

1 A. Barry Cappello (CSB No. 037835)
 2 abc@cappellonoel.com
 3 Lawrence J. Conlan (CSB No. 221350)
 4 lconlan@cappellonoel.com
 5 Wendy D. Welkom (CSB No. 156345)
 6 wwelkom@cappellonoel.com
 7 **CAPPELLO & NOËL LLP**
 8 831 State Street
 9 Santa Barbara, CA 93101-3227
 10 Telephone: (805)564-2444
 11 Facsimile: (805)965-5950

12 UNITED STATES DISTRICT COURT
 13 CENTRAL DISTRICT OF CALIFORNIA

14 KEVIN MICHAEL BROPHY, JR.,
 15 an individual,

Case No. 8:17-cv-01885

16 Plaintiffs,

COMPLAINT FOR:

17 v.

(1) **MISAPPROPRIATION OF
 LIKENESS OR IDENTITY**

18 BELCALIS ALMANZAR aka
 19 CARDI B, an individual; KSR
 20 GROUP, LLC, a New York limited
 21 liability company; WASHPOPPIN,
 22 INC., a New York corporation; and
 23 DOES 1-20, inclusive,

(2) **VIOLATION OF CALIFORNIA
 CIVIL CODE § 3344**

24 Defendants.

(3) **INVASION OF PRIVACY –
 FALSE LIGHT**

1 Plaintiff KEVIN MICHAEL BROPHY, JR. asserts this action against
2 defendants KSR GROUP, LLC; BELCALIS ALMANZAR aka CARDI B;
3 WASHPOPPIN, INC., and DOES 1-20, as follows:
4

5 **NATURE OF THIS ACTION**

6 1. This is a diversity action asserting California state law claims for
7 privacy and publicity rights. Plaintiff is a family man with minor children. He and
8 his family reside near Los Angeles where he works professionally for a surfing and
9 lifestyle company. Plaintiff formerly worked in the entertainment industry. For
10 more than 10 years, he has had a unique tattoo across his entire back depicting a
11 tiger battling a snake, with other interrelated tattoos that continue around his torso
12 and along his arms. Plaintiff's body art is striking, and readily identifiable amongst
13 a wide-ranging community of fellow professionals and friends. Plaintiff's
14 Instagram feed has nearly 10,000 followers.

15 2. Defendants, including Belcalis Almanzar, also known as "Cardi B"
16 have misappropriated the unique likeness of plaintiff's body art and image and have
17 used it in a misleading, offensive, humiliating and provocatively sexual way to
18 launch her career in music and entertainment. Without plaintiff's knowledge or
19 consent, defendants Cardi B, her agent KSR Group, LLC, and her business
20 Washpoppin, Inc., used plaintiff's body art and image for the cover of her career
21 launching mixtape *Gangsta Bitch Music Vol. 1* ("*Gangsta Bitch*"). The cover
22 shows Cardi B forcing plaintiff to perform cunnilingus on her, holding him face-
23 down between her legs – his unique back tattoo and likeness featured conspicuously
24 at the center of the image – while she drains a 24-ounce bottle of Corona Extra beer
25 and stares lustfully into the camera.

26 3. Plaintiff's image is being used to attract consumer attention to Cardi B
27 and her product, to sell her music, and to promote her career. On information and
28 belief, plaintiff's image and likeness on the mixtape cover have generated millions

1 of views on the internet and other media.

2 4. Plaintiff became aware of defendants' misappropriation and egregious
3 use of his likeness approximately eight months ago. Since then, he has had to face
4 uncomfortable comments, questions, and ridicule, from community members and
5 family, related to this matter. His family dynamic has been adversely affected, and
6 his work and professional life have been unalterably damaged by his having to
7 explain this unconsented-to, offensive, and malicious use of his image.

8 5. Plaintiff seeks compensatory, statutory, and punitive damages for this
9 invasion of privacy and misappropriation, as well as injunctive relief.

10
11 **JURISDICTION AND VENUE**

12 6. This Court has diversity jurisdiction over this action pursuant to 28
13 U.S.C. § 1332(a), in that plaintiff and defendants are citizens of different States,
14 and this action seeks over \$75,000.00 in damages. The claims asserted herein are
15 solely state-law claims arising under the laws of the State of California.

16 7. Venue is proper in this Court in that a substantial part of the events or
17 omissions giving rise to the plaintiff's claims occurred in this judicial district. 28
18 U.S.C. § 1391(b)(2), (c)(2), (d).

19
20 **PARTIES**

21 8. Plaintiff Kevin Michael Brophy, Jr. is an individual, domiciled in
22 Costa Mesa, California.

23 9. Defendant BELCALIS ALMANZAR, also known as and referred to
24 herein as "Cardi B," is an individual, believed to be domiciled in New Jersey, and
25 the principal of defendant WASHPOPPIN, INC.

26 10. Plaintiff is informed and believes that defendant KSR GROUP, LLC,
27 is a New York limited liability company, with principal place of business in New
28 York, New York.

1 Body art is not uncommon or unusual in the entertainment and surfing communities
2 in which plaintiff has worked, but plaintiff's tattoos are one of a kind, especially the
3 art on his back that was inked ten years ago.

4 17. Plaintiff's back tattoo is a graphic depiction of an enormous tiger
5 bearing its fangs in a battle with a giant snake, an image and likeness by which he is
6 now widely recognized. A true image of plaintiff's back tattoo is shown below and
7 incorporated herein.



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1 18. Plaintiff has never seen his tattoo on another person, and he is
2 informed and believes that the artist who inked it has not given it to any other
3 person. Plaintiff believes he is the only person in the world with the tattoo.
4 Because plaintiff's vocation and avocation require him to wear board shorts but no
5 shirt regularly, his back and tattoos are frequently exposed. As a result, his back
6 tattoo has become a unique feature and likeness by which both his friends and the
7 business and surfing community know him. People can instantly recognize him by
8 his tiger snake tattoo.

9 19. Defendant Cardi B is a former stripper and entertainer from the Bronx
10 who dabbled in reality television. In March 2016, she dropped her first mixtape,
11 *Gangsta Bitch*, which – boosted by the sexually-charged image of plaintiff wedged
12 between her legs – launched her career as a rapper and a social media personality.
13 The *Gangsta Bitch* mixtape cover and use of plaintiff's image promotes her “no
14 filter attitude,” and she is described on Apple Music Preview as a “raw and
15 aggressive rapper.” She has developed a wide audience, and her presence in
16 California is strong.

17 20. Approximately eight months ago, plaintiff became aware for the first
18 time of the use of his image on the cover of *Gangsta Bitch*, when a friend asked
19 him if he knew about it, emphasizing how crazy it was that his back and body art
20 were on the cover, showing him cunnilingus with this rapper called Cardi B. Plaintiff
21 then searched for *Gangsta Bitch* on the internet and was shocked, outraged,
22 humiliated, and appalled at what he saw.

23 21. The *Gangsta Bitch* cover explicitly misrepresents plaintiff having sex
24 with Cardi B. Plaintiff's body art is readily identifiable across the image from his
25 unique, recognizable tiger snake back tattoo. Plaintiff has never met Cardi B, yet
26 she and her agents and fellow-defendants forced him unwillingly into an image of
27 his face between her legs, which are spread wide around his back and his tiger
28 snake tattoo. Plaintiff never consented to nor would consent to his image, real or

1 photo-shopped, yet the image is now published and re-published across the internet
2 on a daily basis. A true copy of the *Gangsta Bitch* cover is shown below and
3 incorporated herein.



23 22. The cover of *Gangsta Bitch* is designed to attract consumers to the
24 Cardi B edgy persona, and to promote her music and her image as a hard, dominant
25 and aggressive rapper. This includes the unauthorized use of plaintiff's likeness,
26 his unique tiger snake tattoo as an essential part of the scenario, featuring plaintiff
27 as her sex toy.

28 ///

1 23. Plaintiff did not consent to the use of his image and likeness on the
2 *Gangsta Bitch* cover, nor would he.

3 24. Since hearing the first comment about the image approximately eight
4 months ago, plaintiff has had to face ongoing and uncomfortable questions and
5 comments about the *Gangsta Bitch* cover. He has felt ridiculed, disgusted, and
6 humiliated, as the use of his image portrays him in a false light.

7 25. Plaintiff's family life has been negatively affected by the use of his
8 image and likeness on the *Gangsta Bitch* cover. He has been devastated as a result
9 of the trauma to his wife and children; he worried that his wife believed he had
10 betrayed her. He cringes at the thought of his son viewing the image on the internet
11 after he accidentally saw it while plaintiff and his wife tried to figure out how it
12 could have ever appeared on the mixtape cover. Plaintiff's son questioned him –
13 i.e. asking what plaintiff was doing there and who was the girl. Plaintiff had to
14 explain that the picture was false, that even though it showed his back tattoo it was
15 not him, and it didn't really happen. At the time, his son was enrolled in a Christian
16 pre-kindergarten school, consistent with plaintiff's and his wife's family beliefs.
17 His son has not forgotten the picture, and he has referred to it periodically, to
18 plaintiff's chagrin.

19 26. All the while plaintiff suffers, Cardi B's public presence is ever-
20 increasing, and the view of plaintiff's image on her mixtape cover is increasing
21 exponentially. Plaintiff is informed and believes that the use of his image on the
22 *Gangsta Bitch* cover was fundamental to launching her popularity and notoriety,
23 including sales of *Gangsta Bitch* and all of her later music and commercial value.
24 Plaintiff is informed and believes that Cardi B's audience reach is enormous. On
25 September 25, 2017, Cardi B became the first female rapper to top the Billboard
26 Hot 100 since 1998.

27 27. Plaintiff's image and likeness on the *Gangsta Bitch* cover is now
28 widely displayed across the internet, including on iTunes, Amazon, and Spotify.

1 The cover is displayed not only for sales and marketing of the *Gangsta Bitch*
2 mixtape, but also re-displayed for each individual song on the mixtape, making
3 plaintiff and his tattoo the feature picture for Cardi B’s platform database, which is
4 estimated to exceed *nine million* followers.

5 28. Plaintiff is informed and believes, and thereupon alleges, that his
6 image and likeness on the *Gangsta Bitch* cover has also been displayed in print and
7 other commercial media and marketing materials at different times. Cardi B has
8 appeared on television, YouTube, and other national and global media.

9 29. She has also appeared in person for engagements in California in the
10 last two years, and reaches out to California audiences to promote her image and
11 sell herself and her commercial product. Cardi B’s increased public presence,
12 including in California, has increased the magnitude of plaintiff’s harm, as the
13 *Gangsta Bitch* cover – and his likeness – is now everywhere, subjecting plaintiff to
14 increased distress and humiliation. Plaintiff is informed and believes that the
15 defendants have generated – and continue to generate – millions and millions of
16 views of plaintiff’s image across the internet and other media, for their commercial
17 benefit, and to plaintiff’s detriment.

18 30. As a result of defendants’ conduct, plaintiff has suffered damages,
19 including but not limited to: (1) injury to reputation; (2) humiliation,
20 embarrassment and mental distress; (3) amounts reflecting compensation for
21 unauthorized use of his likeness, including profits made by defendants; (4) loss of
22 the commercial value of his likeness; and (5) other damages, all in an amount to be
23 determined at trial, but which are estimated to exceed \$5,000,000.00.

24 31. Plaintiff is also entitled to preliminary and permanent injunctive relief
25 to require the defendants to cease their unauthorized use of plaintiff’s image.

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FIRST CLAIM FOR RELIEF

(Misappropriation of Likeness or Identity)

32. Plaintiff repeats and re-alleges the foregoing allegations as if fully set forth herein.

33. As alleged herein, defendants used plaintiff's likeness or identity without his permission.

34. Defendants gained a commercial or other benefit by using plaintiff's likeness or identity.

35. Plaintiff was harmed.

36. Defendants' conduct was a substantial factor in causing plaintiff's harm.

37. In doing the acts herein alleged, defendants acted fraudulently, willfully, maliciously, oppressively, and with intentional disregard of plaintiff's interests and privacy, and subjected plaintiff to unjust hardship. As a result of this conduct, plaintiff is entitled to punitive damages.

38. Plaintiff is also entitled to preliminary and permanent injunctive relief to require the defendants to cease the unauthorized use of plaintiff's image.

SECOND CLAIM FOR RELIEF

(Violation of California Civil Code § 3344)

39. Plaintiff repeats and re-alleges the foregoing allegations as if fully set forth herein.

40. As alleged herein, defendants knowingly used plaintiff's likeness to advertise or sell the Gangsta Bitch mixtape and launch Cardi B's career as a rapper and entertainer.

41. The use did not occur in connection with a news, public affairs, or sports broadcast or account, or with a political campaign.

42. Defendants did not have plaintiff's consent.

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1 43. Defendants' use of plaintiff's likeness was directly connected to
2 defendants' commercial purpose.

3 44. Plaintiff was harmed.

4 45. Defendants' conduct was a substantial factor in causing plaintiff's
5 harm.

6 46. As a result of defendants' conduct, plaintiff is entitled to recover
7 actual, special, and statutory damages, profits attributable to such unauthorized use,
8 and attorney's fees and costs.

9 47. In addition, in doing the acts herein alleged, defendants acted
10 fraudulently, willfully, maliciously, oppressively, and with intentional disregard of
11 plaintiff's interests, and subjected plaintiff to unjust hardship. As a result of this
12 conduct, plaintiff is entitled to punitive damages.

13 **THIRD CLAIM FOR RELIEF**

14 **(Invasion of Privacy – False Light)**

15 48. Plaintiff repeats and re-alleges the foregoing allegations as if fully set
16 forth herein.

17 49. As alleged herein, defendants publicized information or material that
18 showed plaintiff in a false light.

19 50. The false light created by the publication would be highly offensive to
20 a reasonable person in plaintiff's position.

21 51. Defendants were negligent in determining the truth of the information
22 or whether a false impression would be created by its publication.

23 52. Plaintiff was harmed.

24 53. Defendants' conduct was a substantial factor in causing plaintiff's
25 harm.

26 54. In doing the acts herein alleged, defendants acted fraudulently,
27 willfully, maliciously, oppressively, and with intentional disregard of plaintiff's
28 interests, and subjected plaintiff to unjust hardship. As a result of this conduct,

1 plaintiff is entitled to punitive damages.

2 55. Plaintiff is also entitled to preliminary and permanent injunctive relief
3 to require the defendants to cease the unauthorized use of plaintiff's image.

4 **PRAYER**

5 WHEREFORE, Plaintiffs pray for judgment against defendants, and each of
6 them, as follows:

7 ON THE FIRST and THIRD CLAIMS FOR RELIEF:

- 8 1. For compensatory damages in an amount to be determined at trial.
9 2. For punitive damages in an amount to be determined at trial.
10 3. For preliminary and permanent injunctive relief, requiring the defendants
11 to cease the unauthorized use of plaintiff's image.

12 ON THE SECOND CLAIM FOR RELIEF:

- 13 1. For compensatory actual damages in an amount to be determined at trial.
14 2. For statutory damages, as appropriate.
15 3. For disgorgement of profits from the unauthorized use.
16 4. For punitive damages in an amount to be determined at trial.
17 5. For attorney's fees and costs.

18 ON ALL CLAIMS FOR RELIEF:

- 19 1. For interest at the legal rate.
20 2. For attorney's fees on all applicable claims.
21 3. For costs of suit incurred herein.
22 4. For such other further relief as the court may deem just and proper.

23
24 DATED: October 26, 2017

CAPPELLO & NOËL LLP

25 By: /s/A. Barry Cappello
26 A. Barry Cappello
27 Lawrence J. Conlan
28 Wendy D. Welkom

Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues so triable in this action.

DATED: October 26, 2017

CAPPELLO & NOËL LLP

By: /s/A. Barry Cappello
A. Barry Cappello
Lawrence J. Conlan
Wendy D. Welkom

Attorneys for Plaintiff