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STATE OF NORTH CAROLINA

COUNTY OF UNION

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
NO.: 26CV000296-890

MICHELLE BALL, TED TOMS, SOFIA CHABOT, AMELIA BALL, ELIZA BALL, JESSICA MULLEN, and LISA METZGER, **Plaintiffs/Counterclaim Defendants,** **v.** **EAST FRANKLIN SUPERETTE AND KITCHEN LLC d/b/a EAST FRANK SUPERETTE & KITCHEN,** **Defendant/Counterclaim Plaintiff,** **ROBERT E. HUFFMAN and CARLEY ELIZABETH ENGLANDER,** **Defendants.**	**ORDER GRANTING PLAINTIFFS' MOTION FOR INJUNCTIVE RELIEF AND ENTERING PRELIMINARY INJUNCTION**

THIS MATTER came before the Court upon Plaintiffs' Motion for Injunctive Relief pursuant to Rule 65 of the North Carolina Rules of Civil Procedure. Plaintiffs appeared through counsel Jonathan A. Vogel. Defendants appeared through counsel Jeremy S. Foster.

Having considered the Motion, the parties' memoranda of law, the record in this action, the arguments of counsel, and the evidence previously presented in connection with Plaintiffs' Motion for Partial Summary Judgment on Liability, the Court makes the following findings and conclusions for purposes of the injunctive relief granted herein:

1. Plaintiffs asserted against Defendants a claim for invasion of privacy by unauthorized appropriation of likeness arising from Defendants' use of Plaintiffs' photographs and likenesses in advertisements and commercial promotions for Defendant East Franklin Superette and Kitchen LLC d/b/a East Frank Superette & Kitchen ("East Frank").

2. On September 1, 2026, the Court heard Plaintiffs' Motion for Partial Summary Judgment on Liability. The Court thereafter communicated its ruling to counsel and, at the October 1, 2026 hearing on Plaintiffs' Motion for Injunctive Relief, clarified that its ruling applies to all three Defendants. The Court is separately preparing a written order memorializing that ruling.

3. Among the commercial advertisements at issue in Plaintiffs' Motion for Partial Summary Judgment on Liability were the following:

a. the East Frank June 24 Advertisement;

b. the East Frank July 12 Advertisement;

c. the East Frank July 15 Advertisement;

d. the East Frank October 21 Advertisement;

e. the East Frank Royal Revue Advertisement;

f. the East Frank Brisket Day Advertisement; and

g. the East Frank Drag You to Brunch Advertisement.

4. The foregoing advertisements use photographs or photographic likenesses of one or more Plaintiffs for purposes of advertising, marketing, or promoting East Frank and its commercial activities.

5. Plaintiffs did not authorize or consent to Defendants' use of Plaintiffs' photographs or likenesses for those advertising, marketing, or promotional purposes.

6. In their pleading and in discovery, Defendants admitted that, despite assuming ownership and control of East Frank and authority over its marketing, advertising, and social media activities since July 17, 2023, they had taken no action to remove the challenged advertisements from East Frank's social media accounts and that images containing Plaintiffs' likenesses remain publicly available, to the best of Defendants' knowledge.

7. North Carolina recognizes a cause of action for invasion of privacy arising from the unauthorized use of a person's photograph or likeness in connection with an advertisement or other commercial enterprise. *Flake v. Greensboro News Co.*, 212 N.C. 780, 195 S.E. 55 (1938).

8. Based upon the record before the Court, including the evidence presented in connection with Plaintiffs' Motion for Partial Summary Judgment on Liability, Plaintiffs have established a likelihood of success on the merits sufficient to warrant preliminary injunctive relief on their claim for invasion of privacy by unauthorized appropriation of likeness.

9. *Flake* expressly recognizes injunctive relief as an appropriate remedy where an unauthorized commercial use of a person's photograph or likeness is persisted in.

10. Since July 17, 2023, Huffman and Englander have exercised authority and control over East Frank's marketing, advertising, and social media activities. Yet after Huffman and Englander assumed ownership and control of East Frank and authority over its marketing, advertising, and social media activities, the advertisements containing Plaintiffs' likenesses remained published and publicly available on East Frank's social media accounts notwithstanding Plaintiffs' objections and the commencement of this action. Defendants have taken no action to remove those advertisements.

11. Plaintiffs are suffering a continuing injury from the continued unauthorized commercial use of their photographs and likenesses. That injury is not confined to a completed historical use for which monetary damages could provide complete relief; absent injunctive relief, the challenged advertisements will remain publicly available and Plaintiffs remain exposed to further unauthorized commercial use of their likenesses.

12. Plaintiffs therefore lack an adequate remedy at law for the continuing and prospective conduct addressed by this Order. Monetary damages may compensate Plaintiffs for

past injury but cannot, by themselves, terminate the continuing publication or prevent renewed unauthorized commercial use of Plaintiffs' photographs and likenesses. Preliminary injunctive relief is therefore necessary to protect Plaintiffs' rights during the pendency of this litigation.

13. The balance of equities favors entry of preliminary injunctive relief. The injunction does not prevent Defendants from operating East Frank, conducting events, advertising or promoting East Frank through lawful means, or engaging in lawful noncommercial speech. The injunction requires removal of the seven identified advertisements, prohibits republication of those advertisements or substantially identical versions thereof, and prohibits Defendants from using any Plaintiff's likeness in future commercial advertising or promotion without that Plaintiff's written consent.

14. The harm to Plaintiffs from the continued or renewed unauthorized commercial use of their likenesses outweighs any cognizable harm to Defendants from being prohibited during the pendency of this litigation from using Plaintiffs' likenesses in commercial advertising or promotion without their written consent.

15. The public interest favors protecting rights recognized under North Carolina law while preserving lawful expression. The preliminary injunction is limited to the seven identified advertisements and substantially identical versions thereof and to future commercial advertising or promotion using a Plaintiff's likeness without that Plaintiff's written consent. The injunction does not prohibit Defendants from engaging in lawful noncommercial speech.

16. The equities therefore favor preliminary injunctive relief, and such relief is necessary and appropriate to protect Plaintiffs' rights during the pendency of this litigation. The prospective provisions of the injunction do not prohibit Defendants from engaging in lawful

noncommercial speech but are limited to the commercial advertising and promotional uses specified herein.

17. The injunctive relief set forth below is narrowly tailored to the conduct at issue and is sufficiently specific to satisfy Rule 65(d).

18. The Court has considered the security requirement of Rule 65(c). Considering the nature and scope of the preliminary injunctive relief ordered herein and the potential costs and damages that may be incurred or suffered by Defendants if they are ultimately determined to have been wrongfully enjoined, the Court determines that security in the amount of Five Hundred Dollars ($500.00) is appropriate.

Based upon the foregoing findings and conclusions, the Court concludes that Plaintiffs are entitled to preliminary injunctive relief and that Plaintiffs' Motion for Injunctive Relief should be GRANTED to the extent set forth herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion for Injunctive Relief is **GRANTED** to the extent it seeks the preliminary injunctive relief set forth herein, and the Court hereby enters the following preliminary injunction, which shall remain in effect until final adjudication of this action or further Order of this Court:

1. **Removal of Existing Advertisements**. Within seven (7) business days after this preliminary injunction becomes effective upon Plaintiffs' posting of the security required herein, Defendants shall remove from all social media accounts, websites, and other online platforms owned, operated, or controlled by any Defendant all existing publications of:

a. the East Frank June 24 Advertisement (attached hereto as Exhibit 1);

b. the East Frank July 12 Advertisement (attached hereto as Exhibit 2);

c. the East Frank July 15 Advertisement (attached hereto as Exhibit 3);

d. the East Frank October 21 Advertisement (attached hereto as Exhibit 4);

e. the East Frank Royal Revue Advertisement (attached hereto as Exhibit 5);

f. the East Frank Brisket Day Advertisement (attached hereto as Exhibit 6); and

g. the East Frank Drag You to Brunch Advertisement (attached hereto as Exhibit 7).

2. **Prohibition Against Republication**. Defendants are enjoined from republishing, reposting, displaying, distributing, or otherwise publishing any of the seven advertisements identified in Paragraph 1 and reproduced in Exhibits 1 through 7 to this Order, or anything consisting of a substantially identical version of any such advertisement.

3. **Future Commercial Advertising or Promotion Using Plaintiffs' Likenesses**. Defendants are enjoined from using any Plaintiff's likeness in future commercial advertising or promotion without the prior written consent of that Plaintiff.

4. **Scope of Injunction.** This Order prohibits only the conduct described above. Nothing in this Order prohibits Defendants from engaging in lawful noncommercial speech.\

5. **Persons Bound.** Consistent with Rule 65(d), this Order is binding upon Defendants, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with Defendants who receive actual notice of this Order by personal service or otherwise.

6. **Remaining Claims and Remedies**. Nothing in this Order adjudicates, releases, waives, limits, or otherwise affects:

a. Plaintiffs' claims for damages or other monetary relief arising from Defendants' alleged invasion of privacy by unauthorized appropriation of likeness;

b. Plaintiffs' claim under the North Carolina Unfair and Deceptive Trade Practices Act;

c. Plaintiffs' claim for unjust enrichment;

d. Plaintiffs' request for attorneys' fees or other relief available under Chapter 75;

e. any other claim or issue remaining for determination in this action; or

f. East Frank's counterclaim.

7. **Jurisdiction.** The Court retains jurisdiction to enforce, modify, or dissolve this Order and the preliminary injunctive relief entered herein as permitted by law.

8. **Security**. Pursuant to Rule 65(c), Plaintiffs shall provide security in the amount of Five Hundred Dollars ($500.00) for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. This preliminary injunction shall become effective upon Plaintiffs' posting of the required security.

This the 21 day of October, 2026.

Jonathan W. Perry 10/21/2026 3:14:04 PM
Presiding Superior Court Judge