

1 MARTIN D. SINGER (BAR NO. 78166)
 ALLISON S. HART (BAR NO. 190409)
 2 KELSEY J. LEEKER (BAR NO. 313437)
 LAVELY & SINGER
 3 PROFESSIONAL CORPORATION
 2049 Century Park East, Suite 2400
 4 Los Angeles, California 90067-2906
 Telephone: (310) 556-3501
 5 Facsimile: (310) 556-3615
 Email: mdsinger@lavelysinger.com
 6 ahart@lavelysinger.com
 kleeker@lavelysinger.com

7 Attorneys for Plaintiff OAK PRODUCTIONS, INC.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES - WEST DISTRICT

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OAK PRODUCTIONS, INC., a
 California Corporation,
 Plaintiff,
 v.
 ASAP GROUP, LLC (d/b/a Promobot),
 a Pennsylvania limited liability company;
 and DOES 1 through 10, inclusive,
 Defendants.

CASE NO. 20SMCV00347
 COMPLAINT FOR:
 (1) VIOLATION OF CIVIL CODE
 SECTION 3344;
 (2) COMMON LAW
 MISAPPROPRIATION OF THE
 RIGHT OF PUBLICITY;
 (3) UNJUST ENRICHMENT; AND
 (4) UNFAIR BUSINESS PRACTICES

JURY TRIAL DEMANDED

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Plaintiff OAK PRODUCTIONS, INC. alleges as follows:

THE PARTIES

1. Plaintiff OAK PRODUCTIONS, INC. ("Plaintiff") is, and at all times relevant
 hereto was, a corporation organized and existing under the laws of the State of California,
 doing business in the County of Los Angeles, State of California.

1 2. Plaintiff is informed and believes and based thereon alleges that Defendant
2 ASAP Group, LLC d/b/a Promobot (“Promobot” or “Defendant”) is, and at all times relevant
3 hereto has been, a limited liability company organized and existing under the laws of the State
4 of Pennsylvania.

5 3. Plaintiff is informed and believes and based thereon alleges, pursuant to Section
6 474 of the California Code of Civil Procedure, that the fictitiously-named Defendants sued
7 herein as Does 1 through 10, inclusive, and each of them, are in some manner responsible or
8 legally liable for the actions, events, transactions and circumstances alleged herein. The true
9 names and capacities of Does 1 through 10, inclusive, whether individual, corporate, associate
10 or otherwise, are presently unknown to Plaintiff, and Plaintiff will seek leave of Court to
11 amend this Complaint to assert the true names and capacities of such fictitiously-named
12 defendants when the same have been ascertained. (For convenience, all defendants, including
13 Promobot and Does 1 through 10, inclusive, are sometimes collectively referred to herein as
14 “Defendants.”)

15 4. Plaintiff is informed and believes and based thereon alleges that Defendants, and
16 each of them, were and are the agents, employees, partners, joint-venturers, co-conspirators,
17 owners, principals, and employers of the Defendants, and each of them, and are, and at all
18 times herein mentioned were, acting within the course and scope of that agency, partnership,
19 employment, conspiracy, ownership or joint venture. Plaintiff is further informed and believes
20 and based thereon alleges that the acts and conduct herein alleged of each such Defendant were
21 known to, authorized by and/or ratified by the other Defendants, and each of them.

22 5. Plaintiff owns all rights of publicity of Arnold Schwarzenegger
23 (“Schwarzenegger”), a universally known motion picture star, celebrity, bodybuilder and
24 politician who, for decades, has starred in and received critical acclaim for his performances in
25 motion pictures that have been viewed by millions of people throughout the United States and
26 the world. Schwarzenegger started his career by dominating the sport of competitive
27 bodybuilding and winning five Mr. Universe titles and seven Mr. Olympia titles. He is likely
28 best known for his iconic role in *The Terminator* and its two sequels, in which he delivered

1 one of the most famous and quoted movie lines of all time in his easily-recognizable Austrian
2 accent: "I'll be back." Schwarzenegger was also the governor of California from 2003-2011.
3 His photograph and likeness are recognized instantly by the public and have substantial
4 commercial value. Plaintiff generally does not permit Schwarzenegger's name, photograph,
5 likeness or voice to be used in advertising for products or services in the United States.

6
7 DEFENDANTS' WRONGFUL CONDUCT

8 6. Plaintiff is informed and believes and based thereon alleges that Promobot is a
9 manufacturer of autonomous service robots for business. Promobot's website
10 (<https://promo-bot.ai/>) advertises that it's robots "can communicate with people, independently
11 move and connect to any external system: from databases to apps and services. The robot is
12 autonomous, which means it doesn't need assistance for its work."

13 7. Plaintiff is informed and believes and based thereon alleges that Promobot
14 makes a product called an Android Robo-C ("Robo-C"), which is an android assistant that a
15 purchaser can customize to look like a real person of their choosing. Promobot's website
16 states that "The 'face' of Robo-C can display more than 600 variants of human facial
17 expressions: the robot can move its eyes, eyebrows, lips, neck and 'face muscles.'"

18 8. Without Plaintiff's or Schwarzenegger's prior knowledge or authorization,
19 Defendants have made Schwarzenegger the unwilling "face" of Promobot and its Robo-C, by
20 making a model of the product bearing his likeness and imitating his voice to demonstrate the
21 Robo-C at public events. In 2019, Schwarzenegger was in St. Petersburg to deliver a speech at
22 an educational forum and Defendants asked him if he would pose for a photograph with the
23 Robo-C bearing his likeness, which Defendants no doubt intended to use in promotional
24 advertising and marketing materials for Promobot and/or the Robo-C, and Schwarzenegger
25 refused.

26 9. Despite Schwarzenegger's refusal to be photographed with the Robo-C bearing
27 his likeness, and the fact that Defendants had no authorization to do so, Plaintiff is informed
28 and believes and based thereon alleges that Defendants subsequently used a model of the

1 Robo-C bearing Schwarzenegger's likeness again at a trade show called the "Consumer
2 Technology Association" on January 7-10, 2020 ("CES 2020") in Las Vegas, Nevada.

3 10. As soon as Plaintiff became aware that Defendants were further using
4 Schwarzenegger's likeness to promote the Robo-C at events in the United States and on their
5 website, Plaintiff, by and through its counsel, sent a cease and desist letter to Defendants on
6 January 9, 2020, attached hereto as Exhibit A, demanding that Defendants "immediately cease
7 and desist from using and/or commercially exploiting [Schwarzenegger's] name, photograph
8 and likeness in any manner whatsoever, and that it immediately cease the exploitation and
9 exhibition of the Android Robo-C product bearing [Schwarzenegger's] likeness and remove
10 [Schwarzenegger's] name, photograph and likeness from all websites and other advertising,
11 marketing or other promotional material disseminated on Promobot's behalf."

12 11. Defendants immediately responded to Plaintiff's counsel via email on January 9,
13 2020, a true and correct copy of which is attached hereto as Exhibit B, and agreed to
14 immediately, "1) Remove the Robo-C android from the [CES 2020] exhibition. 2) Remove all
15 materials about Robo-C from our website." Notwithstanding the foregoing, Plaintiff is
16 informed and believes and based thereon alleges that Defendants have continued using the
17 Robo-C bearing Plaintiff's likeness at promotional events and trade shows marketing and
18 advertising Promobot's products.

19 12. Plaintiff is informed and believes and based thereon alleges that, without
20 Plaintiff and/or Schwarzenegger's knowledge or authorization, and despite Defendants'
21 assurances otherwise, Defendants displayed a Robo-C bearing Schwarzenegger's likeness at
22 the "New York Toy Fair 2020." As evidence of Defendants' usage of Schwarzenegger's
23 likeness, an article titled "This creepy Arnold Schwarzenegger robot wants to be your
24 companion" by John Velasco was published on February 26, 2020.

25 13. Plaintiff is informed and believes and based thereon alleges that Defendants have
26 plans to use the Robo-C with Schwarzenegger's likeness at future events to promote
27 Promobot's products including, without limitation, the Robo-C.
28

1 14. At no time have Plaintiff or Schwarzenegger ever given permission to Promobot
2 to use Schwarzenegger's name, photograph, image or likeness in publicity or other
3 advertising, including on Promobot's website, trade shows and/or in any other form of
4 advertising, marketing or promotion. The use of Schwarzenegger's name, image and likeness
5 on the Robo-C and related advertising and promotional materials is misleading and injurious to
6 Schwarzenegger's reputation in that Defendants falsely imply that he voluntarily acquiesced to
7 the use of his name, image and likeness to promote the Robo-C and Promobot, uses for which
8 Plaintiff and/or Schwarzenegger would never have approved without a payment of at least
9 \$10,000,000.

10 15. Plaintiff is informed and believes and based thereon alleges that Defendants
11 intentionally, negligently and/or knowingly have used Schwarzenegger image without Plaintiff
12 or Schwarzenegger's permission for the purpose of advertising and promoting Promobot and
13 the Robo-C.

14 16. Defendants' use of Schwarzenegger's image on Promobot's website and in its
15 advertising materials is grossly misleading and deceptive to the public in that it appears that
16 Plaintiff and/or Schwarzenegger agreed to permit the use of his image in the manner herein
17 alleged, and agreed to promote and/or endorse Promobot and its Robo-C, when in fact neither
18 did, and do not, consent to any of the foregoing.

19 17. Schwarzenegger has carefully cultivated and developed his image and persona,
20 thereby significantly increasing its value, and Defendants have, without any right, title or
21 authorization, misappropriated such valuable publicity rights and the success and popularity of
22 Schwarzenegger by illegally using his likeness for the aforesaid commercial purposes.

23
24 FIRST CAUSE OF ACTION

25 (For Violation of California Civil Code § 3344 Against All Defendants)

26 18. Plaintiff repeats, realleges, adopts and incorporates each and every allegation
27 contained in Paragraphs 1 through 17, inclusive, as though fully set forth herein.
28

1 19. The conduct of Defendants, and each of them, as alleged hereinabove,
2 constitutes a violation of section 3344 of the California Civil Code due to the knowing and
3 unauthorized use by Defendants, and each of them, of Schwarzenegger's photograph for
4 commercial purposes. Schwarzenegger's image has substantial commercial value to Plaintiff
5 and Plaintiff has received substantial monies and recognition therefrom.

6 20. As a direct and proximate result of the aforesaid wrongful acts of Defendants,
7 and each of them, Plaintiff has been damaged in an amount subject to proof at the time of trial,
8 but believed to be no less than Ten Million Dollars (\$10,000,000).

9 21. As a direct and proximate result of the aforesaid wrongful acts of Defendants,
10 and each of them, Plaintiff has incurred, and will continue to incur, substantial attorneys' fees
11 and costs. Plaintiff is entitled to an award of his attorneys' fees and costs incurred in
12 connection with this action pursuant to section 3344(a) of the California Civil Code.

13 22. As a direct and proximate result of the aforesaid wrongful acts of Defendants,
14 and each of them, Plaintiff is entitled to a preliminary and permanent injunction to stop
15 Defendants, and each of them, from any further commercial use of Plaintiff's publicity rights.

16 23. By reason of the aforesaid wrongful acts of Defendants, and each of them, in
17 addition to the relief sought hereinabove, Plaintiff is entitled to an accounting of all gross
18 revenues and profits received, directly and indirectly, by Defendants, and each of them, as a
19 result of the unauthorized commercial use of Plaintiff's image, and to an award of all such
20 sums. By reason of Defendants', and each of their, wrongful acts as alleged hereinabove,
21 Defendants, and each of them, are involuntary trustees holding all such sums in their
22 possession under a constructive trust for the benefit of Plaintiff with a duty to transfer the same
23 to Plaintiff forthwith.

24 24. Plaintiff is informed and believes and based thereon alleges that Defendants, in
25 doing the things herein alleged, acted willfully, maliciously, oppressively and despicably, with
26 full knowledge of the adverse effect of their actions on Plaintiff, and with willful and deliberate
27 disregard for the consequences to Plaintiff. Plaintiff is further informed and believes and
28 based thereon alleges that the officers, directors and/or managing agents of the Defendants

1 authorized, directed and/or ratified the wrongful acts of the Defendants and are consequently
2 liable to Plaintiff. Plaintiff is therefore entitled to exemplary and punitive damages in an
3 amount appropriate to punish or set an example of Defendants, and each of them, and to deter
4 such conduct in the future, the exact amount of such damages subject to proof at the time of
5 trial.

6
7 SECOND CAUSE OF ACTION

8 (For Common Law Misappropriation of The Right of Publicity Against All Defendants)

9 25. Plaintiff repeats, realleges, adopts and incorporates each and every allegation
10 contained in Paragraphs 1 through 17, inclusive, as though fully set forth herein.

11 26. Through decades of hard work, Schwarzenegger's name, photograph, image,
12 likeness, voice, and persona have become and are very valuable and are invested with
13 substantial goodwill in the eyes of the public. Accordingly, Plaintiff's valuable rights of
14 publicity have substantial commercial value which Plaintiff never agreed to transfer, in whole
15 or in part, to Defendants, or any of them, for any purpose whatsoever.

16 27. The wrongful acts of Defendants, and each of them, as alleged herein above,
17 constitute a violation and misappropriation of Plaintiff's rights of publicity because
18 Defendants, and each of them, misappropriated Schwarzenegger's image for a commercial
19 purpose to advertise and promote Promobot and its Robo-C.

20 28. As a direct and proximate result of the aforesaid wrongful acts of Defendants,
21 and each of them, Plaintiff has been damaged in an amount subject to proof at the time of trial,
22 but believed to be no less than Ten Million Dollars (\$10,000,000).

23 29. Plaintiff is informed and believes and based thereon alleges that Defendants, in
24 doing the things herein alleged, acted willfully, maliciously, oppressively and despicably, with
25 full knowledge of the adverse effect of their actions on Plaintiff, and with willful and deliberate
26 disregard for the consequences to Plaintiff. Plaintiff is further informed and believes and
27 based thereon alleges that the officers, directors and/or managing agents of the Defendants
28 authorized, directed and/or ratified the wrongful acts of the Defendants and are consequently

1 liable to Plaintiff. Plaintiff is therefore entitled to exemplary and punitive damages in an
2 amount appropriate to punish or set an example of Defendants, and each of them, and to deter
3 such conduct in the future, the exact amount of such damages subject to proof at the time of
4 trial.

5
6 **THIRD CAUSE OF ACTION**

7 **(For Unjust Enrichment Against All Defendants)**

8 30. Plaintiff repeats, realleges, adopts and incorporates each and every allegation
9 contained in Paragraphs 1 through 17, inclusive, as though fully set forth herein.

10 31. As a result of the wrongful acts of Defendants, and each of them, as herein
11 above alleged, Defendants, and each of them, have been unjustly enriched and benefitted.
12 Such unjust enrichment and benefits include, but are not limited to: (1) the value of the use of
13 Schwarzenegger's image for the commercial purposes made thereof by Defendants; and (2) the
14 amount of Defendants' gross revenues and/or profits attributable to the use of
15 Schwarzenegger's image as alleged herein.

16 32. Defendants, and each of them, are under an obligation to pay Plaintiff,
17 forthwith, the entire amount by which they have been unjustly enriched, and Plaintiff is
18 entitled to the imposition of a constructive trust for the benefit of Plaintiff, and Defendants
19 have a duty to transfer the same to Plaintiff forthwith.

20
21 **FOURTH CAUSE OF ACTION**

22 **(For Unfair Business Practices In Violation of Business & Professions Code**
23 **Section 17200 Against All Defendants)**

24 33. Plaintiff repeats, realleges, adopts and incorporates each and every allegation
25 contained in Paragraphs 1 through 17, inclusive, as though fully set forth herein.

26 34. The wrongful exploitation of Schwarzenegger's photograph, image, likeness
27 and/or other publicity rights, as herein alleged, by Defendants, and each of them, constitutes
28

1 unfair competition, unfair business practices and false advertising in violation of, among other
2 things, California Business and Professions Code sections 17200, *et seq.*, 17500 and 17535.

3 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
4 conduct as alleged herein is such that Defendants falsely, unfairly, deceptively, unlawfully
5 and/or misleadingly stated, suggested or implied that Plaintiff and/or Schwarzenegger agreed
6 to permit their valuable publicity rights to be used to endorse Promobot and its Robo-C, all in
7 a manner likely to mislead the general public. Plaintiff further alleges, on the basis of
8 information and belief, that Defendants' use of Schwarzenegger's image in this context
9 unfairly, unlawfully and falsely misled, deceived, substantially confused and/or misinformed
10 the general public. Plaintiff further alleges, on the basis of information and belief, that at all
11 material times Defendants, and each of them, knew that their conduct alleged herein would
12 mislead, deceive, substantially confuse and/or misinform the general public, all for
13 Defendants' pecuniary gain.

14 36. As a direct and proximate result of the aforesaid wrongful acts of Defendants,
15 and each of them, Plaintiff is entitled to a preliminary and permanent injunction to stop
16 Defendants, and each of them, from any further commercial use of Plaintiff's publicity rights.

17 37. Plaintiff is informed and believes and based thereon alleges that the relief that it
18 is seeking against Defendants as described above will confer a significant benefit on a large
19 class of persons, and the necessity and financial burden on Plaintiff in bringing this action is
20 such to make an award of attorney's fees to Plaintiff appropriate and that such fees in the
21 interest of justice should not be paid out of the recovery, if any. Accordingly, Plaintiff is
22 entitled to an award of attorney's fees under California Code of Civil Procedure section
23 1021.5.

24

25 **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of them, as
26 follows:

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1 AS TO THE FIRST CAUSE OF ACTION:

2 1. General and special damages against Defendants in an amount no less than Ten
3 Million Dollars (\$10,000,000), or according to proof at trial, together with interest thereon at
4 the legal rate;

5 2. An award of the profits received by Defendants as a result of the unauthorized
6 commercial use of Schwarzenegger's photograph and/or other publicity rights, together with
7 interest thereon at the legal rate;

8 3. Preliminary and permanent injunction restraining Defendants, and each of them,
9 from directly or indirectly making any commercial use of Plaintiff's publicity rights in any
10 manner

11 4. Exemplary and punitive damages in an amount according to proof at the time of
12 trial;

13 5. An award of Plaintiff's attorneys' fees pursuant to California Civil Code section
14 3344(a);

15
16 AS TO THE SECOND CAUSE OF ACTION:

17 6. General and special damages against Defendants, and each of them in an amount
18 no less than Ten Million Dollars (\$10,000,000), or according to proof at trial, together with
19 interest thereon at the legal rate;

20 7. Exemplary and punitive damages in an amount according to proof at the time of
21 trial;

22
23 AS TO THE THIRD CAUSE OF ACTION:

24 8. General and special damages against Defendants in an amount according to
25 proof at trial, together with interest thereon at the legal rate;

26 9. Imposition of a constructive trust on all monies and sums realized by Defendants
27 as a result of their misappropriation of Plaintiff's publicity rights, with interest thereon at the
28 legal rate;

1 AS TO THE FOURTH CAUSE OF ACTION:

2 10. Preliminary and permanent injunction restraining Defendants, and each of them,
3 from directly or indirectly making any commercial use of Plaintiff's publicity rights in any
4 manner;

5 11. An award of Plaintiff's attorneys' fees pursuant to California Code of Civil
6 Procedure section 1021.5;

7
8 AS TO ALL CAUSES OF ACTION:

9 12. For costs of the suit incurred;

10 13. For interest at the statutory rate; and

11 14. For such other and further relief as the Court may deem just and proper.

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13 DATE: March 4, 2020

LAVELY & SINGER
PROFESSIONAL CORPORATION
MARTIN D. SINGER
ALLISON S. HART
KELSEY J. LEEKER

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17 By: 

MARTIN D. SINGER
Attorneys for Plaintiff OAK PRODUCTIONS, INC.

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DEMAND FOR JURY TRIAL

Plaintiff Oak Productions, Inc. hereby demands a trial by jury in this action.

DATE: March 4, 2020

LAVELY & SINGER
PROFESSIONAL CORPORATION
MARTIN D. SINGER
ALLISON S. HART
KELSEY J. LEEKER

By: 
MARTIN D. SINGER
Attorneys for Plaintiff OAK PRODUCTIONS, INC.

EXHIBIT A

LAVELY & SINGER

PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

SUITE 2400

2049 CENTURY PARK EAST

LOS ANGELES, CALIFORNIA 90067-2906

TELEPHONE (310) 556-3501

FACSIMILE (310) 556-3615

WWW.LAVELYSINGER.COM

ANDREW B. BRETTLER,

ALLISON S. HART

T. WAYNE HARMAN

DAVID B. JONELIS

MELISSA Y. LERNER

JAKE A. CAMARA

KELSEY J. LEEKER

MARTIN F. HIRSHLAND

² ALSO ADMITTED IN NY

³ ALSO ADMITTED IN NY AND NJ

JOHN H. LAVELY, JR.
MARTIN D. SINGER
BRIAN G. WOLF
LYNDA B. GOLDMAN
PAUL N. SORRELL
MICHAEL E. WEINSTEIN
EVAN N. SPIEGEL
TODD S. EAGAN

January 9, 2020

VIA E-MAIL: sales@promo-bot.ai; dir@promo-bot.ai
& U.S. CERTIFIED MAIL/RRR

Mr. Oleg Kivokurtsev, CBDO and Co-Founder
Mr. Maksim Chugunov, CEO
ASAP Group, LLC dba Promobot
626 Jacksonville Road, Suite 125
Warminster, Pennsylvania 18974

Re: Arnold Schwarzenegger v. ASAP Group, LLC dba Promobot
Our File No. 472-247

Dear Messrs. Kivokurtsev and Chugunov:

Our firm is litigation counsel for Arnold Schwarzenegger, and I am writing regarding my client's substantial claims against ASAP Group, LLC dba Promobot ("Promobot"), as a result of its wrongful and tortious conduct arising out of the unauthorized use of Mr. Schwarzenegger's name, photograph and likeness for commercial purposes without his consent on its product "Android Robo-C", as well as on its website (<https://promo-bot.ai/>) and in promotional and advertising materials used to publicize Promobot's introduction of the Android Robo-C at CES 2020 in Las Vegas, Nevada.¹ *Demand is hereby made that Promobot immediately cease and desist from using and/or commercially exploiting my client's name, photograph and likeness in any manner whatsoever, and that it immediately cease the exploitation and exhibition of the Android Robo-C product bearing my client's likeness and remove my client's name, photograph and likeness from all websites and other advertising, marketing or other promotional material disseminated on Promobot's behalf.* Promobot's conduct is in violation of California Civil Code section 3344 and constitutes an unauthorized commercial misappropriation of my client's valuable rights of publicity, among other torts, and has exposed you to substantial liability.

As you know, my client has never given Promobot permission to use his likeness on its Android Robo-C product, nor has he authorized Promobot to use his photograph or likeness to advertise Promobot's products or for any other purpose. To the contrary, when representatives of Promobot requested that my client pose for a photograph with the Android Robo-C when he

¹ See, e.g.,

<https://www.dailymail.co.uk/sciencetech/article-7866429/Promobot-showcases-android-Arnold-Schwarzenegger-field-questions-mime-human-expressions.html>

Mr. Oleg Kivokurtsev

Mr. Maksim Chugunov

Re: Arnold Schwarzenegger / ASAP Group, LLC dba Promobot

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was in St. Petersburg to deliver a speech at an educational forum several months ago, my client refused to be photographed with this product. Notwithstanding the foregoing, Promobot has literally made my client the unwilling "face" for its Android Robo-C by using a model of the product bearing my client's likeness and imitating his voice to demonstrate the Android Robo-C at CES 2020, and by prominently displaying his photograph and likeness on the home page of Promobot's website, as well as in related advertising and promotional materials. Accordingly, Promobot's actions constitute an unauthorized exploitation of my client's photograph, image and likeness, giving rise to numerous legal claims against Promobot and exposing Promobot to significant liability in excess of \$10,000,000, plus disgorgement of Promobot's profits from the use of his name, photograph and likeness, reimbursement of my client's attorneys fees and costs, as well as punitive damages.

Promobot's exploitation of my client's name, photograph and likeness without first seeking or obtaining his consent constitutes a blatant and egregious unauthorized commercial exploitation in violation California Civil Code section 3344, as well as my client's common law rights of publicity. Indeed, California specifically recognizes "the right of a person whose identity has commercial value – most often a celebrity – to control the commercial use of that identity." *Waits v. Frito-Lay, Inc.*, 978 F.2d 1093, 1098 (9th Cir. 1992); *see also Felice v. Delporte*, 136 A.D.2d 913, 913-914 (1988) ("trial court properly ruled, as a matter of law, that defendants violated the statute when, without plaintiff's consent, they used her photograph on commercial billboard advertising"). It is well known in the entertainment industry that Mr. Schwarzenegger, like most movie stars of his magnitude, does not participate in commercial endorsements in the United States, as such activity diminishes his hard-earned and well-deserved reputation as a major motion picture star, and risks the potential for over-exposure of his image to the public. Thus, Promobot's misappropriation of Mr. Schwarzenegger's photograph violates my client's policy of strictly controlling the exploitation of his photograph, image, likeness and persona for commercial and merchandising purposes, thereby causing considerable harm to my client.

"At its heart, the value of the right of publicity is associational." *McFarland v. Miller*, 14 F.3d 912, 919 (3d. Cir. 1994). As the court explained in *Eastwood v. Superior Court*, 149 Cal.App.3d 409, 420 (1983), "one of the primary purposes of advertising is to motivate a decision to purchase a particular product or service. The first step toward selling a product or service is to attract the consumers' attention. Because of a celebrity's audience appeal, people respond almost automatically to a celebrity's name or picture." Here, you have used my client's identity to attract and solicit consumers to purchase your products. "To the extent [such] use attracted the readers' attention, [you] gained a commercial advantage." *Id.*

Newcombe v. Adolf Coors Co., 157 F.3d 686 (9th Cir. 1998) is instructive here. In that case, Coors published a beer advertisement illustrated by a drawing of an old-time baseball game which depicted a pitcher in a wind-up stance that resembled the stance of a famous Brooklyn Dodger pitcher of the 1950s, Don Newcombe. In analyzing whether Coors had misappropriated Newcombe's image and likeness for commercial and advertising purposes, the Ninth Circuit wrote that "Newcombe's likeness was certainly used to Coors'...commercial advantage as the drawing

Mr. Oleg Kivokurtsev

Mr. Maksim Chugunov

Re: Arnold Schwarzenegger / ASAP Group, LLC dba Promobot

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Page 3

which resembled Newcombe was a central figure in the advertisement and the purpose of the advertisement was to attract attention.” *Id.* at 693. Here, even more plainly than Coors’ unauthorized commercial exploitation in *Newcombe*, which *merely resembled the stance of Don Newcombe*, Promobot has created a product bearing my client’s image to demonstrate and promote its AI product in an obvious effort to attract the attention of potential consumers and to “motivate a decision” to visit your website and purchase your products. *Eastwood v. Superior Court, supra*, 149 Cal.App.3d at 420 (“one of the primary purposes of advertising is to motivate a decision to purchase a particular product or service. The first step toward selling a product or service is to attract the consumers’ attention.”).

As the California Court of Appeal has confirmed, as a result of Promobot’s unauthorized commercial use of my client’s photograph, he will be entitled to disgorgement of Promobot’s profits resulting from the unauthorized exploitation of his name, photograph and likeness, as well as his actual damages, *i.e.*, the value he commands in the marketplace for his services. *Orthopedic Systems, Inc. v. Schlein*, 2011 WL 6846745 (Dec. 29, 2011); *see, also, Waits, supra*, 978 F.2d at 1103 (damages award calculated according to “the fair market value” of singer Tom Waits’ services); *Midler v. Ford Motor Company*, 849 F.2d 460, 463 (9th Cir. 1988) (“What [Ford] sought was an attribute of Midler’s identity. Its value was what the market would have paid for Midler to have sung the commercial in person”); *Ventura v. Titan Sports*, 65 F.3d 725 (8th Cir. 1995) (affirming compensatory damages of nearly \$810,000, based upon the market rate of services for plaintiff and former wrestler Jesse Ventura); *Grant v. Esquire, Inc.*, 367 F. Supp. 876, 881 (S.D.N.Y. 1973) (affirming that actor Cary Grant could “recover the fair market value of the use for the purposes of trade of his face, name and reputation”).

California’s Unfair Business Practices Act provides a broad cause of action for those who have been injured as a result of any “unfair” business act or practice. Cal. Bus. & Prof. Code §17200. California courts interpret the term “unfair” very broadly to mean “any practice whose harm to the victim outweighs its benefits.” *Saunders v. Superior Court*, 27 Cal. App. 4th 832, 839 (1994); *see People ex rel. Renne v. Servantes*, 86 Cal.App.4th 1081, 1095 (2001) (“The [UCL] statute is intentionally broad to give the court maximum discretion to control whatever new schemes may be contrived, even though they are not yet forbidden by law.”). Indeed, even a single instance of unfair conduct may be sufficient to create liability. *Wilner v. Sunset Life Ins. Co.*, 78 Cal.App.4th 952, 965 (2000). Here, the use of my client’s name, photograph and likeness on the Android Robo-C and related advertising and promotional materials is misleading and injurious to Mr. Schwarzenegger’s reputation in that they falsely imply that Mr. Schwarzenegger voluntarily acquiesced to the use of his name, photograph and likeness to promote the Android Robo-C and Promobot, uses for which he would never have approved without a payment of at least \$30,000,000. Therefore, in addition to the claims outlined above, Promobot’s conduct in using Mr. Schwarzenegger’s name and likeness without his consent exposes Promobot to potential claims for unfair competition, unfair business practices and false advertising in violation of California Business & Professions Code §§17200 through 17204, 17500 and 17535 and violation of the federal Lanham Act, 15 United States Code Section 1125(a), which entitles a prevailing plaintiff to recover treble damages in the case of a willful violation such as this.

Mr. Oleg Kivokurtsev

Mr. Maksim Chugunov

Re: Arnold Schwarzenegger / ASAP Group, LLC dba Promobot

January 9, 2020

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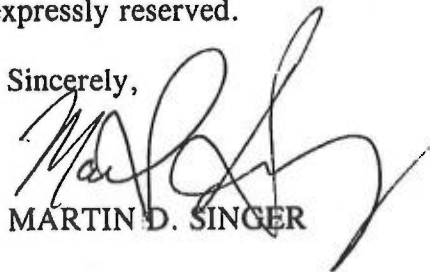
I caution you to refrain from assuming that the claims described above do not expose you to substantial damages. In 1999, I represented actress Priscilla Presley in a commercial misappropriation case arising from the unauthorized use of Ms. Presley's name in a press release which was published by the trade paper *Daily Variety* for a proposed movie that was never made. I successfully tried the case to a Los Angeles jury, and obtained a judgment in Ms. Presley's favor in excess of \$2,500,000. That multi-million dollar judgment was for a plaintiff who is far less recognizable to the public, and far less commercially valuable, than Mr. Schwarzenegger. Certainly in a situation such as this, in which you exploited the photograph of one of the most successful and renowned major motion picture stars in the world, without his knowledge or authorization, the damages awarded at trial would be increased exponentially.

On behalf of my client, I am hereby demanding that Promobot immediately cease and desist its outrageous, completely unauthorized and blatantly opportunistic misappropriation of my client's photograph and likeness, including without limitation by immediately ceasing the exploitation and exhibition of the Android Robo-C bearing my client's likeness, and taking down any and all pages on Promobot's website containing or referencing my client's photograph or likeness, and removing my client's photograph and likeness from any and all other advertising, marketing or other promotional materials associated with Promobot. My client is also entitled to be compensated for your unauthorized use of his photograph, name and likeness. Please confirm in writing within 72 hours of your receipt of this letter that you will comply with the foregoing. If you fail to agree to comply, then a lawsuit will be filed against you in which my client will be seeking, in addition to his substantial compensatory damages, disgorgement of Promobot's profits, punitive damages and attorney's fees, as well as an injunction prohibiting Promobot from further engaging in the unauthorized exploitation of my client's valuable rights of publicity. If this matter is not immediately resolved to my client's satisfaction, you will be acting at your peril.

Please govern yourself accordingly.

This letter is not intended to constitute, nor shall it be deemed to constitute, a full statement of all facts, rights or claims relating to this matter, nor is it intended, nor should it be construed as a waiver, release or relinquishment of any rights or remedies available to my client, whether legal or equitable, all of which are hereby expressly reserved.

Sincerely,



MARTIN D. SINGER

cc: Mr. Arnold Schwarzenegger
Mr. Paul Wachter
Patrick Knapp, Esq.
Allison S. Hart, Esq.

EXHIBIT B

Allison Hart

From: sales@promo-bot.ai
Sent: Thursday, January 9, 2020 3:41 PM
To: dir@promo-bot.ai; Martin Singer
Cc: Allison Hart
Subject: Re: Arnold Schwarzenegger v. ASAP Group, LLC dba Promobot (472-247)

Hello Martin,

Thank you for your email.

We would like to inform you that we didn't anticipate any law violations in our actions.

For now, we will fulfill your demands and will immediately:

- 1) Remove the Robo-C android from the exhibition.
- 2) Remove all materials about Robo-C from our website.

Our Legal team will send you an official response on our arrival back to Russia beginning of the next week

Regards,

promo-bot.ai

9 янв. 2020 г., 14:32 -0800, Martin Singer <MDSinger@lavelysinger.com>, написал (-а):

Please see the attached correspondence from Marty Singer.

Christy Priske | Office of Martin D. Singer | Lavely & Singer

CPriske@lavelysinger.com | 310.556.0731 direct