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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Case No.: 5:17-cv-00853

CLASS ACTION COMPLAINT

TANYA MACK, individually and
on behalf of all others similarly
situated,

Plaintiff,

v.

LLR, INC. and LULAROE, LLC

Defendants.

**1. Violation of California Civil Code
§1750, *et seq.***

**2. Violation of California Business and
Professions Code § 17200, *et seq.***

**3. Violation of California Business and
Professions Code § 17500, *et seq.***

4. Breach of Implied Warranty

5. Breach of Express Warranty

6. Common Law Fraud

**7. Quasi-Contract/Unjust
Enrichment/Restitution**

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

1 Plaintiff Tanya Mack (“Plaintiff”) by and through her counsel, brings this Class
2 Action Complaint against LLR, Inc. and LuLaRoe, LLC (“Defendants”), on behalf of
3 herself and all others similarly situated, and alleges upon personal knowledge as to
4 her own actions, and upon information and belief as to counsel’s investigations and
5 all other matters, as follows:

6 **NATURE OF THE ACTION**

7 1. Plaintiff brings this consumer protection class action lawsuit against
8 Defendants, based on Defendants’ unlawful business practices with respect to the
9 marketing, advertisement, and sale of LuLaRoe defective leggings (the “Products”).

10 2. At all relevant times, Defendants have marketed, advertised, and sold the
11 Products as leggings for regular and athletic use. The Products however, are defective
12 and unfit for normal or athletic use because they arrive with holes or tears, and/or rip,
13 tear, or develop holes after limited use.

14 3. Plaintiff and other consumers have reasonably relied on Defendants to
15 provide Products free of defect and fit for ordinary use, and reasonably believed at
16 the time of purchase that the Products would be free of defect and fit for ordinary use.
17 To their dismay, Plaintiff and other consumers have received sub-par defective
18 leggings that tear, rip, or develop holes after limited use.

19 4. Had Plaintiff and other consumers known that the Products were
20 defective, they would not have purchased the Products, would have purchased less of
21 them, or would have paid significantly less for them. Therefore, Plaintiff and other
22 consumers have suffered injury in fact as a result of Defendants’ unlawful practices.

23 5. At all relevant times, Defendants were aware, or should have been
24 aware, that the Products are defective and not fit for ordinary use. Consumers across
25 the country have submitted complaints to the Federal Trade Commission (“FTC”)
26 and the Better Business Bureau (“BBB”), and have posted complaints on social
27 media platforms, including but not limited to Facebook and Twitter.

1 Products, Ms. Mack relied on Defendants to provide Products free of defect and fit
2 for ordinary use, and reasonably believed at the time of purchase that the Products
3 would be free of defect and fit for ordinary use. However, the Products Ms. Mack
4 purchased either arrived with holes, or developed holes within her first use of them.
5 Furthermore, some of the Products she purchased were mis-sized. Ms. Mack would
6 not have purchased the Products, would have purchased less of them, or would have
7 paid significantly less for them had she known that they were defective. Ms. Mack
8 therefore suffered injury in fact and lost money as a result of Defendants' misleading,
9 false, unfair, and fraudulent practices, as described herein. Ms. Mack would like to
10 purchase the Products in the future but will not know whether they are defective or
11 not because she purchases them online and cannot see or inspect them at the point of
12 sale.

13 13. Defendant LLR, Inc. is a Wyoming corporation with its principal place
14 of business in Thayne, Wyoming. Defendant LLR, Inc. is responsible for the
15 marketing, distribution, and sale of the Products in the United States, including in this
16 District.

17 14. Defendant LuLaRoe, LLC is a California limited liability company with
18 its principal place of business in Corona, CA. Defendant LuLaRoe, LLC is
19 responsible for the marketing, distribution, and sale of the Products in the United
20 States, including in this District.

21 **FACTUAL ALLEGATIONS**

22 **A. Defendants' Business Model**

23 15. Founded in 2012, Defendants operate the LuLaRoe brand as a direct
24 sales multi-level marketing ("MLM") business that designs and manufactures
25 clothing, including leggings, for customers across the United States.

26 16. Through its MLM business model, Defendants foregoes selling
27 LuLaRoe clothing directly to consumers, and instead sells the clothing at wholesale
28

1 to recruited members of the general public, known as “Fashion Consultants” or
2 “Fashion Retailers,” who in turn sell the clothing directly to consumers through in-
3 home and online boutiques.¹

4 17. To date, Defendants have approximately 80,000 independent Fashion
5 Consultants selling LuLaRoe clothing to consumers across the country. Reports have
6 indicated that Defendants’ sales have exploded to approximately \$1 billion as of
7 2016.

8 18. To get on board, Fashion Consultants purchase bundles of clothing from
9 Defendants (the “Onboarding Packages”) — clothing bundles that cost the Fashion
10 Consultants between \$5,000 and \$9,000. Due to the steep costs of these Onboarding
11 Packages, Defendants are incentivized to focus their business model on recruiting
12 more Fashion Consultants and selling more Onboarding Packages, rather than
13 catering to the voices of the consumers they do not sell directly to.

14 19. Because the Fashion Consultants deal directly with the purchasing
15 consumers, Defendants have also tasked the Fashion Consultants with management
16 of customer service, including managing customer complaints, returns, and
17 exchanges.

18 20. When customers complain directly to Defendants, they are advised to
19 contact their Fashion Consultants. However, when the Fashion Consultants attempt to
20 reach Defendants to coordinate the return of goods or to obtain credit for their
21 customers, their correspondence goes unanswered by Defendants.

22 21. Because of the MLM business model employed by Defendants,
23 Defendants have been able to shift not only the financial risk associated with the
24 business, but also the burden of adequate customer service to the Fashion
25 Consultants.

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27
28 ¹ <http://www.lularoe.com/shop-lularoe> (last visited on May 2, 2017).

B. The Products

22. One of Defendants' highest selling clothing products is their line of LuLaRoe leggings (the "Products").²



23. Defendants warrant on their LuLaRoe social media accounts and website that the Products will be fit for ordinary, and even athletic, use, and that the Products will be defect free. For example, the LuLaRoe website says the following regarding

² <http://www.lularoe.com/adult-leggings> (last visited on May 2, 2017).

1 the Products:³

2 a. “Our adult Leggings are ultra-stretchy”

3 b. “[W]e’ve made sure to make our bright Leggings from materials that
4 will last even the longest week of wear.”

5 c. “You can sport these print Leggings at your favorite Pilates class or
6 throw on some cute booties and wear them out for a girl’s night!”

7 24. Furthermore, by selling the Products as “leggings,” Defendants
8 impliedly warrant that customers are purchasing a leggings product fit for normal use,
9 including the warranty that the Products will not arrive with tears and holes, and will
10 not develop tears and holes after only a few hours of use. The normal use of leggings
11 does and should not involve tearing and ripping after limited use. Leggings should be
12 suitable for regular wear, daily activity, and covering of the lower body.

13 25. Defendants know, knew or should have known that Plaintiff and other
14 consumers did and would rely on them to provide Products that are defect free and fit
15 for ordinary use as leggings.

16 **C. The Products are Defective and Not Fit for Ordinary or Athletic Use**

17 26. The Products, however, are defective and unfit for normal and athletic
18 use. Customers of the Products across the country have complained that the Products
19 either arrive torn or with holes, and/or develop tears or holes after only a few hours of
20 use.

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28 ³ *Id.*

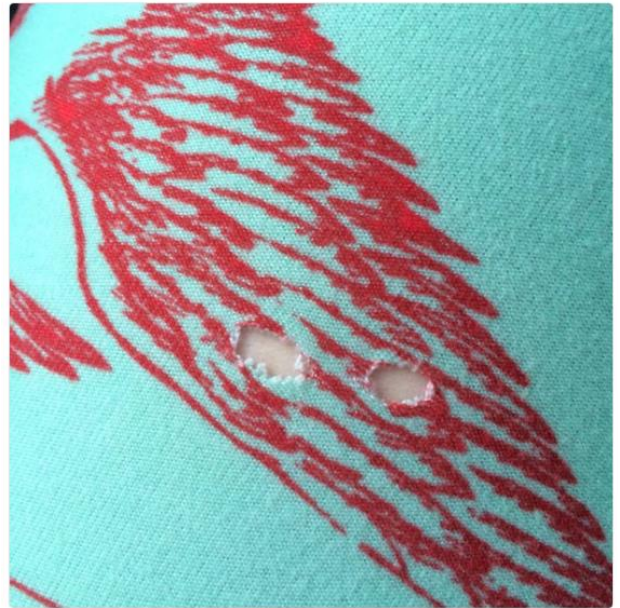
27. The following images depict some of the defects with the Products that customers have documented:⁴

@LuLaRoe I put on my new first pair of your black leggings and have 2 holes! Black is hard to come by! #LuLaRoe



RETWEET 1 LIKES 5
9:14 AM - 9 Jan 2017

.@LuLaRoe My brand new unicorn leggings came with holes. #defective #unhappycustomer #emailmebackplease



6:21 PM - 21 Mar 2016

28. Furthermore, the Products are defective because they often arrive mis-sized.

29. As described in Paragraph 12, Plaintiff has experienced the defects in the Products first-hand, as the Products she purchased arrived with holes and/or developed holes or tears within a few hours of use. For example, on numerous occasions, Plaintiff received the Products and immediately noticed there were numerous pinholes in them that would lead to tearing or ripping almost immediately. Once Plaintiff reviewed the return policy and saw that she was unable to return the defective product she threw them away:

⁴

https://twitter.com/corimarino/status/818506129626042369/photo/1?ref_src=twsrc%5Etfw&ref_url=http%3A%2F%2Fwww.self.com%2Fstory%2Fflularoe-leggings (last visited on May 2, 2017);
<https://twitter.com/laurens450/status/712086880515461120> (last visited on May 2, 2017).



30. Furthermore, Plaintiff has purchased Products that were mis-sized.

D. Defendants were, or should have been, aware that the Products are defective

31. Defendants know, knew or should have known that the Products were defective and not fit for ordinary use.

32. Defendants have acknowledged the defects in the Products and have admitted that they intentionally manufacture inferior leggings products. Patrick Winget, designer and head of production for the LuLaRoe clothing line, reportedly admitted in a January 17, 2017 company-wide email that, “[t]he leggings may get holes, because we weaken the fibers to make them buttery soft.” In a company-wide webinar meeting that same day, Mr. Winget admitted that “[w]e’re still getting emails

1 and concerns about holes.”⁵

2 33. Furthermore, in addition to customer complaints received directly by
3 Defendants on a daily basis, customers have taken to numerous platforms to express
4 their concerns with the Product.

5 34. For example, consumers have created a Facebook Group called
6 “LuLaRoe Defective/Ripped/Torn Leggings and Clothes,” a forum with over 27,000
7 members. Members use the forum to express their outrage about the Products.

8 35. Furthermore, numerous consumers have filed complaints about the
9 Products with the FTC⁶:

10 a. “I purchased a \$25 pair of leggings from a LuLaRoe consultant
11 online. As soon as I tried to put them on, the fabric tore. The fabric is
12 thin, shotty and cheaply made. You can poke the fabric gently and they
13 tear instantly. They are full of holes, ruined and not wearable. I
14 contacted the company via email and they have not replied. I have been
15 unable to return or exchange them.”

16 b. “I have purchased 5 different pairs of the TC leggings from this
17 company and ALL 5 have had holes in them while wearing them for the
18 first time in a matter of hours. Poor quality of these products and the
19 only outcome is to replace. I don't want to replace a poor quality item
20 with another poor quality item.”

21 c. “I have had four pairs of leggings in total rip. The first pair had
22 tiny pin holes throughout the thigh area. The second ripped while putting
23 them on. The third tore two identical holes below the butt cheeks, this
24 was the first time I wore them and I pretty much rode in the car all day.
25

26 ⁵ <http://www.businessinsider.com/lularoe-admits-leggings-are-tearing-holes-2017-3> (last visited on
27 May 2, 2017).

28 ⁶ <https://www.truthinadvertising.org/wp-content/uploads/2017/03/LLR-FTC-complaints.pdf> (last
visited May 2, 2017).

1 The fourth ripped along the seam.”

2 36. Numerous customers have also taken their concerns to the Better
3 Business Bureau, which has given LuLaRoe an “F” rating:⁷

4 a. “For a 26.50 pair of leggings they were very disappointing and ripped
5 after one wear. Was told I can not return worn items for a refund!”

6 b. “I have purchased several items from Lularoe, I now have holes in
7 leggings, varied sizing even though they all say 'one size' pilling of
8 fabric after one wear, missing stitching.”

9 c. “Nothing like buying a pair of leggings that you spend 25.00 ...To wear
10 one time to either find holes in the material or you end up with your butt
11 cheek showing due to poor quality...Never again.”

12 **E. Plaintiff and other Consumers of the Product were Harmed**

13 37. Plaintiff and other consumers have reasonably relied on Defendants to
14 provide Products free of defect and fit for ordinary use, and reasonably believed at
15 the time of purchase that the Products would be free of defect and fit for ordinary use.

16 38. Plaintiff and other consumers did not know, and had no reason to know,
17 that the Products are defective Defendants did not disclose to Plaintiff and other
18 consumers that the Products would be defective and not fit for ordinary use.

19 39. Because the Products are defective and not fit for ordinary use,
20 Defendants’ marketing and sale of the Products was and continues to be unlawful.

21 40. Plaintiff and other consumers have paid an unlawful premium for the
22 Products. Plaintiff and other consumers would not have purchased the Products at
23 all, or would have purchased less of them had they known that the Products were
24 defective. In the alternative, Plaintiff and other consumers would have paid
25 significantly less for the Products had they known that the Products are defective.
26 Therefore, Plaintiff and other consumers purchasing the Products suffered injury in

27 ⁷ [https://www.bbb.org/central-california-inland-empire/business-reviews/online-retailer/lularoe-in-](https://www.bbb.org/central-california-inland-empire/business-reviews/online-retailer/lularoe-in-corona-ca-89069765/reviews-and-complaints)
28 [corona-ca-89069765/reviews-and-complaints](https://www.bbb.org/central-california-inland-empire/business-reviews/online-retailer/lularoe-in-corona-ca-89069765/reviews-and-complaints) (last visited May 2, 2017).

1 fact and lost money as a result of Defendants' unlawful, unfair, and fraudulent
2 practices, as described herein.

3 41. As a result of its misleading business practices, and the harm caused to
4 Plaintiff and other consumers, Defendants should be enjoined from selling the
5 Products. Furthermore, Defendants should be required to pay for all damages caused
6 to harmed consumers, including Plaintiff.

7 42. Despite being harmed by Defendants, Plaintiff would like to purchase
8 the Products in the future but will not know whether they are defective or not because
9 she purchases them online and cannot see or inspect them at the point of sale.

10 **F. Defendants' Poor Return/Refund Policy During the Class Period**

11 43. Prior to April 24, 2017, customers were barred from returning or
12 exchanging LuLaRoe products to Defendants directly. Defendant's website
13 confirmed this policy: "any request pertaining to returns, damages, or shipping should
14 go to the original Retailer you purchased from. THANK YOU."

15 44. Under this policy, when a customer attempted to return a defective
16 product for a refund or an exchange directly from Defendants, he or she was either
17 ignored or instructed to contact the Fashion Consultant from whom he or she
18 purchased the product. It was the Fashion Consultants' responsibility to contact
19 Defendants to return the defective product. However, Fashion Consultants have
20 reported that coordinating a return/exchange of a defective product with Defendants
21 is not an easy task, as their correspondence and requests almost always go
22 unanswered by Defendants. Therefore, based on Defendants' return policies, Fashion
23 Consultants often do not provide refunds and/or exchanges for defective products.

24 45. To the extent that a Fashion Consultant allows an exchange, the
25 customer often does not receive the exact same product that he or she purchased. Part
26 of Defendants' business model, which enables them to mark up the price of its
27 Products, is to limit the number of each product that they sell. Furthermore, the
28

customer is responsible for any shipping costs associated with the return/exchange.

46. Moreover, Fashion Consultants would typically only exchange unworn, unwashed products with tags still attached, thus precluding a return of a worn product that developed a hole immediately.

G. Defendants’ Recently Instituted Refund and Warranty Program is Inadequate

47. In an attempt to alleviate their unlawful practices regarding the Products, and only in response to numerous defective product lawsuits, in April 2017, Defendants implemented a limited warranty and refund program.

48. Defendants’ “Make Good Program” seeks to remedy Product defect issues for past customer purchases, while the “Limited Warranty” and “Happiness Program” (collectively with the “Make Good Program” referred to as the “Programs”) seek to protect future customer purchases.

49. Although these Programs claim to provide a return and refund policy to Defendants’ customers, the Programs contain many of the same issues as the previous policy and are limited in a number of ways:

The Happiness Policy

50. The Happiness Policy is Defendants new return, refund, credit, and exchange policy for products purchased on or after April 24, 2017 . They have detailed this policy on their website as follows⁸:

Our Return, Refund, Credit and Exchange Policies are Simple:

- If at any time during the first **30 days** you are not completely satisfied or happy with your purchase, please contact the Independent Fashion Retailer **who sold you the product** and provide your original purchase receipt to receive a **full refund, credit or *exchange**.

⁸ <http://www.lularoe.com/happinesspolicy> (last visited May 2, 2017).

1 • If at any time in the **first 90 days** you are not
 2 completely satisfied or happy with your purchase, please
 3 contact **any** Independent Fashion Retailer and provide your
 4 original purchase receipt to receive a **credit or *exchange**.

5 • Our policy applies to all unaltered LuLaRoe products
 6 sold to retail consumers in the United States by an
 7 authorized LuLaRoe Independent Fashion Retailer and
 8 excludes non-apparel and promotional items not sold at
 9 retail.

10 • If your product has a manufacturing defect in
 11 materials or workmanship, you may be entitled to a return
 12 under our limited warranty. Please see our limited warranty
 13 for details.

14 • **Due to the limited and exclusive nature of
 15 LuLaRoe's prints, colors, art and graphics, we cannot
 16 guarantee you will receive the same print, color, art or
 17 graphics in exchange.*

18 51. Defendants still direct customers to contact Fashion Consultants, instead
 19 of Defendants, for a refund, credit or exchange. Thus, the burden of going through a
 20 middle-man for a refund, credit, or exchange still exists.

21 52. As noted in the policy, Defendants still cannot guarantee exchanges for
 22 the exact same product because they still manufacture and distribute limited amounts
 23 of each product style and/or color.

24 53. Defendants' policy only applies to unaltered products, which they do not
 25 define.

26 **The Limited Warranty:**

27 54. The Programs also include a Limited Warranty for returns due to
 28 manufacturing defect in materials or workmanship for products purchased after April
 29 24, 2017. It allows for a return for a period of six months after the date of purchase
 30 with proof of purchase subject to certain limitations.⁹

⁹ <http://www.lularoe.com/limitedwarranty> (last visited May 2, 2017).

1 55. However, the Limited Warranty hinges on Defendants’ sole discretion:
 2 “If at LuLaRoe’s sole discretion your product is found to be defective after it is
 3 returned for inspection to an Independent Fashion Retailer...” The limited warranty
 4 “does not cover damage caused by accident, improper care, negligence, abuse,
 5 **normal wear and tear**, and the natural breakdown of colors and materials that occur
 6 by extended use.” (emphasis added)¹⁰

7 56. According to the Limited Warranty FAQ, “Fabric wearing thin, showing
 8 abrasions, stains, fading, discoloration, **rips, or tears** may be considered normal wear
 9 and tear.”¹¹ (emphasis added). Under such a definition and policy, Defendants can
 10 easily refuse returns/exchanges for the immediate tears and rips in Products,
 11 claiming that those issues are the results of “normal wear and tear” or “the natural
 12 breakdown of...materials,” and thus not covered by the limited warranty.

13 57. According to the policy, Defendants still cannot guarantee exchanges for
 14 the exact same product because they still manufacture and distribute limited amounts
 15 of each product style and/or color.

16 58. Defendants’ policy only applies to “original, unaltered, and unmodified
 17 product[s],” standards which Defendants’ do not further define.

18 59. Moreover, customers cannot receive a cash refund for the defective
 19 product under Defendants’ limited warranty.

20 60. Defendants continue to direct customers to return their product and proof
 21 of purchase to the Fashion Consultant who sold them the product. The Fashion
 22 consultant will process the return and exchange, if Defendants determine that there
 23 was a manufacturing defect.

24 **The MAKE GOOD Program**

25 61. “The ‘MAKE GOOD Program’ entitles Consumers to a product
 26 replacement, LuLaRoe Gift Card, or refund for products containing a defect in

27 ¹⁰ *Id.*

28 ¹¹ *Id.*

1 materials or workmanship purchased between January 1, 2016 and April 24, 2017
2 from an authorized Independent Fashion Retailer.”¹²

3 62. Most importantly, however, the MAKE GOOD Program does not
4 provide any remedy for purchases of the Products made prior to January 1, 2016.

5 63. Like the Limited Warranty Program, the MAKE GOOD Program “does
6 not cover damage caused by accident, improper care, negligence, abuse, normal wear
7 and tear, and the natural breakdown of colors and materials that occurs by extended
8 use.”¹³

9 64. Likewise, the MAKE GOOD Program hinges on Defendants’ sole
10 discretion. Under such a policy, Defendants can easily refuse returns for the defects
11 in the Products described above as being the results of normal wear and tear or the
12 natural breakdown of materials and thus not covered under the program.

13 65. Also, Defendants still cannot guarantee exchanges for the exact same
14 product because they still manufacture and distribute limited amounts of each product
15 style/color.

16 66. Defendants continue to direct customers to return their product and proof
17 of purchase to the Fashion Consultant who sold them the product. The Fashion
18 consultant will process the return and exchange or refund, if Defendants find that the
19 product was defective.

20 67. Despite Defendants’ recent implementation of these three Programs
21 Defendants have done little to alert consumers to these available programs.
22 Customers using Defendants’ website are not put on conspicuous notice of the recall
23 program but rather have to click on the word “Happiness,” in order to be directed to
24 the Program policies. Customers also must navigate through several pages in order to
25 find any of the offers.

26
27 ¹² <http://www.lularoe.com/happiness> (last visited May 2, 2017).

28 ¹³ <http://www.lularoe.com/makegood> (last visited May 2, 2017).

1 68. Furthermore, there is no guarantee that Defendants will modify their
2 unlawful practices to ensure that customers are no longer subject to defective
3 leggings product purchases in the future. This is compounded by Mr. Winget's
4 admission in a January 17, 2017 email regarding the Products, that "[w]e have done
5 all we can to fix them."

6 **CLASS ACTION ALLEGATIONS**

7 69. Plaintiff brings this case as a class action that may be properly
8 maintained under Federal Rule of Civil Procedure 23 on behalf of herself and all
9 persons in the United States who purchased the Products within the relevant statute of
10 limitations periods ("Nationwide Class").

11 70. Plaintiff also seeks to represent a subclass defined as all persons, who
12 are California residents who purchased the Products, or who purchased the Products
13 within the State of California, for personal, family, or household purposes during the
14 relevant statute of limitations periods ("California Consumer Subclass").

15 71. Excluded from the Classes are Defendants, the officers and directors of
16 Defendants at all relevant times, members of their immediate families and their legal
17 representatives, heirs, successors or assigns and any entity in which Defendants have
18 or had a controlling interest. Any judge and/or magistrate judge to whom this action
19 is assigned and any members of such judges' staffs and immediate families are also
20 excluded from the Classes.

21 72. Plaintiff hereby reserves the right to amend or modify the class
22 definitions with greater specificity or division after having had an opportunity to
23 conduct discovery.

24 73. Plaintiff is a member of all Classes.

25 74. Numerosity: Through approximately 80,000 Fashion Consultants,
26 Defendants have sold at least thousands of units of the Products. Accordingly,
27 members of the Classes are so numerous that their individual joinder herein is
28

1 impractical. While the precise number of Class members and their identities are
2 unknown to Plaintiff at this time, the number may be determined through discovery.

3 75. Common Questions Predominate: Common questions of law and fact
4 exist as to all members of the Classes and predominate over questions affecting only
5 individual Class members. Common legal and factual questions include, but are not
6 limited to whether the Products were defective and whether Defendants concealed
7 material facts regarding the quality of the Products.

8 76. Typicality: Plaintiff's claims are typical of the claims of the Classes she
9 seeks to represent in that Plaintiff and members of the Classes were purchased
10 Defendants' defective Products.

11 77. Adequacy: Plaintiff is an adequate representative of the Classes because
12 her interests do not conflict with the interests of the members of the Classes she seeks
13 to represent, she has retained competent counsel experienced in prosecuting class
14 actions, and she intends to prosecute this action vigorously. The interests of the
15 members of the Classes will be fairly and adequately protected by the Plaintiff and
16 her counsel.

17 78. Superiority: A class action is superior to other available means for the
18 fair and efficient adjudication of the claims of the members of the Classes. The size
19 of each claim is too small to pursue individually and each individual Class member
20 will lack the resources to undergo the burden and expense of individual prosecution
21 of the complex and extensive litigation necessary to establish Defendants' liability.
22 Individualized litigation increases the delay and expense to all parties and multiplies
23 the burden on the judicial system presented by the complex legal and factual issues of
24 this case. Individualized litigation also presents a potential for inconsistent or
25 contradictory judgments. The class action mechanism is designed to remedy harms
26 like this one that are too small in value, although not insignificant, to file individual
27 lawsuits for.

79. This lawsuit is maintainable as a class action under Federal Rule of Civil Procedure 23(b)(2) because Defendants have acted or refused to act on grounds that are generally applicable to the Class members, thereby making final injunctive relief appropriate with respect to all Classes.

80. This lawsuit is maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3) because the questions of law and fact common to the members of the Classes predominate over any questions that affect only individual members, and because the class action mechanism is superior to other available methods for the fair and efficient adjudication of the controversy.

FIRST CLAIM FOR RELIEF
Violation of California’s Consumers Legal Remedies Act (“CLRA”),
California Civil Code §§ 1750, et seq.
(for the California Consumer Subclass)
(Injunctive Relief Only)

81. Plaintiff repeats the allegations contained in paragraphs 1-48 above as if fully set forth herein.

82. Plaintiff brings this claim individually and on behalf of the members of the proposed California Consumer Subclass against Defendants.

83. The Products are “goods” within the meaning of Cal. Civ. Code § 1761(a), and the purchases of such Products by Plaintiff and members of the California Consumer Subclass constitute “transactions” within the meaning of Cal. Civ. Code § 1761(e).

84. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have” By marketing and selling the Products as leggings, and stating that the Products are made “from materials that will last even the longest week of wear,” Defendants have represented and continue to represent that the Products have characteristics – that they will be fit for ordinary use – when they do not

1 have such characteristics. Therefore, Defendants have violated section 1770(a)(5) of the
2 CLRA.

3 85. Cal. Civ. Code § 1770(a)(7) prohibits “[r]espresenting that goods or
4 services are of a particular standard, quality, or grade, or that goods are of a particular
5 style or model, if they are of another.” By marketing and selling the Products as
6 leggings, and stating that the Products are made “from materials that will last even the
7 longest week of wear,” Defendants have represented and continue to represent that the
8 Products are of a particular standard or quality – defect free and fit for ordinary use –
9 when they are not of such standard or quality. Therefore, Defendants have violated
10 section 1770(a)(7) of the CLRA.

11 86. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services
12 with intent not to sell them as advertised.” By marketing and selling the Products as
13 leggings, and stating that the Products are made “from materials that will last even the
14 longest week of wear,” but then selling the Products with defects, Defendants have
15 violated section 1770(a)(9) of the CLRA.

16 87. Cal. Civ. Code § 1770(a)(16) prohibits “[r]epresenting that the subject
17 of a transaction has been supplied in accordance with a previous representation when
18 it has not.” By marketing and selling the Products as leggings, and stating that the
19 Products are made “from materials that will last even the longest week of wear,” but
20 then selling the Products with defects, Defendants have violated section 1770(a)(16) of
21 the CLRA

22 88. At all relevant times, Defendants have known or reasonably should have
23 known that the Products were defective and not fit for ordinary use, and that Plaintiff
24 and other members of the California Consumer Subclass would reasonably and
25 justifiably rely on Defendants and their expertise in design and manufacturing to
26 provide Products free of defect and fit for ordinary use.

27 89. Plaintiff and other members of the California Consumer Subclass
28

1 reasonably and justifiably relied on Defendants and their expertise in design and
2 manufacturing to provide Products free of defect and fit for ordinary use.

3 90. Plaintiff and members of the California Consumer Subclass have
4 suffered and continue to suffer injuries caused by Defendants because they would not
5 have purchased the Products, would have purchased less of them, or would have paid
6 significantly less for the Products had they known that Defendants' conduct was
7 unlawful and fraudulent.

8 91. Under Cal. Civ. Code § 1780(a), Plaintiff and members of the California
9 Consumer Subclass are seeking injunctive relief pursuant to the CLRA, preventing
10 Defendants from further wrongful acts and unfair and unlawful business practices, as
11 well as restitution, disgorgement of profits, and any other relief this Court deems
12 proper.

13 92. Pursuant to Cal. Civ. Code § 1782, on April 28, 2017, counsel for
14 Plaintiff mailed a notice and demand letter by certified mail, with return receipt
15 requested, to Defendants. Defendants received the notice and demand letter on May
16 1, 2017.¹⁴ If Defendants failed to fully rectify or remedy the damages caused within
17 the statutorily required 30 day period, Plaintiff will amend this Class Action
18 Complaint to also seek damages under the CLRA.

19 **SECOND CLAIM FOR RELIEF**
20 **Violation of California's Unfair Competition Law ("UCL"),**
21 **California Business & Professions Code §§ 17200, et seq.**
(for the California Consumer Subclass)

22 93. Plaintiff repeats the allegations contained in paragraphs 1-48 above as if
23 fully set forth herein.

24 94. Plaintiff brings this claim individually and on behalf of the members of
25 the proposed California Consumer Subclass against Defendants.

26 95. UCL §17200 provides, in pertinent part, that "unfair competition shall
27

28 ¹⁴ See Exhibit A.

1 mean and include unlawful, unfair or fraudulent business practices and unfair,
2 deceptive, untrue or misleading advertising”

3 96. Under the UCL, a business act or practice is “unlawful” if it violates any
4 established state or federal law.

5 97. Defendants’ manufacturing and sale of the Products therefore was and
6 continues to be “unlawful” because it violates the CLRA, California’s False
7 Advertising Law (“FAL”), and other applicable laws as described herein.

8 98. As a result of Defendants’ unlawful business acts and practices,
9 Defendants have unlawfully obtained money from Plaintiff, and members of the
10 California Consumer Subclass.

11 99. Under the UCL, a business act or practice is “unfair” if the Defendants’
12 conduct is substantially injurious to consumers, offends public policy, and is
13 immoral, unethical, oppressive, and unscrupulous, as the benefits for committing such
14 acts or practices are outweighed by the gravity of the harm to the alleged victims.

15 100. Defendants’ conduct was and continues to be of no benefit to purchasers
16 of the Products, as it is unfair, unlawful, and is injurious to consumers who seek to
17 purchase a leggings product free of defect. Selling a defective product is of no
18 benefit to consumers. Therefore, Defendants’ conduct was and continues to be
19 “unfair.”

20 101. As a result of Defendants’ unfair business acts and practices, Defendants
21 have and continue to unfairly obtain money from Plaintiff, and members of the
22 California Consumer Subclass.

23 102. Under the UCL, a business act or practice is “fraudulent” if it actually
24 deceives or is likely to deceive members of the consuming public.

25 103. Defendants’ conduct here was and continues to be fraudulent because it
26 has the effect of deceiving consumers into believing that the Products would be fit for
27 ordinary use and defect free, when they are not. Because Defendants misled Plaintiff
28

1 and members of the California Consumer Subclass, Defendants' conduct was
2 "fraudulent."

3 104. As a result of Defendants' fraudulent business acts and practices,
4 Defendants have and continue to fraudulently obtain money from Plaintiff, and
5 members of the California Consumer Subclass.

6 105. Plaintiff requests that this Court cause Defendants to restore this
7 unlawfully, unfairly, and fraudulently obtained money to Plaintiff, and members of
8 the California Consumer Subclass, to disgorge the profits Defendants made on these
9 transactions, and to enjoin Defendants from violating the UCL or violating it in the
10 same fashion in the future as discussed herein. Otherwise, Plaintiff, and members of
11 the California Consumer Subclass, may be irreparably harmed and/or denied an
12 effective and complete remedy if such an order is not granted.

13 **THIRD CLAIM FOR RELIEF**
14 **Violation of California's False Advertising Law ("FAL"),**
15 **California Business & Professions Code §§ 17500, et seq**
(for the California Consumer Subclass)

16 106. Plaintiff repeats the allegations contained in paragraphs 1-48 above as if
17 fully set forth herein.

18 107. Plaintiff brings this claim individually and on behalf of the members of
19 the proposed California Consumer Subclass against Defendants.

20 108. California's FAL makes it "unlawful for any person to make or
21 disseminate or cause to be made or disseminated before the public . . . in any
22 advertising device . . . or in any other manner or means whatever, including over the
23 Internet, any statement, concerning . . . personal property or services professional or
24 otherwise, or performance or disposition thereof, which is untrue or misleading and
25 which is known, or which by the exercise of reasonable care should be known, to be
26 untrue or misleading."

27 109. Defendants have represented and continue to represent to the public,
28

1 including Plaintiff and members of the California Consumer Subclass, through
 2 Defendants' website that the Products are made "from materials that will last even the
 3 longest week of wear." Furthermore, by selling the Products as "leggings,"
 4 Defendants have represented that the Products would be leggings fit for ordinary use
 5 and not defective with holes and/or tears. Defendants' representations are misleading
 6 because the Products are defective and not fit for ordinary use. Ordinary use of
 7 leggings does not involve dealing with embarrassing tears and holes. Because
 8 Defendants have disseminated misleading information regarding the Products, and
 9 Defendants know, knew, or should have known through the exercise of reasonable
 10 care that the representations were and continue to be misleading, Defendants violated
 11 the FAL.

12 110. As a result of Defendants' false advertising, Defendants have and
 13 continue to fraudulently obtain money from Plaintiff and members of the California
 14 Consumer Subclass.

15 111. Plaintiff requests that this Court cause Defendants to restore this
 16 fraudulently obtained money to Plaintiff and members of the California Consumer
 17 Subclass, to disgorge the profits Defendants made on these transactions, and to enjoin
 18 Defendants from violating the FAL or violating it in the same fashion in the future as
 19 discussed herein. Otherwise, Plaintiff and members of the California Consumer
 20 Subclass may be irreparably harmed and/or denied an effective and complete remedy
 21 if such an order is not granted.

22 **FOURTH CLAIM FOR RELIEF**
 23 **Breach of Implied Warranty**
 24 **California Commercial Code § 2314**
 25 ***(for the California Consumer Subclass)***

26 112. Plaintiff repeats the allegations contained in paragraphs 1-48 above as if
 27 fully set forth herein.

28 113. Plaintiff brings this claim individually and on behalf of the members of

1 the proposed California Consumer Subclass against Defendants.

2 114. California Commercial Code § 2314(1) provides that “a warranty that
3 the goods shall be merchantable is implied in a contract for their sale if the seller is a
4 merchant with respect to goods of that kind.” Cal. Com. Code § 2314(1).

5 115. California Commercial Code § 2314(2) provides that “[g]oods to be
6 merchantable must be at least such as... (c) Are fit for the ordinary purpose for which
7 such goods are used.” Cal. Com. Code § 2314(2)(c).

8 116. Defendants are merchants with respect to the sale of clothing products,
9 including the Products here. Therefore, a warranty of merchantability is implied in
10 every contract for sale of the Products to Plaintiff and California consumers.

11 117. By selling the Products, Defendants made a promise that the Products
12 are fit for their ordinary purpose as leggings. By providing defective Products,
13 Defendants have failed to provide Products fit for their ordinary purpose. Ordinary
14 use of leggings does not involve dealing with embarrassing tears and holes. Plaintiff
15 and California consumers did not receive the goods as impliedly warranted by
16 Defendants to be merchantable.

17 118. Therefore, the Products are not merchantable under California law and
18 Defendants have breached their implied warranty of merchantability in regard to the
19 Products.

20 119. If Plaintiff and members of the California Consumer Subclass had
21 known that the Products were defective, they would not have purchased the Products,
22 would have purchased less of them, or would not have been willing to pay as much
23 for them. Therefore, as a direct and/or indirect result of Defendants’ breach, Plaintiff
24 and members of the California Consumer Subclass have suffered injury and deserve
25 to recover all damages afforded under the law.

FOURTH CLAIM FOR RELIEF
Breach of Express Warranty
California Commercial Code § 2313
(for the California Consumer Subclass)

120. Plaintiff repeats the allegations contained in paragraphs 1-48 above as if fully set forth herein.

121. Plaintiff brings this claim individually and on behalf of the members of the proposed California Consumer Subclass against Defendants.

122. California Commercial Code § 2313 provides that “(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise,” and “(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.” Cal. Com. Code § 2313.

123. Defendants have expressly warranted through their website and other advertising platforms, including their social media accounts, that the Products are fit for their ordinary use as leggings. These representations about the Products: (1) are affirmations of fact or promises made by Defendants to consumers that the Products are defect free (2) became part of the basis of the bargain to purchase the Products; and (3) created an express warranty that the Products would conform to these affirmations of fact or promises. In the alternative, the representations about the Products are descriptions of goods which were made as part of the basis of the bargain to purchase the Products, and which created an express warranty that the Products would conform to the product descriptions.

124. Plaintiff and members of the California Consumer Subclass reasonably and justifiably relied on the foregoing express warranties, believing that that the Products would in fact conform to these warranties.

125. Defendants have breached the express warranties by manufacturing and

1 selling the Products with defects.

2 126. Plaintiff and members of the California Consumer Subclass have been
3 harmed. If Plaintiff and members of the California Consumer Subclass had known of
4 the true nature of the Products, they would not have purchased the Products, would
5 have purchased less of them, or would not have been willing to pay the price
6 associated with Products.

7 127. As a result, Plaintiff and members of the California Consumer Subclass
8 suffered injury and deserve to recover all damages afforded under the law.

9
10 **SIXTH CLAIM FOR RELIEF**
Common Law Fraud
(for the Classes)

11 128. Plaintiff repeats the allegations contained in paragraphs 1-48 above as if
12 fully set forth herein.

13 129. Plaintiff brings this claim individually and on behalf of the members of
14 the Classes against Defendants.

15 130. Defendants have marketed the Products in a manner indicating that the
16 Products were defect free and fit for ordinary use. Furthermore, Defendants have
17 willfully, falsely, or knowingly concealed and suppressed the material fact that the
18 Products were defective and not fit for ordinary use. The Products, however, are
19 defective contrary to Defendants' representations and omissions. Therefore,
20 Defendants have made misrepresentations regarding the Products.

21 131. Defendants' misrepresentations are and were material (i.e., the type of
22 misrepresentations to which a reasonable person would attach importance and would
23 be induced to act thereon in making purchase decisions), because they relate to where
24 the quality of the Products.

25 132. Defendants knew or recklessly disregarded the fact that the Products
26 were defective.

27 133. Defendants intended and continue to intend that Plaintiff and other
28

1 consumers rely on their expertise in providing quality leggings products, in
2 purchasing the Products.

3 134. Plaintiff and members of the Classes have reasonably and justifiably
4 relied on Defendants to provide defect free Products and had the correct facts been
5 known, would not have purchased the Products, would have purchased less of them,
6 or would not have purchased them at the prices at which they were offered.

7 135. Therefore, as a direct and proximate result of Defendants' fraud,
8 Plaintiff and members of the Classes have suffered economic losses and other general
9 and specific damages, including but not limited to the amounts paid for the Products,
10 and any interest that would have accrued on those monies, all in an amount to be
11 proven at trial.

12
13 **SEVENTH CLAIM FOR RELIEF**
14 **Quasi Contract/Unjust Enrichment/Restitution**
(for the Classes)

15 136. Plaintiff repeats the allegations contained in paragraphs 1-48 above as if
16 fully set forth herein.

17 137. Plaintiff brings this claim individually and on behalf of the members of
18 the Classes against Defendants.

19 138. As alleged herein, Plaintiff and members of the Classes have reasonably
20 relied on Defendants to provide defect free Products but have not received all of the
21 benefits promised by Defendants. Plaintiff and members of the Classes have
22 conferred a benefit upon Defendants as Defendants have retained monies paid to
23 them by Plaintiff and members of the Classes.

24 139. The monies received were obtained under circumstances that were at the
25 expense of Plaintiff and members of the Classes – i.e., Plaintiff and members of the
26 Classes did not receive the full value of the benefit conferred upon Defendants.

27 140. Therefore, it is inequitable and unjust for Defendants to retain the profit,
28

1 benefit, or compensation conferred upon them without paying Plaintiff and the
2 members of the Classes back for the difference of the full value of the benefits
3 compared to the value actually received.

4 141. As a direct and proximate result of Defendants' unjust enrichment,
5 Plaintiff and members of the Classes are entitled to restitution, disgorgement, and/or
6 the imposition of a constructive trust upon all profits, benefits, and other
7 compensation obtained by Defendants from their deceptive, misleading, and unlawful
8 conduct as alleged herein.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, individually and on behalf of all others similarly
11 situated, seeks judgment against Defendants, as follows:

12 a) For an order certifying the Nationwide Class and the California
13 Consumer Subclass, under Rule 23 of the Federal Rules of Civil Procedure;
14 naming Plaintiff as representative of all Classes; and naming Plaintiff's attorneys
15 as Class Counsel to represent all Classes.

16 b) For an order declaring that Defendants' conduct violates the statutes
17 and laws referenced herein;

18 c) For an order finding in favor of Plaintiff, and all Classes, on all counts
19 asserted herein;

20 d) For an order awarding damages on behalf of the Classes, in amounts
21 to be determined by the Court and/or jury;

22 e) For prejudgment interest on all amounts awarded;

23 f) For interest on the amount of any and all economic losses, at the
24 prevailing legal rate;

25 g) For an order of restitution and all other forms of equitable monetary
26 relief;

27 h) For injunctive relief as pleaded or as the Court may deem proper;
28

i) For an order awarding Plaintiff and all Classes their reasonable attorneys' fees, expenses and costs of suit, including as provided by statute such as under California Code of Civil Procedure section 1021.5; and

j) For any other such relief as the Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury on all issues so triable.

Dated: May 2, 2017

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