

1 MARTIN D. SINGER (BAR NO. 78166)
2 PAUL S. BERRA (BAR NO. 186675)
3 BRIGIT K. CONNELLY (BAR NO. 216198)
4 LAVELY & SINGER PROFESSIONAL CORPORATION
5 2049 Century Park East, Suite 2400
6 Los Angeles, California 90067-2906
7 Telephone: (310) 556-3501
8 Facsimile: (310) 556-3615
9 pberra@lavelysinger.com

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

SEP 23 2005

John A. Clarke, Executive Officer/Clerk
By: _____ Deputy
Elizabeth Martínez

6 Attorneys for Plaintiff
7 COLIN FARRELL

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

11 COLIN FARRELL, an individual,
12 Plaintiff,
13 v.
14 NICOLE NARAIN, an individual;
15 DAVID HANS SCHMIDT, an individual;
16 INTERNET COMMERCE GROUP INC.,
17 a corporation; PAUL NASH, an individual;
18 and DOES 1 through 20, inclusive,
19 Defendants.

CASE NO. BC336690
[Hon. Elihu M. Berle]
PLAINTIFF COLIN FARRELL'S FIRST
AMENDED COMPLAINT AGAINST
DEFENDANTS SEEKING DAMAGES
AND INJUNCTIVE RELIEF BASED ON
BREACH OF ORAL CONTRACT,
INVASION OF PRIVACY, VIOLATION
OF COMMON LAW RIGHT OF
PUBLICITY, VIOLATION OF
CALIFORNIA CIVIL CODE § 3344,
AND UNFAIR COMPETITION AND
UNFAIR BUSINESS PRACTICES
[JURY TRIAL DEMANDED]

22 Plaintiff COLIN FARRELL alleges as follows:

23 **THE NATURE OF THIS ACTION**

24 1. This is an action to enjoin and obtain redress for Defendants' unauthorized attempts
25 to commercially exploit a highly confidential videotape depicting private sexual relations between
26 consenting adults. The videotape was created by two individuals solely for their private use and
27 enjoyment, and the intimate matters depicted on the videotape warrant the highest level of
28 constitutional privacy protection. Defendants' outrageous attempt to capitalize on the celebrity of

1 Plaintiff Colin Farrell, a well-known motion picture actor, through their unauthorized commercial
2 exploitation of the highly private and confidential videotape exceeds all bounds of common human
3 decency. Defendants' conduct violates not only Plaintiff's constitutional privacy rights and right of
4 publicity, but numerous other statutory and common law principles as well.

5 **THE PARTIES**

6 2. Plaintiff COLINFARRELL ("Farrell" or "Plaintiff") is now, and at all times material
7 hereto has been, a resident of Dublin, Ireland, who regularly conducts business in the County of Los
8 Angeles.

9 3. Plaintiff is informed and believes and thereon alleges that Defendant NICOLE
10 NARAIN ("Narain") is now, and all times material hereto has been, a resident of the County of Los
11 Angeles who regularly conducts business in the County of Los Angeles.

12 4. Plaintiff is informed and believes and thereon alleges that Defendant DAVID HANS
13 SCHMIDT ("Schmidt") is now, and at all times material hereto has been, a resident of Phoenix,
14 Arizona, who conducts business in the County of Los Angeles.

15 5. Plaintiff is informed and believes and thereon alleges that Defendant INTERNET
16 COMMERCE GROUP INC. ("ICG") is now, and at all times material hereto has been, a corporation
17 based in Phoenix, Arizona, which conducts business in the County of Los Angeles and elsewhere
18 in the United States and indeed throughout the world. Plaintiff is informed and believes and thereon
19 alleges that ICG exploits adult content over the internet through its webmaster affiliate program at
20 www.xxxcash.com and by various other means. This sign-up program allows website owners and
21 operators around the world to exploit the adult products and services offered on dozens of ICG's
22 websites, including www.femalecelebrities.com and www.malecelebrities.com, in exchange for a
23 share of the total revenues that they generate for ICG.

24 6. Plaintiff is informed and believes and thereon alleges that Defendant PAUL NASH
25 ("Nash") is now, and at all times material hereto has been, a resident of Phoenix, Arizona, who
26 conducts business in the County of Los Angeles. Plaintiff is informed and believes and thereon
27 alleges that Nash is the Director of Marketing and Operations of ICG and, in that capacity, oversees
28 ICG's webmaster affiliate program which is based on the website, www.xxxcash.com.

1 7. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as
2 Does 1 through 20, inclusive, and therefore sues said Defendants by such fictitious names. Plaintiff
3 will amend this Complaint to allege the true names and capacities of such fictitiously named
4 Defendants when the same have been ascertained. Plaintiff is informed and believes and based
5 thereon alleges that each of said fictitiously named Defendants is responsible in some manner for
6 the occurrences, acts and omissions alleged herein, and that Plaintiff's damages were proximately
7 caused by their wrongful conduct, as described herein.

8 8. Defendants Narain, Schmidt, ICG, Nash and Doe Defendants 1 through 20 shall
9 sometimes be collectively referred to as "Defendants."

10 9. Plaintiff is informed and believes and thereon alleges that Defendants, and each of
11 them, were the owners, agents, principals, employees, employers, partners, joint venturers or co-
12 conspirators of the remaining Defendants and at all times mentioned herein were acting within the
13 course and scope of that ownership, agency, employment, partnership, joint venture, or conspiracy.

14 **THE MAKING OF THE PRIVATE VIDEOTAPE**

15 10. Approximately two and one-half years prior to the filing of this First Amended
16 Complaint, Plaintiff was involved in a personal relationship with Defendant Narain, a model and
17 actress who resided and conducted business in Los Angeles County. Plaintiff and Narain made a
18 private videotape in Los Angeles that was approximately 15 minutes in length and depicted them
19 having sexual relations (the "Videotape"). At the time the Videotape was made, Plaintiff and Narain
20 agreed that the Videotape would be jointly owned by the two of them, would remain strictly private
21 and confidential between them, and that neither Plaintiff nor Narain would ever give to or share with
22 any third party the Videotape or any of its content. Plaintiff and Narain further agreed that neither
23 party would ever sell, distribute or exploit the Videotape or its content in any way.

24 11. The personal relationship between Plaintiff and Narain subsequently ended.

25 12. Since the making of the Videotape, Plaintiff has neither given to nor shown the
26 Videotape to anyone, nor has Plaintiff authorized its use, sale, exhibition, distribution or exploitation
27 in any way. Plaintiff was unaware of any attempt to use, sell, exhibit, distribute or exploit the
28 Videotape until the recent events alleged below.

1 **DEFENDANTS' WRONGFUL ATTEMPTS**

2 **TO EXPLOIT THE VIDEOTAPE**

3 13. In mid-July 2005, Defendant Schmidt contacted Plaintiff's representatives in Los
4 Angeles County in order to inform Plaintiff of his efforts to commercially exploit the Videotape.
5 Schmidt stated that he was authorized to commercially exploit the Videotape and solicited Plaintiff's
6 representatives regarding an agreement with Plaintiff for the mutual commercial distribution and
7 exploitation of the Videotape. In a written communication to Plaintiff's talent agent dated July 13,
8 2005, Defendant Schmidt described the imminent distribution of "a 15-minute color video depicting
9 [Plaintiff and Defendant Narain] engaged in various acts of copulation." In this communication,
10 Schmidt, among other things, proposed a meeting with Plaintiff's representatives to discuss
11 "commercialization" of the Videotape for profit.

12 14. Defendant Schmidt informed Plaintiff that he was representing and working with
13 Defendant Narain in connection with his efforts to exploit the Videotape, and that he had the right
14 to disseminate the Videotape for commercial purposes. Plaintiff subsequently learned that Narain
15 was, in fact, actively involved in the scheme to profit from Plaintiff's popularity and value of his
16 name and likeness by breaching her agreement with Plaintiff and exploiting the Videotape for her
17 own commercial purposes. Plaintiff is further informed and believes and thereon alleges that
18 Defendants ICG and Nash were also involved in Schmidt's and Narain's initial efforts to promote,
19 market and commercially disseminate the Videotape.

20 15. Plaintiff is informed and believes and thereon alleges that Defendants have contacted
21 third parties, including members of the media, and disclosed to them the substance of what is
22 depicted on the private, confidential Videotape, and have informed others of their intentions to
23 release the Videotape throughout the world for their own commercial purposes.

24 **DEFENDANTS HAVE NO RIGHT TO EXPLOIT THE VIDEOTAPE**

25 16. Plaintiff and his representatives have informed Defendants that they have absolutely
26 no right to license or commercially distribute the Videotape or to use or exploit the Videotape in any
27 manner, and Plaintiff recently obtained a temporary restraining order and preliminary injunction
28 order enjoining and restraining Defendants and others from marketing, distributing, disseminating

1 or otherwise exploiting the Videotape in any way.

2 17. Plaintiff has never in any way authorized or consented to Defendants, or any of them,
3 disclosing, selling, distributing and/or disseminating the Videotape. There has never been any
4 agreement by Plaintiff which would allow Defendants, or any of them, to commercially exploit the
5 Videotape or profit from the value of Plaintiff's name, image or likeness in any manner whatsoever.

6 **PLAINTIFF WILL BE SIGNIFICANTLY DAMAGED BY**

7 **THE DISTRIBUTION OF THE VIDEOTAPE OR ITS CONTENT**

8 18. Plaintiff has spent considerable time, energy and money developing his career as a
9 film actor. Through years of hard work, Plaintiff has developed sufficient skill, reputation, notoriety
10 and virtue to create considerable commercial value in his identity. The marketable product of that
11 work is the ability of Plaintiff's name and likeness to attract public attention and evoke a desired
12 response from a particular consumer audience.

13 19. The commercial value of Plaintiff's identity is diminished by an unauthorized use of
14 his name and likeness in association with a product perceived unfavorably by the public or by the
15 negative portrayal of Plaintiff to the general public.

16 20. Plaintiff and his representatives carefully limit and restrict the use of Plaintiff's name,
17 image and likeness to maximize the commercial value in his identity, to limit the potential harmful
18 consequences to that commercial value caused by improper and inappropriate use of his name and
19 likeness, and to ensure that the product, medium and mode of promotion are consistent and
20 compatible with his image and persona.

21 21. Defendants' conduct with respect to the Videotape and other wrongful conduct
22 described herein manifests an outright disregard of Plaintiff's rights under his agreement with
23 Narain, as well as to Plaintiff's valuable privacy rights and common law rights to prohibit and
24 prevent the unauthorized commercial use of his name and likeness.

25 22. Plaintiff never authorized Defendants to disseminate the Videotape or its content or
26 to commercially exploit Plaintiff's name, image or likeness in any way.

27 23. Plaintiff is informed and believes and alleges thereon that, unless permanently
28 enjoined and restrained, Defendants will continue to attempt to license, distribute or otherwise

1 exploit the Videotape and disclose the contents of the Videotape to third parties despite Plaintiff's
2 objections and in clear violation of Plaintiff's rights. This will continue to cause Plaintiff great
3 distress, and if the Videotape is released on the internet or otherwise made available to the public,
4 Plaintiff's reputation will be irreparably harmed. Indeed, Plaintiff is informed and believes that
5 Defendants ICG and Nash have been working together with certain Doe Defendants to randomly
6 "spam" thousands, if not millions, of persons around the world with e-mails falsely representing that
7 the Videotape is available on their website, www.malecelebrities.com, in an effort to increase sales
8 and revenues through paid subscriptions and other wrongful means.

9 **OTHER COMMERCIAL MISAPPROPRIATION**
10 **OF PLAINTIFF'S NAME AND LIKENESS**

11 24. Plaintiff is informed and believes and thereon alleges that Defendants ICG, Nash, and
12 certain Does have taken actions unrelated to the Videotape to commercially exploit Plaintiff's name
13 and likeness without any authorization, consent or right to do so. Specifically, Plaintiff is informed
14 and believes and thereon alleges that ICG, Nash, and certain Does have prominently posted
15 Plaintiff's name and likeness on the home page of their website, www.malecelebrities.com, to
16 generate interest in this site and increase the number of paid subscribers thereto. Plaintiff is further
17 informed and believes that Defendants ICG, Nash, and certain Does have posted a number of "sex
18 scenes" from Plaintiff's movies on their website, www.malecelebrities.com, for the benefit of their
19 paid subscribers and to lure other potential customers to subscribe thereto. Defendants ICG, Nash,
20 and certain Does have taken these actions for their own commercial benefit without consent,
21 authorization or any other right to do so.

22 **FIRST CAUSE OF ACTION**

23 **(For Breach of Oral Contract Against Defendant Narain)**

24 25. Plaintiff repeats, realleges, adopts and incorporates each and every allegation
25 contained in Paragraphs 1 through 24, inclusive, as though fully set forth herein.

26 26. Plaintiff and Defendant Narain entered into the oral agreement with regard to the
27 making of the Videotape and with respect to the confidentiality of the Videotape as described above.

28 \\\

1 27. Plaintiff has performed all conditions, covenants and promises required under the
2 agreement with Defendant Narain, except for those conditions, covenants and promises which have
3 been prevented or otherwise excused by Defendant Narain's conduct.

4 28. Defendant Narain materially breached the oral agreement between the parties by,
5 among other things, working with Defendants Nash, Schmidt and/or others and taking actions to
6 exploit and/or otherwise profit from the Videotape and to publically disclose the Videotape and its
7 contents.

8 29. Defendant Narain's conduct as alleged hereinabove constitutes a breach of the oral
9 agreement with Plaintiff.

10 30. As a direct and proximate result of the aforementioned acts by Defendant Narain,
11 Plaintiff has been damaged in an amount to be proven at trial.

12 **SECOND CAUSE OF ACTION**

13 **(For Invasion of Privacy by Public Disclosure**
14 **of Private Facts Against All Defendants)**

15 31. Plaintiff repeats, realleges, adopts and incorporates each and every allegation
16 contained in Paragraphs 1 through 24 and 26 through 28, inclusive, as though fully set forth herein.

17 32. Defendants, without Plaintiff's consent and against Plaintiff's will, have grossly
18 invaded Plaintiff's protected right of privacy as recognized under the United States Constitution, the
19 California Constitution and at common law, by disclosing to third parties the content of the
20 confidential Videotape depicting Plaintiff, which was taken for private purposes in a highly private
21 setting. Plaintiff had a reasonable expectation of privacy regarding the Videotape.

22 33. The unauthorized solicitation of commercial opportunities relating to the Videotape
23 and the disclosure of the content of the Videotape is offensive and objectionable to Plaintiff, as it
24 would be to a reasonable person of ordinary sensibilities. Plaintiff did not consent to any use or
25 exploitation of the Videotape whatsoever, or to any disclosure of the contents of the Videotape. The
26 disclosures of the Videotape and its content and its threatened distribution is highly offensive to
27 Plaintiff and has violated Plaintiff's right of privacy.

28 \\\

1 34. Defendants disclosed the Videotape and its contents to third parties in order to realize
2 profits from the ultimate sale and distribution of the Videotape and to otherwise promote and
3 advance Defendants' commercial interests.

4 35. Plaintiff is informed and believes and thereon alleges that Defendants acted with
5 actual malice or in reckless disregard of Plaintiff's right to privacy.

6 36. Defendants have threatened to continue invading Plaintiff's right of privacy by
7 continuing to solicit opportunities relating to, and to sell, disseminate and/or permit distribution of,
8 the Videotape. Unless and until they are further enjoined and restrained by Order of this Court,
9 Defendants' continued acts will cause Plaintiff severe and irreparable injury which cannot adequately
10 be compensated by monetary damages. By reason of the foregoing, Plaintiff is entitled to permanent
11 injunctive relief enjoining the distribution and use of the Videotape and mandating the return of all
12 reproductions and copies of the Videotape to Plaintiff.

13 37. As a direct and proximate result of the aforementioned acts by Defendants, Plaintiff
14 has been damaged, and will be damaged, in an amount according to proof.

15 38. Plaintiff is informed and believes, and on that basis alleges, that the aforementioned
16 acts of Defendant were done intentionally or with a conscious disregard of Plaintiff's rights, and with
17 the intent to vex, injure or annoy, such as to constitute oppression, fraud, or malice, thus entitling
18 Plaintiff to exemplary and punitive damages in an amount appropriate to punish or make an example
19 of Defendant and to deter such conduct in the future, which amount will be proved at trial.

20 **THIRD CAUSE OF ACTION**

21 **(For Common Law Misappropriation Of**
22 **Right of Publicity Against All Defendants)**

23 39. Plaintiff repeats, realleges, adopts and incorporates each and every allegation
24 contained in Paragraphs 1 through 24, 26 through 28, and 32 through 34, inclusive, as though fully
25 set forth herein.

26 40. Plaintiff has been a professional actor for a number of years. Through his hard work
27 and use of his talents in the entertainment field, Plaintiff's name, likeness and persona have
28 substantially increased in value and are vested with substantial goodwill in the eyes of the public.

1 Accordingly, at the time of Defendants' actions alleged hereinabove, Plaintiff had valuable rights
2 of publicity and property rights with substantial commercial value, which he did not agree to transfer,
3 in whole or in part, to Defendants for the purpose of commercially exploiting them by means of
4 soliciting third parties with regard to the Videotape, disseminating or disclosing the Videotape or
5 its contents for Defendants' own commercial purposes, or otherwise.

6 41. Defendants' unauthorized actions with respect to the Videotape constitute violations
7 and misappropriations of Plaintiff's right of publicity, in that Defendants used and profited from
8 Plaintiff's name and likeness without his consent, authorization or other right to do so.

9 42. The misappropriation was for Defendants' advantage, in that Plaintiff's name, image
10 and likeness were used and intended to create and enhance Defendants' pecuniary gain and profit.

11 43. Defendants have threatened to continue utilizing Plaintiff's name and likeness by
12 continuing to solicit and sell, disseminate and/or permit distribution of the Videotape. Unless and
13 until they are further enjoined and restrained by Order of this Court, Defendants' continued acts will
14 cause Plaintiff severe and irreparable injury which cannot adequately be compensated by monetary
15 damages. By reason of the foregoing, Plaintiff is entitled to permanent injunctive relief enjoining
16 the distribution and use of the Videotape and mandating the return of all reproductions and copies
17 of the Videotape to Plaintiff.

18 44. As a direct and proximate result of the aforementioned acts by Defendants, and each
19 of them, Plaintiff has been damaged, and will be damaged, in an amount subject to proof at trial.

20 45. Plaintiff is informed and believes, and on that basis alleges, that the aforementioned
21 acts of Defendants were done intentionally or with a conscious disregard of Plaintiff's rights, and
22 with the intent to vex, injure or annoy Plaintiff, such as to constitute oppression, fraud, or malice
23 thus entitling Plaintiff to exemplary and punitive damages in an amount appropriate to punish or set
24 an example of Defendants, and each of them, and to deter such conduct in the future, which amount
25 will be proved at trial.

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

FOURTH CAUSE OF ACTION

**(For Common Law Misappropriation Of Right of
Publicity Against Defendants ICG and Nash)**

46. Plaintiff repeats, realleges, adopts and incorporates each and every allegation contained in Paragraphs 1 through 24, 26 through 28, and 32 through 34, inclusive, as though fully set forth herein.

47. The unauthorized actions of ICG, Nash, and certain Doe Defendants with respect to the posting of Plaintiff's name and likeness on their website, www.malecelebrities.com, including the "sex scenes" from Plaintiff's movies, as well as their involvement in the sending of thousands, if not millions, of "spam" e-mails to third parties to lure them to their websites and to increase the number of paid subscriptions thereto, constitute violations and misappropriations of Plaintiff's right of publicity in that Defendants used and profited from Plaintiff's name and likeness without his consent, authorization or other right to do so.

48. The violations and misappropriations were for the advantage of Defendants ICG, Nash, and certain Does, in that Plaintiff's name, image and likeness were used and intended to create and enhance their pecuniary gain and profit.

49. As a direct and proximate result of the aforementioned acts by Defendants ICG, Nash, and certain Does, and each of them, Plaintiff has been damaged, and will be damaged, in an amount subject to proof at trial.

50. Plaintiff is informed and believes, and on that basis alleges, that the aforementioned acts of Defendants ICG, Nash, and certain Does were done intentionally or with a conscious disregard of Plaintiff's rights, and with the intent to vex, injure or annoy Plaintiff, such as to constitute oppression, fraud, or malice thus entitling Plaintiff to exemplary and punitive damages in an amount appropriate to punish or set an example of Defendants, and each of them, and to deter such conduct in the future, which amount will be proved at trial.

\\\
\\\
\\

1 **FIFTH CAUSE OF ACTION**

2 **(For Violation of Civil Code § 3344 Against All Defendants)**

3 51. Plaintiff repeats, realleges, adopts and incorporates each and every allegation
4 contained in Paragraphs 1 through 24, 26 through 28, 32 through 34, and 40 through 42, inclusive,
5 as though fully set forth herein.

6 52. Plaintiff has worked hard and invested a great deal of effort to develop abilities and
7 skills as an actor in the motion picture industry. Through his hard work and effort and appearances
8 in numerous major motion pictures and television programs which have achieved great popularity
9 with the public, received great acclaim and generated substantial box office revenues, Plaintiff has
10 invested in his name, voice, likeness and image great value and substantial goodwill which
11 Defendants are seeking to usurp for their own wrongful purposes.

12 53. Defendants have knowingly misappropriated Plaintiff's name, photograph and
13 likeness for commercial purposes, including the dissemination of the Videotape and its content
14 without Plaintiff's consent.

15 54. The illegal and unauthorized usage by Defendants of Plaintiff's name, photograph
16 and likeness as alleged hereinabove constitutes a commercial misappropriation in violation of
17 Section 3344 of the California Civil Code.

18 55. Defendants have threatened to continue utilizing Plaintiff's name and likeness by
19 continuing to solicit and sell, disseminate and/or permit distribution of the Videotape. Unless and
20 until they are further enjoined and restrained by Order of this Court, Defendants' continued acts will
21 cause Plaintiff severe and irreparable injury which cannot adequately be compensated by monetary
22 damages. By reason of the foregoing, Plaintiff is entitled to permanent injunctive relief enjoining
23 the distribution and use of the Videotape and mandating the return of all reproductions and copies
24 of the Videotape to Plaintiff. Plaintiff is also entitled to recover attorneys fees and costs incurred
25 in this action pursuant to Section 3344.

26 56. As a direct and proximate result of the aforementioned acts by Defendants, and each
27 of them, Plaintiff has been damaged, and will be damaged, in an amount subject to proof at trial.

28 \\\

1 57. Plaintiff is informed and believes, and on that basis alleges, that the aforementioned
2 acts of Defendants were done intentionally or with a conscious disregard of Plaintiff's rights, and
3 with the intent to vex, injure or annoy Plaintiff, such as to constitute oppression, fraud, or malice
4 thus entitling Plaintiff to exemplary and punitive damages in an amount appropriate to punish or set
5 an example of Defendants, and each of them, and to deter such conduct in the future, which amount
6 will be proved at trial.

7 **SIXTH CAUSE OF ACTION**

8 **(For Violation of Civil Code § 3344**

9 **Against Defendants ICG and Nash)**

10 58. Plaintiff repeats, realleges, adopts and incorporates each and every allegation
11 contained in Paragraphs 1 through 24, 26 through 28, 32 through 34, and 40 through 42, inclusive,
12 as though fully set forth herein.

13 59. Defendants ICG, Nash, and certain Does have knowingly misappropriated Plaintiff's
14 name and likeness for commercial purposes, including the posting of Plaintiff's name and likeness
15 on their website, www.malecelebrities.com, including the "sex scenes" from Plaintiff's movies, as
16 well as their involvement in the sending of thousands, if not millions, of "spam" e-mails to third
17 parties to lure them to their websites and to increase the number of paid subscriptions thereto.

18 60. The illegal and unauthorized usage by Defendants ICG, Nash, and certain Does of
19 Plaintiff's name, photograph and likeness as alleged hereinabove constitutes a commercial
20 misappropriation in violation of Section 3344 of the California Civil Code.

21 61. As a direct and proximate result of the aforementioned acts by Defendants ICG, Nash,
22 and certain Does, and each of them, Plaintiff has been damaged, and will be damaged, in an amount
23 subject to proof at trial.

24 62. Plaintiff is informed and believes, and on that basis alleges, that the aforementioned
25 acts of Defendants ICG, Nash, and certain Does were done intentionally or with a conscious
26 disregard of Plaintiff's rights, and with the intent to vex, injure or annoy Plaintiff, such as to
27 constitute oppression, fraud, or malice thus entitling Plaintiff to exemplary and punitive damages
28 in an amount appropriate to punish or set an example of Defendants, and each of them, and to deter

1 such conduct in the future, which amount will be proved at trial.

2 **SEVENTH CAUSE OF ACTION**

3 **(For Unfair Competition and Unfair Business Practices Against All Defendants)**

4 63. Plaintiff repeats, realleges, adopts and incorporates each and every allegation
5 contained in Paragraphs 1 through 24, 26 through 28, 32 through 34, 40 through 42, and 47 through
6 48, inclusive, as though fully set forth herein.

7 64. By virtue of the manner in which Defendants have improperly exploited the name,
8 image and likeness of Plaintiff, Defendants have committed unlawful, unfair, and deceptive acts,
9 confusing, untrue and/or misleading advertising, unfair competition and unfair business practices in
10 violation of, among other things, California Business & Professions Code §§ 17200 through 17204,
11 17500 and 17535. Plaintiff is informed and believes and thereon alleges that Defendants in doing
12 the things herein alleged have misled or substantially confused the general public.

13 65. Plaintiff alleges on the basis of information and belief that the conduct of Defendants
14 alleged herein is such that Defendants falsely, unfairly, deceptively, unlawfully and/or misleadingly
15 stated, suggested or implied that Plaintiff consented to the exploitation of his name, image and
16 likeness in an attempt to mislead the general public. Plaintiff further alleges on the basis of
17 information and belief that at all material times, Defendants knew that their conduct as alleged herein
18 would mislead, deceive, substantially confuse and/or misinform the general public, all for
19 Defendants' pecuniary gain.

20 66. As a result of Defendants' wrongful conduct as alleged herein, Plaintiff seeks
21 disgorgement from Defendants of any and all profits or other consideration obtained by or earned
22 by them as a proximate result of their unfair business practices in violation of California Bus. & Prof.
23 Code §§ 17200 and 17500 *et seq.*

24 67. Unless and until they are further enjoined and restrained by Order of this Court,
25 Defendants' continued acts will cause Plaintiff severe and irreparable injury which cannot adequately
26 be compensated by monetary damages. By reason of the foregoing, Plaintiff is entitled to permanent
27 injunctive relief enjoining the distribution and use of the Videotape and mandating the return of all
28 reproductions and copies of the Videotape to Plaintiff.

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff Colin Farrell prays for judgment against Defendants Narain,
3 Schmidt, ICG, Nash and Doe Defendants as follows:

4 **AS TO THE FIRST CAUSE OF ACTION:**

5 1. For general, compensatory and incidental damages against Defendant Narain in an
6 amount according to proof;

7 **AS TO THE SECOND CAUSE OF ACTION:**

8 2. For a permanent injunction (a) prohibiting Defendants from selling, licensing,
9 disseminating, syndicating, displaying, or otherwise commercially exploiting any part of the
10 Videotape; (b) prohibiting Defendants from transferring possession of or disposing of any of any part
11 of the Videotape; (c) prohibiting Defendants from selling, licensing, disseminating, distributing,
12 publishing, broadcasting and/or exploiting any part of the Videotape or any copy thereof or
13 transferring or disposing of them; (d) ordering Defendants to recall, retrieve and obtain the Videotape
14 and all copies thereof in any format or medium, from any persons who have possession of any of said
15 material, and to hold and maintain possession of, or deposit with the Court, the Videotape and all
16 copies thereof pending further Order of the Court; (e) ordering Defendants to give notice to any and
17 all persons and entities who have copies of any part of the Videotape that they are enjoined by Court
18 Order from exploiting, transferring, or disposing of the Videotape in any way pending further Order
19 of this Court; and (f) ordering Defendants to deliver to this Court, under seal, all copies of the
20 Videotape, in any format or medium, which are in their possession, custody or control.

21 3. For general, compensatory and incidental damages against Defendants in an amount
22 according to proof; and

23 4. For exemplary and punitive damages in an amount to punish and deter Defendants;

24 **AS TO THE THIRD CAUSE OF ACTION:**

25 5. For a permanent injunction relief (a) prohibiting Defendants from selling, licensing,
26 disseminating, syndicating, displaying, or otherwise commercially exploiting any part of the
27 Videotape; (b) prohibiting Defendants from transferring possession of or disposing of any of any part
28 of the Videotape; (c) prohibiting Defendants from selling, licensing, disseminating, distributing,

1 publishing, broadcasting and/or exploiting any part of the Videotape or any copy thereof or
2 transferring or disposing of them; (d) ordering Defendants to recall, retrieve and obtain the Videotape
3 and all copies thereof in any format or medium, from any persons who have possession of any of said
4 material, and to hold and maintain possession of, or deposit with the Court, the Videotape and all
5 copies thereof pending further Order of the Court; (e) ordering Defendants to give notice to any and
6 all persons and entities who have copies of any part of the Videotape that they are enjoined by Court
7 Order from exploiting, transferring, or disposing of the Videotape in any way pending further Order
8 of this Court; and (f) ordering Defendants to deliver to this Court, under seal, all copies of the
9 Videotape, in any format or medium, which are in their possession, custody or control.

10 6. For general, compensatory and incidental damages against Defendants in an amount
11 according to proof; and

12 7. For exemplary and punitive damages in an amount to punish and deter Defendants;

13 **AS TO THE FOURTH CAUSE OF ACTION:**

14 8. For general, compensatory and incidental damages against Defendants ICG, Nash,
15 and certain Does in an amount according to proof; and

16 9. For exemplary and punitive damages in an amount to punish and deter Defendants
17 ICG, Nash, and certain Does;

18 **AS TO THE FIFTH CAUSE OF ACTION:**

19 10. For a permanent injunction (a) prohibiting Defendants from selling, licensing,
20 disseminating, syndicating, displaying, or otherwise commercially exploiting any part of the
21 Videotape; (b) prohibiting Defendants from transferring possession of or disposing of any of any part
22 of the Videotape; (c) prohibiting Defendants from selling, licensing, disseminating, distributing,
23 publishing, broadcasting and/or exploiting any part of the Videotape or any copy thereof or
24 transferring or disposing of them; (d) ordering Defendants to recall, retrieve and obtain the Videotape
25 and all copies thereof in any format or medium, from any persons who have possession of any of said
26 material, and to hold and maintain possession of, or deposit with the Court, the Videotape and all
27 copies thereof pending further Order of the Court; (e) ordering Defendants to give notice to any and
28 all persons and entities who have copies of any part of the Videotape that they are enjoined by Court

1 Order from exploiting, transferring, or disposing of the Videotape in any way pending further Order
2 of this Court; and (f) ordering Defendants to deliver to this Court, under seal, all copies of the
3 Videotape, in any format or medium, which are in their possession, custody or control;

4 11. For general, compensatory and incidental damages against Defendants in an amount
5 according to proof; For exemplary and punitive damages in an amount to punish and deter
6 Defendants; and

7 12. For an award of reasonable attorney's fees and costs incurred herein;

8 **AS TO THE SIXTH CAUSE OF ACTION:**

9 13. For general, compensatory and incidental damages against Defendants ICG, Nash,
10 and certain Does in an amount according to proof;

11 14. For exemplary and punitive damages in an amount to punish and deter Defendants
12 ICG, Nash, and certain Does; and

13 15. For an award of reasonable attorney's fees and costs incurred herein against
14 Defendants ICG, Nash, and certain Does;

15 **AS TO THE SEVENTH CAUSE OF ACTION:**

16 16. For a permanent injunction (a) prohibiting Defendants from selling, licensing,
17 disseminating, syndicating, displaying, or otherwise commercially exploiting any part of the
18 Videotape; (b) prohibiting Defendants from transferring possession of or disposing of any of any part
19 of the Videotape; (c) prohibiting Defendants from selling, licensing, disseminating, distributing,
20 publishing, broadcasting and/or exploiting any part of the Videotape or any copy thereof or
21 transferring or disposing of them; (d) ordering Defendants to recall, retrieve and obtain the Videotape
22 and all copies thereof in any format or medium, from any persons who have possession of any of said
23 material, and to hold and maintain possession of, or deposit with the Court, the Videotape and all
24 copies thereof pending further Order of the Court; (e) ordering Defendants to give notice to any and
25 all persons and entities who have copies of any part of the Videotape that they are enjoined by Court
26 Order from exploiting, transferring, or disposing of the Videotape in any way pending further Order
27 of this Court; and (f) ordering Defendants to deliver to this Court, under seal, all copies of the
28 Videotape, in any format or medium, which are in their possession, custody or control.

1 17. For disgorgement by the Defendants of any and all profits or other consideration
2 obtained by or earned by the Defendants as a proximate result of his unfair business practices in
3 violation of Business & Professions Code §§ 17200 *et. seq.*;

4 18. For an award of reasonable attorney's fees incurred herein;

5 19. For exemplary and punitive damages in an amount to punish and deter Defendants;

6 **AS TO ALL CAUSES OF ACTION:**

7 20. For costs of the suit incurred;

8 21. For attorneys fees pursuant to California Civil Code § 3344;

9 22. For interest at the statutory rate; and

10 23. For such other and further relief as the Court may deem just and proper.

11 DATED: September 23, 2005

MARTIN D. SINGER
PAUL S. BERRA
BRIGIT CONNELLY
LAVELY & SINGER
PROFESSIONAL CORPORATION

12
13
14
15 By: Paul Berra
16 PAUL S. BERRA
17 Attorneys for Plaintiff
18 COLIN FARRELL
19
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

SERVICE LIST

COLIN FARRELL v. NICOLE NARAIN, et al.

LASC CASE NO. BC 336690

Leodis C. Matthews, Esq.
MATTHEWS & PARTNERS
4322 Wilshire Boulevard, Suite 200
Los Angeles, California 90010-3793
Telephone: (323) 930-5690
Facsimile: (323) 930-5693
E-mail: mkattys@aol.com

Attorneys for Defendant
NICOLE NARAIN

David S. Gingras, Esq.
JABURG & WILK, P.C.
3200 North Central Ave., Suite 2000
Phoenix, Arizona 85012
Telephone: (602) 248-1000
Facsimile: (602) 248-0522
E-mail: dsg@jaburgwilk.com

Attorneys for Defendant
PAUL NASH

VIA E-MAIL ONLY

Mr. David Hans Schmidt
DAVID HANS SCHMIDT
PUBLIC RELATIONS
4301 North 21st Street, Suite 51
Phoenix, Arizona 85016
Telephone: (602) 230-2220
Facsimile: (602) 224-9607
E-mail: flackman@qwest.net
hans@hansnews.com

Defendant
DAVID HANS SCHMIDT