therefore denied.

b. Unknown, therefore denied.

c. Unknown, therefore denied.

d. Unknown, therefore denied.

88. Denied.

89. Denied.

**B. Defendants Have Misappropriated and Altered Each Plaintiff's Image, Likeness and Identity For Use in Interstate Commerce Without Authority, for Self-Serving Commercial Gain and Without Offering or Paying Compensation to any Plaintiff**

90. Denied

91. Denied.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

97. Denied.

98. Denied.

***Plaintiff Jaime Faith Edmondson***

99. Unknown, therefore denied.

100. Unknown, therefore denied.

101. Denied.

102. Denied.

103. Denied.

104. Denied.

105. Denied.

106. Denied.

107. Denied.

108. Denied.

109. Denied.

110. Denied.

111. Denied.

112. Denied.

***Plaintiff Ana Cheri (Moreland)***

113. Unknown, therefore denied.

114. Unknown, therefore denied.

115. Denied.

116. Denied.

117. Denied.

118. Denied.

119. Denied.

120. Denied.

121. Denied.

122. Denied.

123. Denied.

124. Denied.

125. Denied.

126. Denied.

127. Denied.

128. Denied.

***Plaintiff Carrie Minter***

129. Unknown, therefore denied.

130. Unknown, therefore denied.

131. Denied.

132. Denied.

133. Denied.

134. Denied.

135. Denied.

136. Denied.

137. Denied.

138. Denied.

139. Denied.



140. Denied.

141. Denied.

142. Denied.

143. Denied.

144. Denied.

***Plaintiff Cielo Jean Gibson***

145. Unknown, therefore denied.

146. Unknown, therefore denied.

147. Denied.

148. Denied.

149. Denied.

150. Denied.

151. Denied.

152. Denied.

153. Denied.

154. Denied.

155. Denied.

156. Denied.

157. Denied.

158. Denied.

159. Denied.

160. Denied.

***Plaintiff Cora Skinner***

161. Unknown, therefore denied.

162. Unknown, therefore denied.

163. Denied.

164. Denied.

165. Denied.

166. Denied.

167. Denied.

168. Denied.

169. Denied.

170. Denied.

171. Denied.

172. Denied.

173. Denied.

174. Denied.

175. Denied.

***Plaintiff Danielle Ruiz***

176. Unknown, therefore denied.

177. Unknown, therefore denied.

178. Denied.

179. Denied.

180. Denied.

181. Denied.

182. Denied.

183. Denied.

184. Denied.

185. Denied.

186. Denied.

187. Denied.

188. Denied.

189. Denied.

190. Denied.

191. Denied.

***Plaintiff Eva Pepaj***

192. Unknown, therefore denied.

193. Unknown, therefore denied.

194. Denied.

195. Denied.

196. Denied.

197. Denied.

198. Denied.

199. Denied.

200. Denied.

201. Denied.

202. Denied.

203. Denied.

204. Denied.

205. Denied.

206. Denied.

***Plaintiff Heather Depriest***

207. Unknown, therefore denied.

208. Unknown, therefore denied.

209. Denied.

210. Denied.

211. Denied.

212. Denied.

213. Denied.

214. Denied.

215. Denied.

216. Denied.

217. Denied.

218. Denied.

219. Denied.

220. Denied.

221. Denied.

***Plaintiff Irina Voronina***

222. Unknown, therefore denied.

223. Unknown, therefore denied.

224. Unknown, therefore denied.

225. Denied.

226. Denied.

227. Denied.

228. Denied.

229. Denied.

230. Denied.

231. Denied.

232. Denied.

233. Denied.

234. Denied.

235. Denied.

236. Denied.

237. Denied.

238. Denied.

***Plaintiff Jesse Golden***

239. Unknown, therefore denied.

240. Unknown, therefore denied.

241. Denied.

242. Denied.

243. Denied.

244. Denied.

245. Denied.

246. Denied.

247. Denied.

248. Denied.

249. Denied.

250. Denied.

251. Denied.

252. Denied.

***Plaintiff Jessica Burciaga***

253. Unknown, therefore denied.

254. Unknown, therefore denied.

255. Unknown, therefore denied.

256. Denied.

257. Denied.

258. Denied.

259. Denied.

260. Denied.

261. Denied.

262. Denied.

263. Denied.

264. Denied.

265. Denied.

266. Denied.

267. Denied.

268. Denied.

269. Denied.

***Plaintiff Jessica Hinton***

- 270. Unknown, therefore denied.
- 271. Unknown, therefore denied.
- 272. Unknown, therefore denied.
- 273. Denied.
- 274. Denied.
- 275. Denied.
- 276. Denied.
- 277. Denied.
- 278. Denied.
- 279. Denied.
- 280. Denied.
- 281. Denied.
- 282. Denied.
- 283. Denied.
- 284. Denied.
- 285. Denied.

***Plaintiff Joanna Krupa***

- 286. Unknown, therefore denied.
- 287. Unknown, therefore denied.
- 288. Unknown, therefore denied.
- 289. Unknown, therefore denied.
- 290. Denied.

291. Denied.

292. Denied.

293. Denied.

294. Denied.

295. Denied.

296. Denied.

297. Denied.

298. Denied.

299. Denied.

300. Denied.

301. Denied.

302. Denied.

303. Denied.

***Plaintiff Jordan Carver***

304. Unknown, therefore denied.

305. Unknown, therefore denied.

306. Unknown, therefore denied.

307. Denied.

308. Denied.

309. Denied.

310. Denied.

311. Denied.

312. Denied.



313. Denied.

314. Denied.

315. Denied.

316. Denied.

317. Denied.

318. Denied.

319. Denied.

***Plaintiff Katerina Van Derham***

320. Unknown, therefore denied.

321. Unknown, therefore denied.

322. Unknown, therefore denied.

323. Denied.

324. Denied.

325. Denied.

326. Denied.

327. Denied.

328. Denied.

329. Denied.

330. Denied.

331. Denied.

332. Denied.

333. Denied.

334. Denied.

***Plaintiff Kim Cozzens***

- 335. Unknown, therefore denied.
- 336. Unknown, therefore denied.
- 337. Denied.
- 338. Denied.
- 339. Denied.
- 340. Denied.
- 341. Denied.
- 342. Denied.
- 343. Denied.
- 344. Denied.
- 345. Denied.
- 346. Denied.
- 347. Denied.
- 348. Denied.
- 349. Denied.
- 350. Denied.

***Plaintiff Laurie Fetter (Jacobs)***

- 351. Unknown, therefore denied.
- 352. Unknown, therefore denied.
- 353. Denied.
- 354. Denied.
- 355. Denied.

356. Denied.

357. Denied.

358. Denied.

359. Denied.

360. Denied.

361. Denied.

362. Denied.

363. Denied.

364. Denied.

365. Denied.

***Plaintiff Lina Posada***

366. Unknown, therefore denied.

367. Unknown, therefore denied.

368. Denied.

369. Denied.

370. Denied.

371. Denied.

372. Denied.

373. Denied.

374. Denied.

375. Denied.

376. Denied.

377. Denied.

378. Denied.

379. Denied.

380. Denied.

***Plaintiff Maria Zyrianova***

381. Unknown, therefore denied.

382. Unknown, therefore denied.

383. Denied.

384. Denied.

385. Denied.

386. Denied.

387. Denied.

388. Denied.

389. Denied.

390. Denied.

391. Denied.

392. Denied.

393. Denied.

394. Denied.

395. Denied.

***Plaintiff Marketa Kazdova***

396. Unknown, therefore denied.

397. Unknown, therefore denied.

398. Denied.

- 399. Denied.
- 400. Denied.
- 401. Denied.
- 402. Denied.
- 403. Denied.
- 404. Denied.
- 405. Denied.
- 406. Denied.
- 407. Denied.
- 408. Denied.
- 409. Denied.
- 410. Denied.
- 411. Denied.

***Plaintiff Masha Lund***

- 412. Unknown, therefore denied.
- 413. Unknown, therefore denied.
- 414. Denied.
- 415. Denied.
- 416. Denied.
- 417. Denied.
- 418. Denied.
- 419. Denied.
- 420. Denied.

421. Denied.

422. Denied.

423. Denied.

424. Denied.

425. Denied.

426. Denied.

***Plaintiff Maysa Quy***

427. Unknown, therefore denied.

428. Unknown, therefore denied.

429. Denied.

430. Denied.

431. Denied.

432. Denied.

433. Denied.

434. Denied.

435. Denied.

436. Denied.

437. Denied.

438. Denied.

439. Denied.

440. Denied.

441. Denied.

***Plaintiff Paola Canas***

442. Unknown, therefore denied.

443. Unknown, therefore denied.

444. Denied.

445. Denied.

446. Denied.

447. Denied.

448. Denied.

449. Denied.

450. Denied.

451. Denied.

452. Denied.

453. Denied.

454. Denied.

455. Denied.

456. Denied.

457. Denied.

458. Denied.

***Plaintiff Rachel Bernstein (Koren)***

459. Unknown, therefore denied.

460. Unknown, therefore denied.

461. Denied.

462. Denied.

463. Denied.

464. Denied.

465. Denied.

466. Denied.

467. Denied.

468. Denied.

469. Denied.

470. Denied.

471. Denied.

472. Denied.

473. Denied.

474. Denied.

*Plaintiff Sandra Valencia*

475. Unknown, therefore denied.

476. Unknown, therefore denied.

477. Denied.

478. Denied.

479. Denied.

480. Denied.

481. Denied.

482. Denied.

483. Denied.

484. Denied.

485. Denied.



486. Denied.

487. Denied.

488. Denied.

489. Denied.

490. Denied.

***Plaintiff Sara Underwood***

491. Unknown, therefore denied.

492. Unknown, therefore denied.

493. Unknown, therefore denied.

494. Denied.

495. Denied.

496. Denied.

497. Denied.

498. Denied.

499. Denied.

500. Denied.

501. Denied.

502. Denied.

503. Denied.

504. Denied.

505. Denied.

506. Denied.

***Plaintiff Tiffany Toth***

- 507. Unknown, therefore denied.
- 508. Unknown, therefore denied.
- 509. Unknown, therefore denied.
- 510. Denied.
- 511. Denied.
- 512. Denied.
- 513. Denied.
- 514. Denied.
- 515. Denied.
- 516. Denied.
- 517. Denied.
- 518. Denied.
- 519. Denied.
- 520. Denied.
- 521. Denied.
- 522. Denied.

***Plaintiff Vivian Kindle***

- 523. Unknown, therefore denied.
- 524. Unknown, therefore denied.
- 525. Denied.
- 526. Denied.
- 527. Denied.
- 528. Denied.

529. Denied.

530. Denied.

531. Denied.

532. Denied.

533. Denied.

534. Denied.

535. Denied.

536. Denied.

537. Denied.

*Plaintiff Melanie Iglesias*

538. Unknown, therefore denied.

539. Unknown, therefore denied.

540. Unknown, therefore denied.

541. Denied.

542. Denied.

543. Denied.

544. Denied.

545. Denied.

546. Denied.

547. Denied.

548. Denied.

549. Denied.

550. Denied.

551. Denied.

552. Denied.

553. Denied.

***Plaintiff Brenda Lynn Geiger***

554. Unknown, therefore denied.

555. Unknown, therefore denied.

556. Denied.

557. Denied.

558. Denied.

559. Denied.

560. Denied.

561. Denied.

562. Denied.

563. Denied.

564. Denied.

565. Denied.

566. Denied.

567. Denied.

568. Denied.

***Plaintiff Heather Rae Young***

569. Unknown, therefore denied.

570. Unknown, therefore denied.

571. Denied.

572. Denied.

573. Denied.

574. Denied.

575. Denied.

576. Denied.

577. Denied.

578. Denied.

579. Denied.

580. Denied.

581. Denied.

***Plaintiff Rosa Acosta***

582. Unknown, therefore denied.

583. Unknown, therefore denied.

584. Unknown, therefore denied.

585. Denied.

586. Denied.

587. Denied.

588. Denied.

589. Denied.

590. Denied.

591. Denied.

592. Denied.

593. Denied.

594. Denied.

595. Denied.

**C. Defendants Ignored Plaintiffs' Demand Letter that Directed Defendants to Cease and Desist Unauthorized Use of Plaintiffs' Images and Notified Defendants of the Potential Claims Should Defendants Fail or Refuse to Comply**

596. Admitted that Defendants received a Demand Letter from Plaintiffs, otherwise denied.

597. Admitted that Defendants received a Demand Letter from Plaintiffs, otherwise denied.

598. Admitted that Defendants received a Demand Letter from Plaintiffs, otherwise denied.

599. Admitted that Defendants received a Demand Letter from Plaintiffs, otherwise denied.

600. Admitted that Defendants received a Demand Letter from Plaintiffs, otherwise denied.

601. Admitted that Defendants received a Demand Letter from Plaintiffs, otherwise denied.

602. Admitted that Defendants received a Demand Letter from Plaintiffs, otherwise denied.

603. Admitted that Defendants received a Demand Letter from Plaintiffs, otherwise denied.

604. Admitted that Defendants received a Demand Letter from Plaintiffs, otherwise denied.

605. Admitted that Defendants received a Demand Letter from Plaintiffs, otherwise

denied.

606. Denied.

607. Denied.

608. Denied.

609. Denied.

610. Denied.

611. Denied.

612. Denied.

613. Denied.

614. Denied.

### **CAUSES OF ACTION**

#### **COUNT I – Violation of the Lanham Act, 15 U.S.C. § 1125(a); False Advertising against all Defendants**

615. Defendant re-alleges all responses to Paragraphs 1 – 614 above, and incorporates same by reference as though fully set forth herein.

616. The statutes speak for themselves, otherwise denied.

617. Denied.

618. Denied.

619. Denied.

620. Denied.

621. Denied.

622. Denied.

623. Denied.

624. Denied.

625. Denied.

626. Denied.

627. Denied.

628. Denied.

629. Denied.

630. Denied.

631. Denied.

632. Denied.

633. Denied.

**COUNT II – Violation of The Lanham Act, 15 U.S.C. § 1125(a):**  
**False Endorsement against all Defendants**

634. Defendant re-alleges all responses to Paragraphs 1 – 614 above, and incorporates same by reference as though fully set forth herein.

635. The statutes speak for themselves, otherwise denied.

636. Denied.

637. Denied.

638. Unknown, therefore denied.

639. Denied.

640. Denied.

641. Denied.

642. Denied.

643. Denied.

644. Denied.



645. Denied.

646. Denied.

647. Denied.

648. Denied.

649. Denied.

650. Denied.

651. Denied.

652. Denied.

#### **AFFIRMATIVE DEFENSES**

Defendants assert the following affirmative defenses as full and complete defenses to all claims asserted by the Plaintiffs in the operative Complaint, and would state as follows:

1. Plaintiff's Complaint, and each and every cause of action set forth therein, fails to state a cause of action against Defendants.
2. Defendants state that each and every one of Plaintiffs' claims fail as a matter of law for the reason that Plaintiffs consented to public use and dissemination of the photographs of Plaintiffs by virtue of their execution of a model release whereby each model gave the photographer/videographer permission to photograph the Plaintiffs, and relinquished their rights including, but not limited to, the photo and the rights to the Plaintiffs' likenesses.
3. Defendants state that Plaintiffs' claims fail as a matter of law for the reason that Defendants did not use the names of the Plaintiffs as symbols for Plaintiffs' identity or persona.

Further, any use of photographs of Plaintiffs did not involve character, personality, or reputation of the Plaintiffs, or other factors shaping identity.

4. Defendants state that Plaintiffs' claims fail as a matter of law for the reason that Defendants did not use photographs of Plaintiffs for commercial advantage.
5. Defendants state that Plaintiffs' claims fail as a matter of law for the reason that Plaintiffs have suffered no commercial harm or damages. To the extent Plaintiffs would be entitled to any relief, Plaintiffs would be limited to the relief of injunction against use of his or her image by the Defendants.
6. Defendants state that Plaintiffs' claims fail as a matter of law for the reason that Plaintiffs have not and cannot establish that Defendants engaged in deceptive acts or practices, that any alleged deception is "probable," not just "possible", and that Defendants practice would likely have deceived a reasonable person under the same circumstances.
7. Defendants state that Plaintiffs' claims fail as a matter of law for the reason that Plaintiffs have not and cannot establish they were aggrieved by the alleged deceptive practice and suffered actual damages. To the extent Plaintiffs would be entitled to any relief, Plaintiffs would be limited to the relief of injunction against use of his or her image by the Defendants.
8. Defendants state that Plaintiffs' claims are barred due to payment. Each Plaintiff was paid for their photograph and paid for a release, including, but not limited to all rights in any subject photograph and the Plaintiffs' likeness.
9. Defendants state that Plaintiffs' alleged injuries were caused, in whole or in part by, the negligence of a third party (i.e., the photographer who took the subject photograph) and liability should be apportioned to these photographers.

10. Defendants state that Plaintiffs' alleged injuries were caused, in whole or in part, by the negligence of a third party (i.e., any graphic designers or others relied on by Defendants to produce any of the alleged "promotions") whom Defendants had no control over, and liability should be apportioned to these graphic designers or others.
11. Defendants state that any damages, if any, assessed against Defendant, should be reduced because of Plaintiffs comparative and/or contributory negligence in failing to ensure that the photographs which are the subject of the operative complaint were not used or disseminated in accordance with any general release, model release, waiver, license, or any other document describing the use and/or limitations on publication or dissemination of the subject photographs.
12. The Defendants assert that, while the Defendants deny that the Plaintiffs are entitled to any recovery whatsoever, to the extent that the Plaintiffs' alleged damages are caused, in whole or part, by third parties who are not parties to this action, liability shall be apportioned according to fault, irrespective of whether such third parties become parties to this action.
13. Defendants state that Plaintiffs failed to mitigate any of the damages allegedly sustained by Plaintiffs. Upon Plaintiffs' knowledge of Defendant's alleged use of the subject photographs in the operative Complaint, the Plaintiffs failed to take any steps to minimize or mitigate any alleged unauthorized use of the subject photographs. Plaintiffs never utilized the Digital Millennium Copyright Act ("DMCA") which has a "take down" form which results in the removal of content from a website at the request of the owner or the owner of the copyright of the content. As such, any damages actually sustained by the Plaintiffs should be reduced proportionally for failure to mitigate such loss.

14. Defendants also state that Plaintiffs failed to mitigate any of their damages allegedly sustained, by the Plaintiffs failure to instruct photographers on any limitations of the use of the subject photos or the Plaintiffs likenesses. Plaintiffs failed to define the parameters of any release they signed. As such, any damages actually sustained by the Plaintiffs should be reduced proportionally for failure to mitigate any damages caused by the publication of the subject photographs.
15. Plaintiffs assumed the risk that the images would be used in the manner complained of in the operative complaint when the photographs or images were taken. The Plaintiffs dressed in a provocative manner, and assumed poses of a seductive nature, and therefore assumed the risk that the images could be used for promotion of themes and/or businesses related to adult entertainment.
16. Defendants state that each and every one of Plaintiffs' claims are barred by the doctrine of unclean hands. The Plaintiffs' wrongful conduct of releasing all rights to the photos and likeness and subsequently claiming they currently have rights to the photos or likenesses, precludes them from seeking relief and all claims should be dismissed.
17. Defendants state that each and every one of Plaintiffs' claims are barred by the doctrine of waiver. The Plaintiffs' execution of model releases whereby, each model gave the photographer/videographer permission to photograph Plaintiffs and relinquished their rights, including, but not limited to, the subject photo and the rights to their likeness resulted in a waiver of all future claims.
18. Defendants state that each and every one of Plaintiffs' claims are barred by the doctrine of estoppel. The Plaintiffs executed model releases whereby, each model gave the photographer/videographer permission to photograph Plaintiffs and relinquished their

rights, including, but not limited to the subject photo to the photo and the rights to their likenesses as depicted in the subject photographs.

19. Defendants assert that Plaintiffs' claims are fraudulent, in that Plaintiffs knowingly and deliberately released all claims to the rights, including but not limited to, the subject photo and their likenesses.

20. Defendants' state that each and every one of Plaintiffs claims are barred by the existence of a valid license.

21. Defendant reserves the right to supplement these affirmative defenses as they may become known through discovery or the administration of this case.

### **DEFENDANTS' THIRD PARTY COMPLAINT**

Defendants, VELVET LIFESTYLES, LLC, f/k/a VELVET LIFESTYLES, INC., d/b/a MIAMI VELVET, a Florida Limited Liability Company; JOY DORFMAN a/k/a JOY ZIPPER, an individual, PRESIDENT OF VELVET LIFESTYLES, LLC, and MY THREE YORKIES, LLC, a Florida Limited Liability Company, (hereinafter "Corporate Defendants" or "the Club"), hereby sues Third Party Defendant, JLFL CONCEPTS, LLC, a Florida Limited Liability Company; JESSICA L. SWINGER, f/k/a JESSICA L. NEFT, an individual; and JESSE SWINGER, an individual (hereinafter, and alleges:

### **INTRODUCTION AND JURISDICTION**

1. This Third Party Complaint is an effort to respond to Plaintiffs' Amended Complaint, which alleges, "Defendants have pirated and altered the images, likeness and/or identity of each Plaintiff Model for purely self-serving commercial purposes – to advertise, promote

and market Defendants' own business interests on websites and social media accounts owned, operated, hosted, or controlled by Defendants," by bringing in the parties who actually produced the promotional materials at issue therein.

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C, § 1367, which authorizes this Court to exercise jurisdiction over supplemental state law claims part of the same "case and controversy," such as those issues described herein, and 28 U.S.C. § 1332, based on diversity of citizenship of the parties.
3. The amount in controversy for this Third Party Complaint is in excess of \$75,000.00.

### **PARTIES**

#### **A. Velvet Lifestyles, LLC, f/k/a Velvet Lifestyles, Inc., d/b/a Miami Velvet**

4. Velvet Lifestyles, LLC, f/k/a Velvet Lifestyles, Inc., (collectively, "Velvet Lifestyles") is a limited liability corporation organized and existing under the laws of the State of Florida with a principal place of business at 3901 NW 77th Avenue, Miami, Florida 33180. Velvet Lifestyles is, and during all times relevant to the allegations in this Third Party Complaint was, operating and doing business "Miami Velvet" (as defined above, or "the Club").
5. The Club is a private, members-only club marketing and catering locally individuals who engage in the "swinger," or open relationship lifestyle and who seek to regularly attend events where they can participate in those activities.
6. Individuals who attend the Club's events are sold memberships. Membership is not elective. Attendees must purchase a membership in order to enter the Club and attend an event. However, by purchasing a membership, months, members are allowed to attend multiple events at the Club. Generally, the Club hosts three parties per week.

7. Third Party Plaintiffs own and/or operate [miamivelvet.com](http://miamivelvet.com) as well as other social media accounts and websites through which the subject business is advertised.
8. Miami Velvet holds multiple “swinger” events throughout each month.

**B. Defendant Joy Dorfman, a/k/a Joy Zipper**

9. Joy Dorfman (“Dorfman”), a/k/a Joy Zipper, is an individual who works and/or resides in Cook County, Nevada.
10. Dorfman presently serves, and during all times relevant to the allegations raised herein served, as the President of Defendant Velvet Lifestyles, LLC.
11. Dorfman serves, and during all time relevant to the allegations raised herein served, as Managing Member of Defendant My Three Yorkies, LLC.
12. Despite Dorfman’s “corporate status,” she actually has no participation in the day to day operations of Miami Velvet.

**C. Defendant “My Three Yorkies, LLC”**

13. My Three Yorkies, LLC (“Yorkies”) is a limited liability corporation organized and existing under the laws of the State of Florida with a principal place of business at 6070 N. Federal Highway, Boca Raton, Florida 33487.
14. Yorkies presently serves, and during all times relevant to the allegations raised herein served, as the Managing Member of Velvet Lifestyles. Even as Managing Member, Yorkies has no participation in the day to day operations of Miami Velvet.

**D. Third Party Defendant, JLFL Concepts, LLC**

15. JLFL Concepts, LLC (“JLFL”) is a limited liability corporation organized and existing under the laws of the State of Florida with a principal place of business at 6920 44<sup>th</sup> Street, #108, Miami, Florida, 33155.

**E. Third Party Defendant, Jessica L. Swinger a/k/a Jessica L. Neft**

16. Jessica L. Swinger a/k/a Jessica L. Neft (“Swinger”) is an individual who works and/or resides in Broward County, Florida.
17. Jessica L. Swinger serves, and during all time relevant to the allegations raised herein served, as Managing Member of JLFL Concepts, LLC.
18. As Managing Member of Third Party Defendant JLFL Concepts, LLC, Swinger has, and during all times relevant to the allegations raised herein had, operational and managerial control and responsibility over the business operations of JLFL Concepts, LLC, including decisions relating to Miami Velvet's promotional, advertising, marketing and endorsement activities such as those detailed in this Third Party Complaint.

**F. Third Party Defendant, Jesse Swinger**

19. Jesse Swinger (“Jesse”) is an individual who works and/or resides in Broward County, Florida.
20. As a Member of Third Party Defendant JLFL Concepts, LLC, Jesse Swinger has, and during all times relevant to the allegations raised herein had, operational and managerial duties and responsibilities over the business operations of JLFL Concepts, LLC, including decisions relating to Miami Velvet's promotional, advertising, marketing and endorsement activities such as those detailed in this Complaint.

**GENERAL ALLEGATIONS**

21. On or about October of 2011, Third Party Plaintiffs, through their authorized agent, entered into an oral contract with Third Party Defendant JLFL Concepts, LLC, Jesse Swinger, individually, and Jessica Neft, individually (hereinafter, “Third Party Defendants”), to take full responsibility to produce and make all decisions relating to Miami Velvet's



promotional, advertising, marketing and endorsement activities, such as those detailed in the Amended Complaint.

22. As a specific term and condition of the oral contract, Third Party Plaintiffs required that any and all images or photographs used for any and all promotional, advertising, marketing and endorsement activities, such as those detailed in the Amended Complaint, would be fully licensed and authorized, with appropriate releases and/or permission for their use.
23. Third Party Defendants agreed to said specific term and condition and represented that they would comply with same.
24. Third Party Plaintiffs relied on the oral agreement and representations described in paragraphs 22 and 23 and allowed Third Party Defendants to produce and make all decisions relating to Miami Velvet's promotional, advertising, marketing and endorsement activities, such as those detailed in the Amended Complaint.
25. All of the Exhibits to the Amended Complaint depicting the image of any Plaintiff in Miami Velvet's promotional, advertising, and/or marketing materials that were produced for Third Party Plaintiffs were produced by Third Party Defendants.

**CAUSES OF ACTION**  
**Count I – Breach of Contract**

26. Third Party Plaintiffs re-allege Paragraphs 1-25 above, and incorporate the same by reference as though fully set forth herein.
27. The elements for a Cause of Action for breach of Contract are:
  - a. Plaintiff and Defendant entered a valid contract;
  - b. Defendant committed a material breach of the contract; and
  - c. Plaintiff suffered damages caused by the Defendant's breach.

28. Third Party Plaintiffs entered into a valid oral contract to take full responsibility to produce and make all decisions relating to Miami Velvet's promotional, advertising, marketing and endorsement activities, such as those detailed in the Amended Complaint.

29. As a specific term and condition of the oral contract, Third Party Plaintiffs required that any and all images or photographs used for any and all promotional, advertising, marketing and endorsement activities, such as those detailed in the Amended Complaint, would be fully licensed and authorized, with appropriate releases and/or permission for their use.

30. Third Party Defendants agreed to said specific term and condition and represented that they would comply with same.

31. Third Party Plaintiffs relied on the oral agreement and representations described in paragraphs 22 and 23 and allowed Third Party Defendants to produce and make all decisions relating to Miami Velvet's promotional, advertising, and marketing activities, such as those detailed in the Amended Complaint.

32. Assuming that any aspect of the allegations in the Amended Complaint are accurate, Third Party Defendants committed a material breach of said oral agreement.

33. As a result of Third Party Defendants' breach of contract, Third Party Plaintiffs are subject to damages to be determined according to proof at trial, which damages are within the jurisdiction of the Court.

WHEREFORE, Third Party Plaintiffs demand judgment against Third Party Defendants for damages, including but not limited to actual damages, consequential damages, special damages, costs, interest, and such other and further relief in law or equity as this Court deems just and proper.

**Count II – Fraudulent Misrepresentation**

34. Defendants re-allege Paragraphs 1-25 above, and incorporate the same by reference as though fully set forth.
35. The elements for a Cause of Action for Fraudulent Misrepresentation are:
- a. Defendant made a false statement regarding a material fact;
  - b. Defendant knew or should have known the representation was false;
  - c. Defendant intended that the representation induce the Plaintiff to act on it;
  - and
  - d. Plaintiff suffered damages acting in reliance on the representation.
36. Third Party Plaintiffs entered into a valid oral contract to take full responsibility to produce and make all decisions relating to Miami Velvet's promotional, advertising, marketing and endorsement activities, such as those detailed in the Amended Complaint.
37. As a specific term and condition of the oral contract, Third Party Plaintiffs required that any and all images or photographs used for any and all promotional, advertising, marketing and endorsement activities, such as those detailed in the Amended Complaint, would be fully licensed and authorized, with appropriate releases and/or permission for their use.
38. Third Party Defendants agreed to said specific term and condition and represented that they would comply with same.
39. Third Party Plaintiffs relied on the oral agreement and representations described in paragraphs 22 and 23 and allowed Third Party Defendants to produce and make all decisions relating to Miami Velvet's promotional, advertising, and marketing activities, such as those detailed in the Amended Complaint.

40. Assuming that any aspect of the allegations in the Amended Complaint are accurate, Third Party Defendants made fraudulent misrepresentations to Third Party Plaintiffs.

41. As a result of Third Party Defendants fraudulent misrepresentations, Third Party Plaintiffs are subject to damages to be determined according to proof at trial, which damages are within the jurisdiction of the Court.

WHEREFORE, Third Party Plaintiffs demand judgment against Third Party Defendants for damages, including but not limited to actual damages, consequential damages, special damages, costs, interest, and such other and further relief in law or equity as this Court deems just and proper.

### **Count III – Breach of Express Warranty**

42. Defendants re-allege Paragraphs 1-25 above, and incorporate the same by reference as though fully set forth.

43. The elements for a Cause of Action for Breach of Express Warranty are:

- a. Plaintiff purchased a product or service;
- b. Defendant provided an express warranty by affirmation of fact or promise, or description of the product or service;
- c. The product or service failed to conform to the Defendant's affirmation or description; and
- d. Plaintiff suffered damages caused by the Defendant's breach.

44. As a specific term and condition of the oral contract described herein, Third Party Plaintiffs required that any and all images or photographs used for any and all promotional,

advertising, marketing and endorsement activities, such as those detailed in the Amended Complaint, would be fully licensed and authorized, with appropriate releases and/or permission for their use.

45. Third Party Defendants agreed to said specific term and condition and represented that they would comply with same, thus providing an express warranty by fact or promise that they would comply with producing promotional, advertising, marketing and endorsement activities, such as those detailed in the Amended Complaint, and any images would be fully licensed and authorized, with appropriate releases and/or permission for their use.

46. Third Party Plaintiffs relied on the express oral agreement and representations described in paragraphs 22 and 23 as an express warranty and allowed Third Party Defendants to produce and make all decisions relating to Miami Velvet's promotional, advertising, marketing and endorsement activities, such as those detailed in the Amended Complaint.

47. Assuming that any aspect of the allegations in the Amended Complaint are accurate, Third Party Defendants provided services that failed to conform to the Third Party Defendants affirmation and description of said services to Third Party Plaintiffs.

48. As a result of Third Party Defendants providing services that failed to conform the Third Party Defendants affirmation and description of said services to Third Party Plaintiffs, Third Party Plaintiffs are subject to damages to be determined according to proof at trial, which damages are within the jurisdiction of the Court.

WHEREFORE, Third Party Plaintiffs demand judgment against Third Party Defendants for damages, including but not limited to actual damages, consequential damages, special damages, costs, interest, and such other and further relief in law or equity as this Court deems just and proper.

**Count IV – Breach of Implied Warranty**

49. Defendants re-allege Paragraphs 1-25 above, and incorporate the same by reference as though fully set forth.
50. The elements for a Cause of Action for Breach of Implied Warranty are:
- a. Plaintiff purchased a product or service;
  - b. Plaintiff was a foreseeable user of the product or service;
  - c. Plaintiff was “using” the product or service in the intended manner at the time of the injury;
  - d. The product was defective when transferred from the warrantor; and
  - e. The defect caused the plaintiff’s injury.
51. As a specific term and condition of the oral contract described herein and the service provided pursuant to same, Third Party Plaintiffs required that any and all images or photographs used for any and all promotional, advertising, marketing and endorsement activities, such as those detailed in the Amended Complaint, would be fully licensed and authorized, with appropriate releases and/or permission for their use.
52. Third Party Defendants agreed to said specific term and condition and represented that they would comply with same, thus providing an implied warranty by fact or promise that they would comply with producing promotional, advertising, marketing and endorsement activities, such as those detailed in the Amended Complaint, and any images would be fully licensed and authorized, with appropriate releases and/or permission for their use.
53. Third Party Plaintiffs relied on the express oral agreement and representations described in paragraphs 22 and 23 as an express warranty and was “using” the services provided by Third Party Defendants to produce and make all decisions relating to Miami Velvet's

promotional, advertising, marketing and endorsement activities, such as those detailed in the Amended Complaint.

54. Assuming that any aspect of the allegations in the Amended Complaint are accurate, Third Party Defendants provided services that failed to conform to the foreseeable use of same by Third Party Plaintiffs.

55. As a result of Third Party Defendants failed to provide goods and services that did not meet the intended manner and conditions of their use at the time of the injury to Third Party Plaintiffs, the Third Party Defendants are subject to damages to be determined according to proof at trial, which damages are within the jurisdiction of the Court.

WHEREFORE, Third Party Plaintiffs demand judgment against Third Party Defendants for damages, including but not limited to actual damages, consequential damages, special damages, costs, interest, and such other and further relief in law or equity as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

DEFENDANTS demand a jury trial of all issues so triable.

Dated: December 16, 2016

Respectfully Submitted,

/s/Luke Lirot

Luke Lirot, Esq.

Florida Bar Number 714836

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on December 16, 2016, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all parties in this case.

/s/Luke Lirot

Luke Lirot, Esquire

Florida Bar Number 714836