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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
12

13 In re LuLaRoe, LLC, Leggings Marketing,
Sales Practices and Products Liability
14 Litigation

Case No. 5:17-cv-00853-JGB-DTB

CLASS ACTION

**CONSOLIDATED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiffs Suzanne Jones, Caitlin Goodwin, Tanya Mack, Mina Nicolle Ulaszek
2 Benjamin, Terri Doran, and Emma Heinichen (“Plaintiffs”) on behalf of themselves and
3 all others similarly situated, allege the following based upon personal knowledge as to
4 allegations regarding themselves, on the investigation of their counsel, and on information
5 and belief as to all other allegations:

6 **I. NATURE OF ACTION**

7 1. This is a class action seeking monetary damages, restitution, injunctive, and
8 declaratory relief from Defendants LuLaRoe, LLC and LLR, Inc. (“LuLaRoe” or
9 “Defendants”) arising from their advertising, marketing, and sale of defective leggings
10 and other clothing.

11 2. Defendants sell brightly colored clothing, including leggings (the “Products”
12 or “leggings”) as well as dresses and tops, throughout the United States. The Products,
13 however, are not available in retail stores, or through the company website at
14 www.lularoe.com.

15 3. Instead, Defendants’ business model relies on recruiting members of the
16 general public, called Fashion Consultants (also known as “Fashion Retailers” or
17 “Independent Retailers”), who buy the Products from Defendants at wholesale, and then
18 sell the Products to consumers through in-home and online “boutiques.”

19 4. Defendants’ business model is known as multi-level marketing (“MLM”) or
20 pyramid selling. Other companies that operate under the MLM business model include
21 Tupperware, Beachbody, Mary Kay, and Herbalife.

22 5. As of 2017, there were approximately 80,000 Fashion Consultants selling
23 Defendants’ clothing, including the Products, throughout the United States.

24 6. To become a Fashion Consultant, a person must make an initial investment
25 ranging from \$5,000 to \$9,000, in what is called an “onboard package,” which is
26 essentially a package of clothing and marketing materials.

27 7. LuLaRoe was founded in 2012 by DeAnne Brady and Mark Stidham, and
28 the business has become very successful, very quickly. Reports indicate that Product

1 sales have soared 600 percent to approximately \$1 billion as of 2016.

2 8. While Defendants are pleased with the company, many of the consumers
3 who buy the Products for personal, family or household use (hereinafter, “Customers”)
4 are not. Specifically, thousands of Customers have taken their outrage to Facebook and
5 other online forums to complain about the defective Products. Specifically, Customers
6 have complained that the leggings are of such poor quality that holes, tears, and rips
7 appear before wearing or during the first use. The Products have also been described as
8 tearing as easily as “wet toilet paper.”

9 9. Other problems with the Products include leggings that have one leg that is
10 substantially larger (or smaller) than the other, and clothes that are supposed to be for
11 adults but instead would only fit a child.

12 10. Defendants are well aware that their Products are defective. Patrick Winget,
13 the head of production for Defendants, reportedly wrote in a January 2017 company-wide
14 email about the leggings, “The leggings may get holes, *because we weaken the fibers* to
15 make them buttery soft. We have done all we can to fix them.” (Emphasis added.)

16 11. Moreover, the defects that exist in the Products occur in the design and
17 manufacturing stage, prior to receipt by Customers. This is confirmed by the statement
18 made by Defendants’ head of production—that Defendants affirmatively weaken the
19 fibers. Furthermore, the defects are material in that they substantially affect the
20 performance of the Products to function as suitable clothing.

21 12. Defendants have received complaints regarding their defective Products
22 since at least early 2016, before any of the Plaintiffs filed their complaints, by Customers
23 complaining to the Better Business Bureau (“BBB”) that the Products are defective in
24 that they arrive with and/or develop holes and tears within the first use, or are
25 unreasonably mis-sized despite Defendants’ representations about size.

26 13. Defendants’ record for ignoring and/or not satisfactorily addressing
27 Customer complaints about the defective Products has earned LuLaRoe an “F” rating
28 from the BBB.

1 14. It is clear that Defendants have chosen to sacrifice the quality of their
2 Products in order to meet the growing demand at the expense of Customers. The extent
3 to which they have done this, however, is unacceptable.

4 15. Defendants, as the manufacturers of the Products, are in exclusive
5 possession of information providing them the knowledge about the inferior quality of
6 their Products, including hundreds of complaints directly from Customers and their
7 Fashion Consultants. Defendants provide no disclosures on any Products about the
8 defective and negligent construction or quality of the Products, even though they
9 represent that their Products are of acceptable quality and fit for normal, ordinary use.
10 Further, Defendants do not authorize their Fashion Consultants to disclose that the
11 Products are defective and of negligent construction or quality. Plaintiffs and Customers
12 are not made aware of the defective nature of the Products until after their purchase and
13 receipt of them.

14 16. At all relevant times, Defendants misrepresented and suppressed material
15 facts about the quality of their defective Products and negligently designed,
16 manufactured, marketed, advertised, promoted, sold, and/or distributed such Products.

17 17. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil
18 Procedure to redress Defendants' distribution and sale of defective Products, and
19 misleading conduct, including the failure to disclose to Fashion Consultants and
20 Customers that the Products Defendants designed, manufactured, distributed, and/or sold
21 were and are defective and unfit for ordinary use.

22 18. Plaintiffs allege claims on behalf of themselves and all others similarly
23 situated for violations of the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200,
24 *et seq.*, the Consumers Legal Remedies Act, Cal. Bus. & Prof. Code §§ 1750, *et seq.*, the
25 California False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*, the Texas
26 Deceptive Trade Practices Act, Tex. Bus. & Com. Code §§ 17.50, *et seq.*, the Oregon
27 Unlawful Trade Practices Act, O.R.S. §§ 646.605, *et seq.*, breach of the implied warranty
28 of merchantability, and unjust enrichment.

1 **II. THE PARTIES**

2 **A. Individual and Representative Plaintiffs**

3 19. Plaintiff Suzanne Jones is a resident and citizen of Lafayette, California.

4 20. Plaintiff Jones purchased leggings made by Defendants between
5 approximately October 2016 and February 2017 from various Fashion Consultants.
6 Specifically, before her purchases, Plaintiff Jones saw images of the leggings during
7 Facebook “pop-up” sales by Fashion Consultants. The images showed women wearing
8 Defendants’ leggings in various settings—there was nothing in the public representations
9 to suggest the leggings would arrive with or immediately develop tears or holes. The
10 Fashion Consultants were authorized by Defendants to upload these pictures and/or live
11 video of Defendants’ Products on Facebook for the purpose of selling them to Customers,
12 such as Plaintiff Jones. Moreover, Defendants authorized the Fashion Consultants to
13 represent that the Products were made by LuLaRoe. Before purchasing Products from
14 Defendants, Plaintiff Jones relied on the images of the Products she saw on Facebook, the
15 fact that they were by LuLaRoe, and the fact that they appeared to be new and in good
16 condition allowed her to reasonably believe they were suitable for ordinary use—the
17 images gave her no reason to believe the Products were in fact defective and would
18 develop holes and rips shortly after using them. Additionally, based on the images and
19 Defendants’ representations regarding sizing, Plaintiff Jones had no reason to believe that
20 the actual sizing of the Products varied from pair to pair, rendering some Products
21 completely unfit for ordinary use. Plaintiff Jones saw no disclosures that the Products
22 were defective.

23 21. Plaintiff Jones purchased one pair of leggings that was represented as being
24 her size, however, she could not even get past her knees because they were so small, as if
25 they were manufactured for a child. Plaintiff Jones purchased two other pairs of leggings
26 which developed holes when she pulled the leggings on with her fingers.

1 22. Plaintiff Jones would like to purchase additional leggings in the future,
2 however, she will not know whether they are defective or not because she purchases them
3 online and cannot see them before she pays for them.

4 23. Plaintiff Caitlin Goodwin is a resident and citizen of Berea, Ohio.

5 24. Plaintiff Goodwin purchased leggings made by Defendants on or about
6 January 28, 2017, from a Fashion Consultant. Specifically, before her purchase, Plaintiff
7 Goodwin saw images of the leggings during Facebook “pop-up” sales by Fashion
8 Consultants. The Fashion Consultants were authorized by Defendants to upload pictures
9 and/or live video of Defendants’ Products on Facebook for the purpose of selling them to
10 Customers, such as Plaintiff Goodwin. Moreover, Defendants authorized the Fashion
11 Consultants to represent that the Products were by LuLaRoe. Plaintiff Goodwin relied on
12 the images of the Products she saw on Facebook, the fact that they were by LuLaRoe, and
13 the fact that they appeared to be new and in good condition allowed her to reasonably
14 believe they were suitable for ordinary use—the images gave her no reason to believe the
15 Products were in fact defective and would arrive with and/or develop holes and rips
16 shortly after using them. Additionally, based on the images and Defendants’
17 representations regarding sizing, Plaintiff Goodwin had no reason to believe that the
18 actual sizing of the Products varied from pair to pair, rendering some Products completely
19 unfit for ordinary use. Plaintiff Goodwin saw no disclosures that the Products were
20 defective.

21 25. Plaintiff Goodwin purchased a pair of leggings, however, before she wore
22 them, she discovered there was a hole in the leggings at the crotch. Plaintiff Goodwin
23 contacted the Fashion Consultant on or about February 7, 2017, for a refund. The Fashion
24 Consultant stated she could not give refunds because Defendants do not allow that and
25 that Plaintiff Goodwin could only get an exchange, however, the product would not be the
26 same. Plaintiff Goodwin was also unsuccessful in getting a refund from Defendants
27 directly.

28

1 26. Plaintiff Goodwin would like to purchase additional leggings in the future,
2 however, she will not know whether they are defective or not because she purchases them
3 online and cannot see them before she pays for them.

4 27. Plaintiff Tanya Mack is a resident and citizen of Wildomar, California.

5 28. Plaintiff Mack purchased Defendants’ leggings between May 2016 and
6 March 2017 from a Fashion Consultant. Specifically, before her purchase, Plaintiff Mack
7 saw images of the leggings during Facebook “pop-up” sales by Fashion Consultants. The
8 Fashion Consultants were authorized by Defendants to upload pictures and/or live video
9 of Defendants’ Products on Facebook for the purpose of selling them to Customers, such
10 as Plaintiff Mack. Moreover, Defendants authorized the Fashion Consultants to represent
11 that the Products were by LuLaRoe. Plaintiff Mack relied on the images of the Products
12 she saw on Facebook, the fact that they were by LuLaRoe, and the fact that they appeared
13 to be new and in good condition allowed her to reasonably believe they were suitable for
14 ordinary use—the images gave her no reason to believe the Products were in fact
15 defective and would arrive with and/or develop holes and rips shortly after using them.
16 Additionally, based on the images and Defendants’ representations regarding sizing,
17 Plaintiff Mack had no reason to believe that the actual sizing of the Products varied from
18 pair to pair, rendering some Products completely unfit for ordinary use. Plaintiff Mack
19 saw no disclosures that the Products were defective.

20 29. Plaintiff Mack purchased approximately 18 pairs of Defendants’ leggings ,
21 and of those, 15 pairs either had holes upon receipt of them or developed holes within the
22 first use.

23 30. Plaintiff Mack would like to purchase additional leggings in the future,
24 however, she will not know whether they are defective or not because she purchases them
25 online and cannot see them before she pays for them.

26 31. Plaintiff Mina Nicolle Ulaszek Benjamin is a resident and citizen of Bandera,
27 Texas.

28

1 32. Plaintiff Benjamin purchased Defendants’ leggings between August 2016
2 and February 2017 from various Fashion Consultants. Specifically, before her purchases,
3 Plaintiff Benjamin saw images of the leggings during Facebook “pop-up” sales by
4 Fashion Consultants. The Fashion Consultants were authorized by Defendants to upload
5 pictures and/or live video of Defendants’ Products on Facebook for the purpose of selling
6 them to Customers, such as Plaintiff Benjamin. Moreover, Defendants authorized the
7 Fashion Consultants to represent that the Products were by LuLaRoe. Plaintiff Benjamin
8 relied on the images of the Products she saw on Facebook, the fact that they were by
9 LuLaRoe, and the fact that they appeared to be new and in good condition allowed her to
10 reasonably believe they were suitable for ordinary use—the images gave her no reason to
11 believe the Products were in fact defective and would develop holes and rips shortly after
12 using them. Additionally, based on the images and Defendants’ representations regarding
13 sizing, Plaintiff Benjamin had no reason to believe that the actual sizing of the Products
14 varied from pair to pair, rendering some Products completely unfit for ordinary use.
15 Plaintiff Benjamin saw no disclosures that the Products were defective.

16 33. Plaintiff Benjamin purchased four pairs of leggings that were represented as
17 being her size, however, they were too small. Plaintiff Benjamin tried to exchange them
18 for leggings that were not mis-sized but was unable to. Plaintiff Benjamin also purchased
19 other leggings made by Defendants which either arrived with or developed holes after the
20 first use.

21 34. Plaintiff Benjamin would like to purchase additional leggings in the future,
22 however, she will not know whether they are defective or not because she purchases them
23 online and cannot see them before she pays for them.

24 35. Plaintiff Terri Doran is a resident and citizen of Keizer, Oregon.

25 36. Plaintiff Doran purchased leggings made by Defendants in 2016 and 2017
26 from a Fashion Consultant. Specifically, before her purchase, Plaintiff Doran saw images
27 of the leggings during Facebook “pop-up” sales by Fashion Consultants. The Fashion
28 Consultants were authorized by Defendants to upload pictures and/or live video of

1 Defendants' Products on Facebook for the purpose of selling them to Customers, such as
2 Plaintiff Doran. Moreover, Defendants authorized the Fashion Consultants to represent
3 that the Products were by LuLaRoe. Plaintiff Doran relied on the images of the Products
4 she saw on Facebook, the fact that they were by LuLaRoe, and the fact that they appeared
5 to be new and in good condition allowed her to reasonably believe they were suitable for
6 ordinary use—the images gave her no reason to believe the Products were in fact
7 defective and would arrive with and/or develop holes and rips shortly after using them.
8 Additionally, based on the images and Defendants' representations regarding sizing,
9 Plaintiff Doran had no reason to believe that the actual sizing of the Products varied from
10 pair to pair, rendering some Products completely unfit for ordinary use. Plaintiff Doran
11 saw no disclosures that the Products were defective.

12 37. Plaintiff Doran purchased Defendants' leggings which ripped or developed
13 holes within the first or second use. Plaintiff Doran was denied a refund.

14 38. Plaintiff Doran would like to purchase additional leggings in the future,
15 however, she will not know whether they are defective or not because she purchases them
16 online and cannot see them before she pays for them.

17 39. Plaintiff Emma Heinichen is a resident and citizen of San Francisco,
18 California.

19 40. Plaintiff Heinichen purchased leggings made by Defendants in 2017 from a
20 Fashion Consultant. Specifically, before her purchase, Plaintiff Heinichen saw images of
21 the leggings during Facebook "pop-up" sales by Fashion Consultants. The Fashion
22 Consultants were authorized by Defendants to upload pictures and/or live video of
23 Defendants' Products on Facebook for the purpose of selling them to Customers, such as
24 Plaintiff Heinichen. The Fashion Consultant who sold Plaintiff Heinichen the leggings
25 had a Facebook page dedicated only to selling LuLaRoe. The Fashion Consultant would
26 post photos multiple times per day and tag Plaintiff Heinichen in posts that would say
27 "like and share this photo and comment your favorite type of fruit to enter the drawing for
28 a free pair of leggings." Moreover, Defendants authorized the Fashion Consultants to

1 represent that the Products were by LuLaRoe. Plaintiff Heinichen relied on the images of
2 the Products she saw on Facebook, the fact that they were by LuLaRoe, and the fact that
3 they appeared to be new and in good condition allowed her to reasonably believe they
4 were suitable for ordinary use—the images gave her no reason to believe the Products
5 were in fact defective and would arrive with and/or develop holes and rips shortly after
6 using them. Additionally, based on the images and Defendants’ representations regarding
7 sizing, Plaintiff Heinichen had no reason to believe that the actual sizing of the Products
8 varied from pair to pair, rendering some Products completely unfit for ordinary use.
9 Plaintiff Heinichen saw no disclosures that the Products were defective.

10 41. Plaintiff Heinichen purchased Defendants’ leggings which ripped or
11 developed holes within the first or second use. Plaintiff Heinichen was unable to receive
12 a refund for all of the defective leggings she purchased.

13 42. Defendants, through their Fashion Consultants and website,
14 www.lularoe.com, marketed and sold LuLaRoe branded leggings. Leggings by their own
15 definition provide covering of the legs. Since Defendants’ leggings were defective in that
16 they arrived with and/or immediately developed holes and tears among other things, they
17 did not provide covering. Hence, Defendants’ business practices were fraudulent, false,
18 and/or misleading, including because Defendants did not disclose that the Products or
19 leggings were not suitable for the ordinary purpose for which they are used because they
20 did not provide covering.

21 43. Defendants have records of all relevant purchase information of their
22 Products. Specifically, Defendants require their Fashion Consultants to process Customer
23 purchases through Defendants’ point of sale system. As a result, Defendants maintain
24 records of who purchased which Products and on what date. Moreover, the records
25 include the price paid by the Customers and the Customers’ contact information. Thus,
26 Defendants have all purchase records as if Customers bought the Products directly from
27 Defendants.

28

1 52. Defendants’ Founders, DeAnne Brady and Mark Stidham, who participate in
2 the marketing and sales of the Products, also reside in California.

3 53. In addition, Patrick Winget, Defendants’ chief merchandise officer and chief
4 designer (“CMO”), along with approximately twenty-one other employees, some of which
5 inspect the Products, work at and maintain an office in Carson, California.

6 54. Mr. Winget, in part, is responsible for overseeing the quality control of the
7 Products. Defendants maintain their records, in both hardcopy and in electronic format, in
8 California.

9 55. Further, since at least January 1, 2016, an apparel manufacturing company,
10 MyDyer, a division of Providence Industries, has sourced/manufactured Products for
11 Defendants. MyDyer oversees the sourcing/manufacturing of the Products from the
12 earliest stage of production through the shipment of finished Products. MyDyer’s facility
13 is located in Carson, California, where it stores some Products.

14 **V. FACTUAL ALLEGATIONS**

15 **A. Defendants’ Business Model and Rapid Success**

16 56. LuLaRoe was founded in 2012 by DeAnne Brady, a former network
17 marketer, and her husband, Mark Stidham.

18 57. Defendants’ business model depends on the recruitment of Fashion
19 Consultants. In order to attract individuals to undertake this position, Defendants cater
20 towards busy women with children who want a flexible working opportunity to earn
21 money. A main pitch of Defendants is that mothers can earn money while selling their
22 Products to friends in their living rooms and/or through online forums, such as Facebook.
23 Many of Defendants’ Fashion Consultants are millennial mothers.

24 58. Fashion Consultants are authorized and encouraged by Defendants to sell the
25 Products to their family and friends at parties, at home or online known as “pop-ups.”
26 Defendants also authorize Fashion Consultants to advertise that the Products are by
27 LuLaRoe, and authorize them to use Defendants’ images of the Products to share with
28 Customers.

1 59. It has been reported that Defendants have over approximately 80,000 Fashion
2 Consultants. Reports indicate that the company “on boards” approximately 150 to 200
3 new retail sellers every day, with the goal of getting 300 new Fashion Consultants per
4 day.

5 60. The initial investment for an individual to become a Fashion Consultant is
6 not inexpensive; it costs between \$5,000 and \$9,000 to buy an “onboard package” which
7 includes approximately 380 pieces of clothing and marketing materials (the “Onboard
8 Package”). One report alleges, however, that Defendants encourage Fashion Consultants
9 to keep about \$20,000 in inventory at any given time, and further encourages them to
10 reinvest in their business.

11 61. Conservative calculations, based solely on the daily new Retail Sellers’
12 Onboard Packages, demonstrate that Defendants are generating millions of dollars in
13 revenue every day from their new Fashion Consultants. That revenue excludes any
14 partnership deals or subsequent purchases of Defendants’ clothing by Fashion
15 Consultants. Based off of these lucrative numbers, it is evident Defendants want to
16 provide Onboard Packages to as many new Fashion Consultants as they can, even if this
17 means providing them with clothing that has holes in it and/or has been negligently
18 manufactured.

19 62. In order to become a Fashion Consultant, one can visit Defendants’ website
20 at www.lularoe.com and click on the tab, “Join the Movement.” The website boasts:
21 “Becoming a LuLaRoe Fashion Consultant can provide you opportunity to have the
22 means, the time, and the flexibility to pursue your passions and to more fully enjoy the
23 company of those you love.”¹ In reality, however, many of the Fashion Consultants are
24 ultimately caught in crosshairs between Defendants and the friends and family who they
25 sold defective Products to.

26
27
28 ¹ Join the Movement, <http://www.lularoe.com/join-the-movement-page> (last visited February 16, 2018).

1 63. Critics of Defendants believe that the high cost to become a Fashion
2 Consultant is simply to convince the potential retail sellers that it is a real business that
3 will provide a real return on investment. Turning a profit, however, is difficult.
4 “[Defendants] estimate[] the average commission that reps earn is a paltry \$85 per year,
5 according to Tracy Coenen, a forensic accountant and critic of the MLM industry, citing a
6 2015 income disclosure statement from LuLaRoe. In a January post on her blog, Coenen
7 described LuLaRoe as a ‘grand scheme made to look like a real business.’”²

8 64. Aside from investing thousands of dollars and having to sell hundreds if not
9 thousands of pieces of Defendants’ Products to make a return on their investment,
10 excluding the time and expenses involved, Fashion Consultants’ ability to be profitable is
11 also greatly diminished because of the defective Products they receive from Defendants.
12 As explained below, the time, effort, and expense involved with returns and exchanges
13 also fall on Fashion Consultants.

14 65. Thus, not only have Defendants outsourced the selling of their Products and
15 the financial risk associated with that to Fashion Consultants, they have also shifted the
16 burden of returns, exchanges, and Customer complaints to them.

17 **B. Defendants’ Defective Products**

18 66. Defendants, through their website and through their Fashion Consultants,
19 represent to the public that their Products are both comfortable and fit for ordinary, or
20 even, athletic use.

21 67. With respect to their Products, Defendants state: “Our leggings are ultra-
22 stretchy and super soft. They’re as close to your own skin as you can get with all the
23 perks of, ahem, not being naked. You can sport them at your favorite Pilates class or
24 throw on some cute booties and wear them out for a girls night!”³

25 _____
26 ² LuLaRoe’s business is booming, but some sellers are fuming, [http://www.wtsp.com/
27 money/consumer/lularoes-business-is-booming-but-some-sellers-are-fuming/420039
28 896?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+wtsp%2Ftopstories+\(WTSP.com+10+News+Top+Stories](http://www.wtsp.com/money/consumer/lularoes-business-is-booming-but-some-sellers-are-fuming/420039896?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+wtsp%2Ftopstories+(WTSP.com+10+News+Top+Stories) (last visited March 14, 2017).

³ Adult Leggings, <http://www.lularoe.com/adult-leggings> (last visited March 14, 2017).

1 68. Thus, not only are Defendants (via their website and through their Fashion
2 Consultants) impliedly warranting that their Products are fit for the ordinary use for which
3 such goods are used, they explicitly warrant the Products are fit for athletic use.

4 69. The Products, however, are unfit for the ordinary use for which such goods
5 are used, much less athletic use. Customers across the United States have complained that
6 the leggings are ripping and developing holes after as little as a few hours of wear.

7 **C. Defendants Have Been on Notice that Their Products Are Defective**

8 70. Unsurprisingly, thousands of outraged Customers across the United States
9 have posted complaints about the defective Products they have purchased. Defendants
10 have long known about the poor quality of their Products since at least the beginning of
11 2016.

12 71. The complaints regarding the defective Products are well documented and
13 can be easily found on a variety of Internet forums, websites, and groups. Below is a
14 sample of typical complaints posted on the BBB's website:

- 15 • The quality has become extremely poor. The leggings developed holes
16 within minutes of wearing them. (Complaint submitted by Blakely P. on
3/7/2017.)
- 17 • Multiple items purchased have had holes, literally fallen apart in my
18 hands, uneven lengths (leggings, one leg 4 inches longer than the other)
and poor customer service. (Complaint submitted by Shannon G. on
19 3/4/2017.)
- 20 • LuLaRoe is telling all staff and consultants to write positive reviews here
– this info came directly from a high level “coach”. Be WARY of this
21 slimy company. (Complaint submitted by Deanne S. 3/4/2017.)
- 22 • The leggings are garbage. I wore a pair from Vietnam for 4 hours and the
whole seat of the pants developed tiny holes. (Complaint submitted by
23 Lynz on 3/4/2017.)
- 24 • I purchased two pairs of leggings brand new from two separate
consultants. Both got holes within the first few hours of wearing them.
25 Lularoe won't return them, so I'm just out \$60. Stay far away!
(Complaint submitted by Anon on 3/4/2017.)
- 26 • This company's products are horrible. I purchase[d] a pair of leggings
27 and they ripped the first day I ever wore them. I tried to exchange them
and was not refunded or given another pattern. (Complaint submitted by
28 Katie on 3/3/2017.)

- 1 • I ordered my first pair of LulaRoe Leggings, my first purchase from them
2 in general, in December. After my first time wearing them, [I] found
3 numerous pin holes in the butt area. I contacted the consultant I bought
4 them from, she had me return them to her to exchange them. However, I
5 had to pay for the shipping to both return the item and receive the new
6 pair! So, now I've paid nearly \$10 extra, and I'm afraid this pair will rip
7 as well. (Complaint submitted by Nicole H. on 3/2/2017.)

8 72. Defendants have been on notice that their Products are defective since at least
9 January of 2016. When the BBB receives a consumer complaint, the BBB sends the
10 complaint to the company and provides it an opportunity to respond. Customers have
11 filed complaints with the BBB about the poor quality of Defendants' Products since at
12 least January 2016. A large company surely is aware of the BBB and that it is one of, if
13 not the main, forum for consumers to provide feedback to a company. As such,
14 Defendants are aware of the submissions through the BBB and know that they have
15 earned an "F" rating.

16 73. Additionally, Defendants' spokespersons have publicly responded to online
17 articles exposing Defendants for their defective Products. Defendants' responses can be
18 traced back to at least early January of 2017.⁴

19 74. Moreover, there is a Facebook group specifically dedicated to Customers
20 who bought Defendants' defective Products, called LuLaRoe Defective/Ripped/Torn
21 Leggings And Clothes. As of February 16, 2018, there are approximately
22 54,000 members.

23 75. Members of the LuLaRoe Defective/Ripped/Torn Leggings And Clothes
24 Facebook group post complaints about the defective Products on a daily basis and
25 Defendants' employees and/or Fashion Consultants monitor the discussions of the
26 Facebook group.

27 ⁴ See This clothing company is facing claims that its 'pants rip like wet toilet paper',
28 <http://www.businessinsider.com/lularoe-customers-complain-popular-leggings-are-tearing-2017-2> (last visited May 17, 2017).

1 **D. Defendants Had Exclusive Knowledge That the Products Were**
2 **Defective**

3 76. Defendants have exclusive knowledge prior to sale that their leggings are
4 defective, i.e., not according to the represented sizing or that they have holes or will
5 develop holes during normal use. Defendants know the specifications of the clothing they
6 order from their manufacturers, and the types of material being used. Defendants also
7 visit the manufacturing factories and monitor the manufacturing process. In fact,
8 Defendants admit that they “weaken the fibers” during the manufacturing process.

9 77. Moreover, Defendants’ manufacturers send the clothing to Defendants in
10 California before distribution to Fashion Consultants. Defendants claim they inspect the
11 Products, yet send them out to Fashion Consultants despite knowing about the defects.

12 78. Additionally, Defendants are in exclusive possession regarding the number of
13 Customers who have complained directly to them about the defective nature of the
14 leggings. Defendants also keep track of certain information regarding the Products that
15 have been reported as defective, including the country of manufacture, among other
16 things, but do not pass that information onto the Customers.

17 79. Despite having exclusive knowledge regarding the defective nature of the
18 Products, Defendants concealed these material facts from Customers by failing to make
19 disclosures on their website and by failing to authorize their Fashion Consultants to make
20 disclosures about the defective nature of the Products to Customers. Plaintiffs and
21 Customers are not made aware of the defective nature of the Products until after their
22 purchase and receipt of them.

23 **E. Defendants’ “No Return” Policy Before This Lawsuit Was Filed**

24 80. Before the filing of this lawsuit, Customers who bought and received
25 defective Products were not allowed to return them to Defendants, either for a refund or
26 an exchange. Defendants’ website clearly said that “[A]ny request pertaining to returns,
27 damages, or shipping should go to the original Retailer you purchased from. THANK
28 YOU.”

1 81. Thus, when a Customer complained directly to Defendants, he or she was
2 either ignored, or told to contact the Fashion Consultant from whom they purchased the
3 Products. Based on this policy, many Customers were unable to obtain redress for their
4 purchase of defective Products.

5 82. While Fashion Consultants are supposed to contact Defendants to return the
6 defective Product(s) and receive a credit, they have reported that when placing a call to
7 Defendants in order to return damaged goods, they are placed on hold for an hour, and
8 then disconnected. Fashion Consultants also report that emails sent to Defendants
9 regarding the defective Products go unanswered. It is therefore unsurprising that
10 Defendants have earned themselves an “F” rating on the BBB.

11 83. Based on Defendants’ unfair policies and tactics, Fashion Consultants will
12 not provide refunds and in the few cases where they will offer an exchange, it will not be
13 for the same item that a Customer purchased. This is because one of Defendants’
14 gimmicks is that they only make a limited number of patterns, roughly anywhere from
15 2,000-2,500 of a particular print per item. As a result, Defendants have been able to
16 create a high demand for a particular pattern, which are called “Unicorns.” In other
17 words, a highly sought after pattern is a “Unicorn” and allows Fashion Consultants to
18 charge significantly more. Customers who received damaged “Unicorn[s]” never
19 received refunds, though and, if in the rare circumstance was allowed by a Fashion
20 Consultant to make an exchange, could not and did not receive the same item due to the
21 limited numbers of patterns that Defendants offer.

22 84. Additionally, to the extent a Fashion Consultant allows an exchange, a
23 Customer is responsible for paying for the cost of shipping the defective Product to the
24 Fashion Consultant, and for the Fashion Consultant’s cost of shipping the replacement
25 item to the Customer.

26 85. Moreover, many Fashion Consultants report that they will only exchange
27 unworn and unwashed clothing with tags attached that were originally purchased from
28 them within a limited number of days. This excludes thousands of Customers who wore

1 the Product once, sometimes for as little as a few minutes, at which point, the Product
2 became ripped, torn, or developed a hole. Customers who purchased Products during a
3 party hosted by multiple consultants may not know the consultant from whom they
4 purchased the Products from, and hence, will be unable to exchange the Product(s).

5 86. To make matters worse, during weekly conference calls that DeAnne Brady
6 and Mark Stidham hold with Fashion Consultants, Mark Stidham told Fashion
7 Consultants not to spend time and energy sending defective Products back to the
8 company, but that they should try to re-sell them to Customers, including by learning to
9 sew and repair any defective Products.

10 **F. Defendants' New Policies After the First Originally Filed Action**

11 87. After the filing of Plaintiffs' original Class Action Complaint on March 23,
12 2017, and Plaintiffs' compliance with the Consumers Legal Remedies Act, Cal. Civ. Code
13 § 1782(a) ("CLRA"), Defendants instituted their "Happiness Policy," "LuLaRoe Limited
14 Warranty," and "Make Good Program" (collectively the "Exchange Policies") as an
15 attempt to salvage some of their reputation in Customers' eyes.

16 88. Plaintiffs' lawsuit and notice pursuant to the CLRA was clearly the catalyst
17 motivating Defendants to formulate and implement the Exchange Policies.

18 89. While the Exchange Policies may appear to extend goodwill to Defendants'
19 Customers, a closer look at them reveals that they do not provide adequate relief to
20 Customers. To begin with, a Customer is only eligible for the Happiness Policy or the
21 LuLaRoe Limited Warranty if the purchase was made on or after April 25, 2017. This
22 excludes Customers who purchased defective Products from Defendants before that date.

23 **The Happiness Policy**

24 90. In short, the Happiness Policy states that Customers may return the clothing
25 they are unhappy with to the Fashion Consultant they purchased it from within 30 days to
26 receive "full refund, credit or exchange[]", or within the first 90 days to receive credit or
27 exchange. First, Defendants have placed an asterisk next to the word, "exchange" to
28 disclose that due to the limited nature of the prints, the same Products may not be

1 available. Thus, even if an exchange is processed, it is highly unlikely that the particular
2 design in the Customer's size will be available, as Customers have repeatedly complained
3 about. The replacement leggings may also cost less than the amount paid for the original
4 Product. Customers choose specific designs and thus a similar "replacement" is
5 inadequate.

6 91. Additionally, Customers have to pay for the shipping and handling to send
7 their defective Products back to the Fashion Consultant. Thus, it is not a *full* refund or
8 credit. Further, this policy puts the onus on the Customer to reach out and negotiate with
9 the Fashion Consultant. Fashion Consultants are not required to accept returns, in fact,
10 many Customers have complained that Fashion Consultants have ignored requests and/or
11 been told that they will not be refunded. Fashion Consultants have no incentive to honor
12 this program as Defendants only issue the Fashion Consultants the wholesale value while
13 the Customer is supposed to receive the retail price he or she paid. Fashion Consultants
14 must also pay for the shipping to Defendants and/or back to the Customer. Thus, the
15 Fashion Consultants lose money by honoring this system. There are also complaints that
16 Defendants have failed to issue credits in a timely manner.

17 **The LuLaRoe Limited Warranty**

18 92. The LuLaRoe Limited Warranty is supposed to allow a Customer to return a
19 defective item if done so within the first six months from the date of purchase. Again, the
20 Customers have the burden of tracking down the Fashion Consultant they purchased it
21 from, and if they can, they will have to pay for the shipping. Second, it is at Defendants'
22 "sole discretion" whether to accept that the clothing is actually defective. The warranty
23 excludes the ambiguous categories such as "improper care, negligence, abuse, normal
24 wear and tear, and the natural breakdown of colors and materials" Even if a
25 Customer makes it past these hurdles, Defendants will "replace it with a similar
26 product[.]" Again, a similar product is not what the Customer chose to pay for.

27 **The Make Good Program**

28 93. The Make Good Program is supposed to cover Customers who do not qualify

1 for the Happiness Policy or the LuLaRoe Limited Warranty. The Make Good Program is
2 available for Customers who bought Defendants' clothing between January 1, 2016 and
3 April 24, 2017, and who submit a claim no later than July 31, 2017. Defendants never,
4 however, provided notice directly to Customers about the Make Good Program.

5 94. Like the other Exchange Policies, by its terms the Make Good Program
6 requires the Customer to track down the Fashion Consultant they bought from, and pay
7 for shipping to return it to them. Moreover, an exchange is solely dependent on whether
8 Defendants believe the clothing is defective. If accepted by Defendants, any exchange
9 will be a "similar product."

10 95. Defendants state that if the Customers cannot connect with the Fashion
11 Consultant they bought the defective Product(s) from, the Customers may contact the
12 "Consumer Services T.E.A.M." which will help connect them to a different Fashion
13 Consultant in their area. This, however, does not address the issue that the Customers will
14 still be out of pocket for shipping and/or will receive an inadequate "replacement."
15 Moreover, there is no reason Customers who purchased Defendants' defective Products
16 should have to spend the time and money required to track down Fashion Consultants and
17 then submit to Defendants' sole discretion as to whether the Products are indeed
18 defective.

19 96. Defendants have the names, addresses, phone numbers, email addresses,
20 Products purchased, and sales prices paid for each of their Customers, as Fashion
21 Consultants provide such information to Defendants through Defendants' invoicing and
22 point of sale system. Defendants, however, erect barriers for Customers to take advantage
23 of the Exchange Policies so few, if any, do.

24 97. In sum, the Exchange Policies are insufficient. In the best case scenario,
25 Customers will be out of pocket for shipping expenses and/or will receive a replacement
26 that is not adequately similar to what they originally chose.
27
28

CLASS ALLEGATIONS

1
2 98. Plaintiffs bring this action on behalf of themselves pursuant to Rule 23(a),
3 (b)(2), (b)(3), and/or (c)(4) of the Federal Rules of Civil Procedure and on behalf of the
4 following proposed Classes initially defined as follows:

5 (a) **Nationwide Class:** All individuals residing in the United States who
6 purchased for personal, family or household use, LuLaRoe branded
7 leggings.

8 (b) **California Subclass:** All individuals residing in California who purchased
9 for personal, family or household use, LuLaRoe branded leggings.

10 (c) **Ohio Subclass:** All individuals residing in Ohio who purchased for
11 personal, family or household use, LuLaRoe branded leggings.

12 (d) **Oregon Subclass:** All individuals residing in Oregon who purchased for
13 personal, family or household use, LuLaRoe branded leggings.

14 (e) **Texas Subclass:** All individuals residing in Texas who purchased for
15 personal, family or household use, LuLaRoe branded leggings.

16 99. Plaintiffs reserve the right to redefine the Classes prior to class certification
17 and after having the opportunity to conduct discovery. Unless otherwise noted, the
18 Classes will be collectively referred to herein as the “Class.”

19 100. Excluded from the Class are Defendants, their parents, subsidiaries, affiliates,
20 officers, and directors, any entity in which Defendants have a controlling interest, and all
21 judges assigned to hear any aspect of this litigation, as well as their immediate family
22 members.

23 101. Numerosity. Fed. R. Civ. P. 23(a)(1). The members of the Class are so
24 numerous that joinder is impractical. The Class consists of thousands of members, the
25 precise number which is within the knowledge of and can be ascertained only by resort to
26 Defendants’ records.

27 102. Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3). There are numerous
28 questions of law and fact common to the Class, which predominate over any questions

1 affecting only individual members of the Class. Among the questions of law and fact
2 common to the Class are:

- 3 (a) Whether Defendants misrepresented that the Products were suitable for wear
4 when they were not;
- 5 (b) Whether Defendants concealed material facts concerning the quality of their
6 Products;
- 7 (c) Whether Defendants were in possession of exclusive facts regarding the
8 quality of their Products;
- 9 (d) Whether Defendants authorized Fashion Consultants to disclose the quality
10 issues with the Products;
- 11 (e) Whether Defendants failed to employ quality control measures to avoid
12 shipping defective Products;
- 13 (f) Whether Defendants' advertisement and representations concerning their
14 Products constituted false advertising under California law;
- 15 (g) Whether Defendants engaged in deceptive, unfair, unlawful, and/or
16 fraudulent business practices under California law;
- 17 (h) Whether Defendants violated the California Consumers Legal Remedies
18 Act;
- 19 (i) Whether Defendants violated the Texas Deceptive Trade Practices Act;
- 20 (j) Whether Defendants violated the Oregon Unlawful Trade Practices Act;
- 21 (k) Whether Defendants breached the implied warranty of merchantability;
- 22 (l) Whether Defendants were unjustly enriched;
- 23 (m) Whether Class members are entitled to restitution, and in what amount; and
- 24 (n) Whether Defendants should be enjoined from continuing the practices
25 alleged herein.

26 103. Typicality. Fed. R. Civ. P. 23(a)(3). Plaintiffs' claims are typical of the
27 claims of the members of the Class and, like all members of the Class, Plaintiffs
28 purchased defective Products from one or more of Defendants' Fashion Consultants.
Accordingly, Plaintiffs have no interests antagonistic to the interests of any other member
of the Class.

104. Adequacy. Fed. R. Civ. P. 23(a)(4). Plaintiffs will fairly and adequately
assert and protect the interests of the Class, and retained counsel experienced in

1 prosecuting class actions. Plaintiffs are adequate representatives and will fairly and
2 adequately protect the interests of the Class.

3 105. Superiority of Class Action. Fed. R. Civ. P. 23(b)(3). A class action is
4 superior to all other available methods for the fair and efficient adjudication of this
5 lawsuit, because individual litigation of the claims of all members of the Class is
6 economically unfeasible and procedurally impracticable. While the aggregate damages
7 sustained by the Class are in the millions of dollars, the individual damages incurred by
8 each member of the Class resulting from Defendants' wrongful conduct are too small to
9 warrant the expense of individual lawsuits. The likelihood of individual Class members
10 prosecuting their own separate claims is remote, and, even if every member of the Class
11 could afford individual litigation, the court system would be unduly burdened by
12 individual litigation of such cases.

13 106. The prosecution of separate actions by members of the Class would create a
14 risk of establishing inconsistent rulings and/or incompatible standards of conduct for
15 Defendants. Additionally, individual actions may be dispositive of the interests of the
16 Class, although certain Class members are not parties to such actions.

17 107. Injunctive and Declaratory Relief. Fed. R. Civ. P. 23(b)(2). The conduct of
18 Defendants is generally applicable to the Class as a whole and Plaintiffs seek equitable
19 remedies with respect to the Class as a whole. As such, the systematic policies and
20 practices of Defendants make declaratory or equitable relief with respect to the Class as a
21 whole appropriate.

22 108. Issue Certification. Fed. R. Civ. P. 23(c)(4). In the alternative, the common
23 questions of law and fact, set forth in Paragraph 102, are appropriate for issue certification
24 on behalf of the proposed Class.

COUNT I

Unfair Business Practices
(California Business & Professions Code § 17200, et seq.
Unfair Competition Law (“UCL”))
On Behalf of Plaintiffs, the National Class, and the General Public

109. Plaintiffs incorporate and reallege by reference each and every allegation above as if set forth herein in full.

110. The UCL defines unfair business competition to include any “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal. Bus. & Prof. Code § 17200.

111. During the relevant time period, Defendants engaged in unfair business practices by selling defective Products to Fashion Consultants knowing that such Products would be sold to members of the general public, including Plaintiffs and Class members. Such Products were not suitable for the ordinary purpose for which the Products are used. As alleged herein, Defendants’ conduct constitutes a breach of the implied warranty of merchantability.

112. Defendants’ practices constitute unfair business practices in violation of the UCL because, among other things, they are immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers and/or any utility of such practices is outweighed by the harm caused to consumers. Defendants’ practices violate the legislative policies of the underlying statutes alleged herein: namely, protecting consumers and preventing persons from being injured. Defendants’ practices caused substantial injury to Plaintiffs and members of the Class and are not outweighed by any benefits, and Plaintiffs and members of the Class could not have reasonably avoided their injuries.

113. As a result of Defendants’ unfair business practices, Plaintiffs have suffered injury in fact and a loss of money or property in terms of purchasing the Products that are unsuitable for their ordinary purpose as clothing, which they would not have purchased at all, or at the prices they paid.

1 114. Pursuant to Business and Professions Code § 17204, Plaintiffs and the Class
2 are entitled to an order of this Court enjoining such conduct on the part of Defendants, and
3 any other orders and judgments that may be necessary to provide for complete equitable
4 monetary relief by disgorging Defendants’ ill-gotten gains, including the monies
5 Defendants received or saved as a result of their wrongful acts and practices detailed
6 herein, and restoring to any person in interest such monies paid for Defendants’ Products
7 by ordering the payment of full restitution plus interest. Otherwise, Plaintiffs, Class
8 members, and members of the general public may be irreparably harmed or denied an
9 effective and complete remedy if such an order is not granted.

10 **COUNT II**

11 ***Fraudulent Business Practices***
12 **(California Business & Professions Code § 17200, et seq.)**
13 ***On Behalf of Plaintiffs, the National Class, and the General Public***

14 115. Plaintiffs incorporate and reallege by reference each and every allegation
15 above as if set forth herein in full.

16 116. A business act or practice is “fraudulent” under the UCL if it is likely to
17 deceive reasonable consumers.

18 117. Defendants have misrepresented their Products. Specifically, Defendants
19 have disseminated, through their network of Fashion Consultants, Products that are
20 defective and not fit for ordinary use. Additionally, Defendants disseminated to their
21 Fashion Consultants images showing that the Products were suitable for ordinary purposes
22 for which such Products are used. Defendants authorized Fashion Consultants to use
23 these images and photos of the Products for purposes of marketing and selling the
24 Products to Customers. Defendants also authorized Fashion Consultants to show images
25 of the Products during pop-up sales both online and in person. Defendants, on their
26 website and through their Fashion Consultants, represented that they were selling
27 leggings, which by definition means coverage for the legs. The Products, however, did
28 not provide coverage for the legs.

1 118. Defendants omitted material facts they were obligated to disclose regarding
2 the defective nature of their Products, namely, that they are of such poor quality they are
3 not fit for the ordinary purposes for which such Products are used and do not provide
4 coverage. The facts concealed or not disclosed by Defendants with respect to the
5 defective Products at issue are material in that Plaintiffs, Class members, and the general
6 public would have considered these facts to be a substantial factor in deciding whether to
7 purchase Defendants' Products, and the price to pay for Defendants' Products.
8 Defendants concealed these material facts from Fashion Consultants and Customers,
9 and/or did not authorize Fashion Consultants to disclose material facts to Customers
10 regarding the defective nature of the Products. Defendants also failed to disclose the true
11 quality of the Products on the Products themselves or on their website.

12 119. Plaintiffs and Class members had a reasonable expectation that the Products
13 they were purchasing would not be defective and would be fit for the ordinary purposes
14 for which such Products are used, i.e., for wearing and being covered. The thousands of
15 complaints posted on various online communities and message boards substantiate these
16 expectations and assumptions.

17 120. Based on the facts detailed herein, Defendants were under a duty to Plaintiffs
18 and Class members to disclose the poor quality of the Products. Such a duty existed
19 because Defendants had exclusive possession and knowledge of facts—that the Products
20 were unsuitable for the ordinary purposes for which they are used, due to their poor
21 quality—that were not available to Customers and that were material. Defendants knew
22 that their Products were defective through their manufacturing process and inspection they
23 claimed they performed, however, Defendants concealed this information from Plaintiffs
24 and Class members and shipped the Products anyway to Fashion Consultants for
25 distribution and sale to Plaintiffs and Class members. A reasonable purchaser would not
26 anticipate that the Products were defective as there was no reason to believe as such.
27 Plaintiffs and Customers are not actually made aware of the defective nature of the
28 Products until after their purchase and receipt of them.

1 121. Such acts and practices of Defendants, as described herein, constitute
2 “fraudulent” business practices under California Business and Professions Code §§ 17200,
3 *et seq.*, in that such conduct was and is likely to deceive reasonable consumers into
4 believing Defendants’ Products were suitable and fit for the ordinary purposes for which
5 such goods are used.

6 122. As a result of Defendants’ fraudulent business practices, Plaintiffs have
7 suffered injury in fact and a loss of money or property in terms of purchasing the Products
8 that are unsuitable for their ordinary use as clothing, which they would not have
9 purchased at the prices they paid had the true nature of the Products not been
10 misrepresented or had the material facts been fully disclosed.

11 123. Pursuant to Business and Professions Code § 17204, Plaintiffs and Class
12 members are entitled to an order of this Court enjoining such conduct on the part of
13 Defendants, and any other orders and judgments that may be necessary to provide for
14 complete equitable monetary relief by disgorging Defendants’ ill-gotten gains, including
15 the monies Defendants received or saved as a result of its wrongful acts and practices
16 detailed herein, and restoring to any person in interest such monies paid for Defendants’
17 Products by ordering the payment of full restitution plus interest. Otherwise, Plaintiffs
18 and Class members may be irreparably harmed or denied an effective and complete
19 remedy if such an order is not granted.

20 **COUNT III**

21 ***Unlawful Business Practices***
22 **(California Business & Professions Code § 17200, *et seq.*)**
23 ***On Behalf of Plaintiffs, the National Class, and General Public***

24 124. Plaintiffs incorporate and reallege by reference each and every allegation
25 above as if fully set forth herein.

26 125. A business act or practice is “unlawful” under the UCL if it violates any
27 other law or regulation.

28 126. Defendants’ unlawful business practices and acts, as described herein,
breached and continue to breach the implied warranty of merchantability, Cal. Com. Code

1 § 2314(2)(c); the Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5),
2 § 1770(a)(7), and § 1770(a)(9); California’s False Advertising Law, Cal. Bus. & Prof.
3 Code §§ 17500, *et seq.*; the Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code
4 §§ 17.50(1), 17.50(3); and the Oregon Unlawful Trade Practices Act, ORS
5 §§ 646.608(1)(e), (g), (i), and (t), as alleged herein, by manufacturing and selling Products
6 that are unsuitable for normal use and the ordinary purposes for which the Products are
7 used.

8 127. Plaintiffs reserve the right to identify other violations of law as the facts
9 develop.

10 128. As a result of Defendants’ unlawful business practices, Plaintiffs have
11 suffered injury in fact and a loss of money or property in terms of purchasing the Products
12 that are unsuitable for their ordinary use as coverage for legs. Plaintiffs would not have
13 purchased the Products, or at the price they paid, had they known the truth about the
14 Products.

15 129. Pursuant to Business and Professions Code § 17204, Plaintiffs and the Class
16 are entitled to an order of this Court enjoining such conduct on the part of Defendants, and
17 any other orders and judgments that may be necessary to provide for complete equitable
18 monetary relief by disgorging Defendants’ ill-gotten gains, including the monies
19 Defendants received or saved as a result of its wrongful acts and practices detailed herein,
20 and restoring to any person in interest such monies paid for Defendants’ Products by
21 ordering the payment of full restitution plus interest. Otherwise, Plaintiffs and Class
22 members may be irreparably harmed or denied an effective and complete remedy if such
23 an order is not granted.

24 **COUNT IV**

25 ***Violation of the California False Advertising Law,***
26 ***(California Business & Professions Code Sections 17500, et seq.)***
27 ***On Behalf of Plaintiffs, the National Class, and the General Public***

28 130. Plaintiffs incorporate and reallege by reference each and every allegation
above as if fully set forth herein.

1 131. California’s False Advertising Law (“FAL”) prohibits unfair, deceptive,
2 untrue, or misleading advertising, including false statements as to worth, value, and
3 former price.

4 132. The FAL makes it unlawful for a business to disseminate any statement
5 which is untrue or misleading, and which is known, or which by the exercise of
6 reasonable care should be known, to be untrue or misleading.

7 133. Defendants’ practice of representing to the public, through their website,
8 Fashion Consultants, and various social media handles and accounts, that they sold
9 leggings is an unfair, deceptive or misleading advertising practice because it gave the
10 false impression that the Products were suitable for providing coverage for legs.

11 134. Defendants, with the intent to induce members of the public to purchase
12 Products offered from the various Fashion Consultants, made or caused to be made each
13 of the untrue or misleading statements, claims, or representations described herein.

14 135. Defendants knew, or by the exercise of reasonable care should have known,
15 that their claims were untrue, deceptive, or misleading.

16 136. When Defendants made or caused to be made the untrue or misleading
17 claims, statements, or misrepresentations described herein to consumers in California,
18 Defendants failed to adequately disclose material facts pleaded herein, namely, that the
19 Products were defective, did not provide coverage for legs, and were unsuitable for
20 ordinary use. Plaintiffs request that this Court cause Defendants to restore this money to
21 Plaintiffs and all other respective Class members, and to enjoin Defendants from
22 continuing to violate the FAL, or from violating the FAL in the future. Otherwise,
23 Plaintiffs, the Class they seek to represent, and members of the general public may be
24 irreparably harmed and/or denied an effective and complete remedy if such an order is not
25 granted.

COUNT V

***Violation of the California Consumers Legal Remedies Act
(California Civil Code § 1750, et seq.)
On Behalf of Plaintiffs, the National Class, and the General Public***

137. Plaintiffs incorporate and reallege by reference each and every allegation above as if fully set forth herein.

138. Defendants, with the intent to induce members of the public to purchase their Products, made or caused to be made false or misleading claims to consumers throughout California and the United States. Specifically, Defendants, through Fashion Consultants and their website, represented that they sold leggings, which by definition, provide coverage for the legs. The leggings, however, did not provide coverage as they were sold with holes or developed holes shortly after use.

139. Plaintiffs and Class members are “consumers” within the meaning of California Civil Code § 1761(d).

140. Customers’ purchases of Defendants’ Products are “transactions” within the meaning of California Civil Code § 1761(e).

141. The Products purchased by Plaintiffs and other Class members throughout the Class Period are “goods” within the meaning of California Civil Code § 1761(a).

142. Defendants engaged in unfair methods of competition, or unfair or deceptive acts or practices against Plaintiffs and Class members in violation of the California Consumers Legal Remedies Act (the “CLRA”), by making false or misleading statements of fact concerning the quality of the Products and their ability to be used for the ordinary purposes for which such goods are used through the use of the word, “leggings” and images disseminated on their website and through their Fashion Consultants.

Additionally, Defendants failed to disclose material facts that were within their exclusive knowledge, namely, the poor quality of the Products that they were not fit for their ordinary purposes of use, or for covering the legs. Defendants did not disclose these material facts on the Products, on their website, or through their Fashion Consultants.

1 143. Defendants violated and continue to violate the CLRA by engaging in the
2 following deceptive practices proscribed by the California Civil Code § 1770(a) that
3 constitute transactions intended to result in, and that did result in, the sale of the Products
4 herein to Plaintiffs and the Class:

5 a. Representing that the goods have characteristics, uses or benefits
6 which they do not have (Cal. Civ. Code § 1770(a)(5));

7 b. Representing that the goods are of a particular standard, quality or
8 grade if it is of another (Cal. Civ. Code § 1770(a)(7)); and

9 c. Advertising goods with the intent not to sell them as advertised
10 (Cal. Civ. Code § 1770(a)(9)).

11 144. As described herein, by purchasing Defendants' Products, Plaintiffs and the
12 Class suffered damage by the wrongful acts and practices of Defendants, in violation of
13 California Civil Code § 1781. Absent these acts or practices, Plaintiffs and Class
14 members would not have purchased Defendants' Products.

15 145. Pursuant to California Civil Code § 1780(a)(2), Plaintiffs, on behalf of
16 themselves and all Class members, request that this Court enjoin Defendants from
17 continuing to engage in the unlawful and deceptive methods, acts or practices alleged
18 herein. Unless Defendants are permanently enjoined from continuing to engage in such
19 violations of the CLRA, consumers will continue to be harmed by Defendants' acts or
20 practices in the same way as those acts or practices have harmed Plaintiffs and Class
21 members.

22 146. Plaintiffs provided notice to Defendants of the alleged violations of the
23 CLRA and the UCL in compliance with Cal. Civ. Code § 1782(a). Plaintiffs now seek
24 damages on behalf of themselves and all others similarly situated and all other appropriate
25 relief.
26
27
28

COUNT VI

Violation of Texas Deceptive Trade Practices Act
(Tex. Bus. & Com. Code § 17.50, *et seq.*)
On Behalf of Plaintiff Benjamin and the Texas Subclass

147. Plaintiff Benjamin incorporates by reference and realleges all paragraphs previously alleged herein.

148. Plaintiff Benjamin and each member of the Texas Subclass is a “consumer” as defined in the Texas Deceptive Trade Practices Act (“DTPA”).

149. By making false or misleading statements of fact concerning the quality of the Products and their ability to be used for the ordinary purposes for which such goods are used through the use of the word “leggings” and images disseminated on their website and through their Fashion Consultants and by failing to disclose material facts that were within their exclusive knowledge, namely, the poor quality of the Products and that they were not fit for their ordinary purposes of use, Defendants violated the following provisions of the DTPA:

(a) Tex. Bus. & Com. Code § 17.50(1): the use or employment of a false, misleading, or deceptive acts or practices as defined in § 17.46(b)(5), § 17.46(b)(7), § 17.46(b)(9), § 17.46(b)(20), and § 17.46(b)(24) of the DTPA that were detrimentally relied upon by Plaintiff Benjamin and each member of the Texas Subclass; and

(b) Tex. Bus. & Com. Code § 17.50(3): an unconscionable action or course of action as defined by § 17.45(5).

150. Defendants’ violations of the DTPA were committed knowingly and intentionally as those terms are defined in § 17.45(9) and § 17.45(13) of the DTPA.

151. Defendants’ conduct was a producing and/or proximate cause of actual damages to Plaintiff Benjamin and each member of the Texas Subclass.

152. Plaintiff Benjamin and Texas Subclass members demand judgment against Defendants for compensatory damages in an amount to be determined at trial (Plaintiff

1 Benjamin and Texas Subclass members will seek treble damages for the intentional and
2 knowing conduct of Defendants), together with reasonable attorneys’ fees and costs.

3 **COUNT VII**

4 ***Violation of the Oregon Unlawful Trade Practices Act***
5 ***(Oregon Revised Statute § 646.605, et seq.)***
6 ***On Behalf of Plaintiff Doran and the Oregon Subclass***

7 153. Plaintiff Doran incorporates by reference and realleges all paragraphs
8 previously alleged herein.

9 154. Plaintiff Doran, each member of the Oregon Subclass, and Defendants are
10 “person[s]” as defined in the Oregon Unlawful Trade Practices Act (“UPTA”). ORS
11 § 646.605(4).

12 155. The UPTA prohibits the following business practices: “(e) [r]epresent[ing]
13 that . . . goods . . . have . . . characteristics . . . uses, benefits, . . . or qualities that they do
14 not have; (g) [r]epresent[ing] that . . . goods . . . are of a particular standard [or] quality . .
15 . if they are of another; (i) [a]dvertis[ing] . . . goods . . . with intent not to provide the . . .
16 goods . . . as advertised;” and (t) . . . fail[ing] to disclose any known material defect or
17 material nonconformity.” ORS § 646.608(1).

18 156. Defendants’ were engaged in and committed the unlawful acts alleged herein
19 in the course of “trade” or “commerce” within the meaning of ORS § 646.605(8).

20 157. Defendants’ Products are “good[s]” within the meaning of ORS
21 § 646.605(6).

22 158. Defendants violated the UPTA by engaging in reckless and unlawful
23 practices in the course of their business by, as alleged herein, representing that their
24 Products have characteristics, uses, benefits, and qualities which they do not have;
25 representing that the Products are of a particular standard and quality when they are not;
26 advertising the Products with the intent not to sell them as advertised; and failing to
27 disclose and omitting from its labeling, advertising, and marketing materials material
28 information regarding the defective nature of the Products and that the Products are not
suitable for the ordinary purpose for which the Products are used. Further, Defendants

1 authorized the Fashion Consultants to use images which misrepresented the quality and
2 suitability of the Products to potential Customers and Class members.

3 159. Defendants' unlawful and reckless practices, including the concealment,
4 omission, and suppression of material facts regarding the Products, were directed at
5 consumers and had a tendency or capacity to mislead and create a false impression in
6 consumers in violation of the UPTA.

7 160. Defendants knew or should have known of the falsity of their representations
8 and their omissions at all material times.

9 161. Plaintiff Doran and the Oregon Subclass did in fact detrimentally rely upon
10 Defendants' misrepresentations and/or omissions regarding the suitability of the Products
11 and were deceived into purchasing defective Products that were not fit for the ordinary
12 purpose of use.

13 162. As a direct and proximate result of Defendants' violations of the UPTA,
14 Plaintiff Doran and the members of the Oregon Subclass have suffered injury and incurred
15 actual damage, including the cost of purchasing the defective Products.

16 163. Plaintiff Doran and the Oregon Subclass are entitled to recover the greater of
17 actual damages or \$200, pursuant to ORS § 646.638(1). Plaintiff Doran and the Oregon
18 Subclass are also entitled to punitive damages because Defendants engaged in reckless
19 conduct amounting to a particularly aggravated, deliberate disregard of the rights of
20 others. Plaintiff Doran and the Oregon Subclass are further entitled to injunctive relief to
21 enjoin Defendants from continuing to engage in the unlawful and deceptive methods, acts
22 or practices alleged herein, and further relief as the Court may be deemed necessary or
23 appropriate.

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COUNT VIII

***Breach of Implied Warranty of Merchantability
On Behalf of Plaintiffs, the National Class, and the State Subclasses***

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4 164. Plaintiffs incorporate by reference and reallege all paragraphs previously
5 alleged herein.

6 165. Every sale of consumer goods that are sold at retail are accompanied by the
7 manufacturer's and the retail seller's implied warranty that the goods are merchantable,
8 and specifically, that the goods are fit for the ordinary purposes for which such goods are
9 used.

10 166. "Defendants" are "manufacturers" and "retail sellers," and the Products
11 Defendants sold are "consumer goods."

12 167. Defendants expressly and impliedly warranted to Plaintiffs and Class
13 members that the Products were merchantable and fit for use as clothing for wearing and
14 covering based on the advertising, marketing, and sale of the Products as alleged herein.

15 168. Defendants knew the Products were not merchantable in that they were not
16 reasonably fit for the ordinary purposes for which they were manufactured and sold,
17 namely, wearing and covering. Specifically, the Products disintegrated and developed
18 small holes which turned into larger holes and no longer provided covering as intended or
19 were suitable for wear in public. Other legging Products had one leg that was shorter or
20 larger than the other, in addition to completely inconsistent sizing. The Products were not
21 sold "as is" nor as "with all faults."

22 169. Defendants were repeatedly put on notice of these issues through thousands
23 of Customer complaints, including through the Better Business Bureau as early as January
24 2016. Despite receiving notice from their Customers of these claims requesting that they
25 resolve the complaints, Defendants have not provided adequate remedies to Plaintiffs and
26 Class members.

27 170. The exception to any applicable vertical privity requirement applies here.
28 Plaintiffs and Class members are intended third party beneficiaries of Defendants'

1 arrangements with Fashion Consultants. Defendants enter into contracts with the Fashion
2 Consultants with the intention that the Fashion Consultants become Defendants’
3 authorized and exclusive sellers of Defendants’ Products to Plaintiffs and Class members.
4 The cost to become a Fashion Consultant is significant; therefore individuals do not
5 become Fashion Consultants to obtain a discount.

6 171. By entering into contracts with Fashion Consultants, Defendants have given
7 them express and exclusive authority to sell and market their Products to Plaintiffs and
8 Class members as “leggings.” Defendants do not sell their Products by any other means.
9 Plaintiffs and Class members bought the Products from Defendants’ authorized dealers—
10 the Fashion Consultants. Defendants authorize Fashion Consultants to use Defendants’
11 Product images, trademarks, and the LuLaRoe name for purposes of selling and marketing
12 the Products to Plaintiffs and Class members. Additionally, Defendants provide a pricing
13 structure for the Fashion Consultants to price the Products that they sell to Plaintiffs and
14 Class members. Additionally, Plaintiffs’ and Class members’ transactions are processed
15 through Defendants’ point of sale systems, and Defendants collect the personal
16 information and purchase records, including payment information, of Plaintiffs and Class
17 members.

18 172. Because the Products are used by Customers, as intended by Defendants, and
19 such warranties are either expressly made through advertising and statements made by
20 Defendants or are implied by law in all consumer transactions, Plaintiffs and Class
21 members who purchased the Products are third party beneficiaries and are entitled to
22 incidental and compensatory damages directly from Defendants.

23 **COUNT IX**

24 ***Unjust Enrichment***
25 ***On Behalf of Plaintiffs, the National Class, and the State Subclasses***

26 173. Plaintiffs incorporate and reallege by reference each and every allegation
27 above as if fully set forth herein.
28

1 174. Plaintiffs and Class members conferred benefits on Defendants by
2 purchasing the Products.

3 175. Defendants have been unjustly enriched in retaining the revenues derived
4 from Plaintiffs' and Class members' purchases of the defective Products that were not fit
5 for the ordinary purposes for which they are used. Retention of those monies under these
6 circumstances is unjust and inequitable because Defendants misrepresented the
7 availability of leggings and that Products were fit for the purpose for which the Products
8 are used. These misrepresentations caused injuries to Plaintiffs and Class members
9 because they would not have purchased the Products if the true facts had been known.

10 176. Because Defendants' retention of the benefits conferred on them by Plaintiffs
11 and Class members is unjust and inequitable, Defendants must pay restitution to Plaintiffs
12 and Class members for their unjust enrichment, as ordered by the Court.

13 **COUNT X**

14 ***Breach of Implied Warranty in Tort***
15 ***On Behalf of Plaintiff Goodwin and the Ohio Subclass***

16 177. Plaintiffs incorporate and reallege by reference each and every allegation
17 above as if fully set forth herein.

18 178. Defendants' leggings are defective.

19 179. The fabric of the leggings is so "soft" that it tears from ordinary use, and in
20 some instances, before it is even removed from the package.

21 180. Plaintiff Goodwin bought Defendants' leggings.

22 181. Plaintiff Goodwin is not in privity with Defendants.

23 182. Plaintiff Goodwin's LuLaRoe leggings had holes in them when she removed
24 them from the package.

25 183. Plaintiff requested a refund, but was told by the Fashion Consultant that
26 Defendants did not offer refunds for defective Products.

27 184. The defect in the LuLaRoe leggings was present when the leggings left the
28 hands of Defendants.

1 185. This defect was the direct and proximate cause of injury to Plaintiff Goodwin
2 and the Ohio Subclass.

3 186. As a direct and proximate result of Defendants' breach of warranty, Plaintiff
4 and the other Class members were caused to suffer loss attributable to the purchase of the
5 defective Product.

6 **COUNT XI**

7 ***Breach of Express Warranty Under the UCC***
8 ***On Behalf of Plaintiff Goodwin and the Ohio Subclass***

9 187. Plaintiffs incorporate and reallege by reference each and every allegation
10 above as if fully set forth herein.

11 188. This cause of action is plead in the alternative to the Tenth Claim for Relief
12 (Breach of Implied Warranty in Tort).

13 189. Defendants made specific descriptions of the goods as well as affirmations of
14 fact and promises in the form of marketing representations about the leggings, as stated
15 above.

16 190. The affirmations of fact made by Defendants were made to induce Plaintiff
17 and Class members to purchase the Products.

18 191. Plaintiff and Class members relied on Defendants' affirmations in purchasing
19 the Products.

20 192. All conditions precedent to Defendants' liability under the warranty have
21 been performed by Plaintiff and Class members or have been waived.

22 193. Defendants knew there were problems with the leggings. Once again,
23 Defendants' head of production has stated that "the leggings may get holes because we
24 weaken the fibers to make them buttery soft and that we have done all we can to fix them.
25 The best solution would be to no longer use the brushing technique. But then they're not
26 buttery soft."

27 194. Defendants breached the terms of the express warranty because the Products
28 did not conform to the description provided by Defendants, to wit: Defendants'

1 acknowledged “special brushing” manufacturing and processing technique used to make
2 the leggings “buttery soft” actually weakens the fibers in these leggings, causing them to
3 rip, tear, and form holes nearly immediately.

4 195. As a result of Defendants’ breach of warranty, Plaintiff and Class members
5 have been damaged in the amount to be determined according to proof at the time of trial.

6 **COUNT XII**

7 ***Fraud***
8 ***On Behalf of Plaintiff Goodwin and the Ohio Subclass***

9 196. Plaintiffs incorporate and reallege by reference each and every allegation
10 above as if fully set forth herein.

11 197. Defendants represented through their website and Fashion Consultants that
12 they sold LuLaRoe branded leggings and that their LuLaRoe leggings could be worn in
13 the presence of others.

14 198. For example, at www.lularoe.com/adult-legging/, Defendant stated with
15 respect to LuLaRoe leggings: “They’re as close to your own skin as you can get with all
16 of the perks of, ahem, not being naked. You can sport them at your favorite Pilates class
17 or throw on some cute booties, and wear them out for a girls night! Your LuLaRoe
18 leggings will be a great statement piece wherever you are!”

19 199. Plaintiff and the Class members purchased the LuLaRoe leggings based on
20 the representation that the leggings were appropriate to wear around others.

21 200. The representation that the LuLaRoe leggings could be worn around others
22 was material to the purchase decisions of Plaintiff and the Class.

23 201. If Plaintiff and Class members had known that a defect in the leggings would
24 cause them to tear, making them inappropriate for wearing around others, they would not
25 have purchased them.

26 202. Defendants knew that their representations about the leggings were false, and
27 that, in fact, the material of the leggings was too “soft” and was likely to tear.
28

1 203. Defendants intended for Plaintiff and Class members to rely on the
2 representation that the leggings were fit to wear around others.

3 204. Plaintiff and the Class justifiably relied upon that representation.

4 205. Plaintiff and the Class members' reliance on Defendants' false representation
5 was the proximate cause of their injuries.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs and the Class demand judgment against Defendants as
8 follows:

9 A. An order certifying that this action may be maintained as a class action, that
10 Plaintiffs be appointed Class Representatives and Plaintiffs' counsel be appointed Class
11 Counsel;

12 B. A judgment awarding Plaintiffs and all members of the Class damages as
13 alleged above incurred by Plaintiffs and Class members as a result of Defendants'
14 unlawful, deceptive, unfair, and fraudulent business and trade practices described herein;

15 C. A judgment awarding Plaintiffs and all members of the Class restitution or
16 other equitable relief, including, without limitation, disgorgement of all profits and unjust
17 enrichment that Defendants obtained from Plaintiffs and the Class as a result of their
18 unlawful, unfair, and fraudulent business practices described herein;

19 D. An order enjoining Defendants from continuing to violate the laws as
20 described herein;

21 E. A judgment awarding Plaintiffs the costs of suit, including reasonable
22 attorneys' and experts' fees, and pre and post-judgment interest; and

23 F. Such other and further relief as may be deemed necessary or appropriate.
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JURY DEMAND

Plaintiffs hereby demand a trial by jury.

Dated: February 16, 2018

LEVI & KORSINSKY, LLP

By: /s/ Rosemary M. Rivas

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