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Elaine Oxina

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**ELAINE OXINA;
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

LANDS' END, INC.,

Defendant.

Case No.: 3:14-cv-02577-MMA-NLS

**SECOND AMENDED CLASS
ACTION COMPLAINT FOR:**

- 1) VIOLATION OF CAL. CIVIL
CODE §§ 1750, ET SEQ.
(THE CONSUMERS LEGAL
REMEDIES ACT);**
- 2) VIOLATION OF BUSINESS &
PROFESSIONS CODE §§ 17200,
ET SEQ. (CALIFORNIA UNFAIR
COMPETITION LAW); AND**
- 3) VIOLATION OF BUSINESS &
PROFESSIONS CODE §§ 17500,
ET SEQ. (CALIFORNIA FALSE
ADVERTISING LAW);**
- 4) NEGLIGENT
MISREPRESENTATION; AND**
- 5) INTENTIONAL
MISREPRESENTATION**

JURY TRIAL DEMANDED

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INTRODUCTION

1. ELAINE OXINA (hereinafter “Plaintiff”) brings this Second Amended Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of LANDS’ END, INC. (hereinafter “Defendant”) in unlawfully engaging in false and misleading advertising, unfair competition, and deceptive conduct toward consumers by advertising Defendant’s neckties, including the necktie purchased by Plaintiff, with the false representation that Defendant’s product was “Made in U.S.A.” Defendant’s falsely advertised products are sold via Defendant’s website, catalogue, and in various stores throughout the United States.¹ Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.
2. As stated by the California Supreme Court in *Kwikset v. Superior Court* (January 27, 2011) 51 Cal4th 310, 328-29:

Simply stated: labels matter. The marketing industry is based on the premise that labels matter, that consumers will choose one product over another similar product based on its label and various tangible and intangible qualities that may come to associate with a particular source...In particular, **to some consumers**, the “Made in U.S.A.” label matters. A range of motivations may fuel this preference, from the desire to support domestic jobs to beliefs about quality, to concerns about overseas environmental or labor conditions, to simple patriotism. The Legislature has recognized the materiality of this representation by specifically outlawing deceptive and fraudulent “Made in America” representations. (Cal. Bus. & Prof. Code section 17533.7; see also Cal. Civ. Code § 1770, subd. (a)(4) (prohibiting deceptive representations of geographic origin)). The object of section 17533.7 “is to protect consumers from being misled when they purchase products in the belief that they are advancing

¹ Plaintiff purchased the mislabeled Lands’ End necktie, which in part is the subject matter of this lawsuit, from Defendant’s website, at the following web address: http://www.landsend.com/products/kids-plaid-necktie/id_178450 on or about August 29, 2014.

the interest of the United States and its industries and workers...”

3. The “Made in USA” claim is prominently displayed on the Defendant’s website under Defendant’s description of the misrepresented products²; and specifically, under the description of the offending “Kids To-be-tied Plaid Necktie” (hereinafter “Necktie”) purchased by Plaintiff.³ The Necktie, however, is actually made in China, as indicated by the fabric tag attached to the Necktie,⁴ contrary to Defendant’s representation to Plaintiff and similarly situated consumers, and in violation of California and/or Federal laws.
4. On information and belief, the Necktie and substantially similar neckties sold by Defendant are manufactured outside of the United States, contrary to the “Made in USA” claim prominently posted on Defendants’ website, where Plaintiff purchased the offending necktie.

JURISDICTION AND VENUE

5. This Court also has jurisdiction over this matter pursuant to the Class Action Fairness Act (CAFA) because the amount in controversy in this matter exceeds \$5,000,000.00 as to all putative Class members, inclusive of attorneys’ fees and costs, and injunctive relief. 28 U.S.C. Sections 1332(d), 1453, and 1711-1715.
6. This Court also has diversity jurisdiction over this matter under 28 U.S.C. § 1332 in that Plaintiff is a resident and citizen of the State of California while Defendant is incorporated under the laws of the State of Delaware.

² Plaintiff seeks class wide relief on behalf of all purchasers of any Lands’ End neckties advertised as “Made in USA” that are in fact foreign-made and/or incorporate foreign-made component parts, contrary to Defendant’s representations.

³ A true and correct copy of a screenshot of Defendant’s website featuring the Necktie attached hereto as **Exhibit A**.

⁴ A true and correct copy of a photograph of the Necktie showing its tag attached hereto as **Exhibit B**.

7. Venue is proper in the United States District Court for the Southern District of California pursuant to 28 U.S.C. § 1391 for the following reasons: (i) Plaintiff resides in the City of Chula Vista, County of San Diego, State of California, which is within this judicial district; (ii) the conduct complained of herein occurred within this judicial district; and, (iii) many of the acts and transactions giving rise to this action occurred in this district because Defendant:

- (a) is authorized to conduct business in this district and has intentionally availed itself of the laws and markets within this district;
- (b) does substantial business within this district;
- (c) is subject to personal jurisdiction in this district because it has availed itself of the laws and markets within this district; and,
- (d) the harm to Plaintiff occurred within this district.

PARTIES

8. Plaintiff is an individual residing in the City of Chula Vista, County of San Diego, State of California.
9. Defendant is a corporation that is organized and exists under the laws of the State of Delaware and doing business in the State of California as “Lands’ End Direct Merchants, Inc.”
10. Defendant is an American clothing retailer that conducts business through mail order and internet sales, at numerous retail stores in the United States, and distributed through a large number of Sears department stores. One of the products sold by Defendant is the Necktie purchased online by Plaintiff from Defendant’s website.⁵

⁵ Plaintiff purchased the mislabeled Lands’ End necktie, which in part is the subject matter of this lawsuit, from Defendant’s website, at the following web address: http://www.landsend.com/products/kids-plaid-necktie/id_178450 on or about August 29, 2014.

FACTUAL ALLEGATIONS

11. Plaintiff realleges and incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

12. Defendant Lands' End, Inc. represents itself as an "all-American" company committed to creating honest, well-crafted goods and "clothing that sets the highest standards for enduring quality, style and value." Specifically, Defendant's website states "[its] people are passionate about quality. So [they] search out the finest natural or high-tech fabrics, working with vendors and artisans in the United States whenever possible. [They] take the time to craft products made for years of satisfying wear. And [they] never reduce a product quality for the sake of a little extra profit."⁶

13. Defendant manufactures, markets and/or sells Lands' End products, including the neckties purchased by Plaintiff and the putative Class, that have been represented on Defendant's website as "Made in USA" when the products are in fact made or manufactured outside of the United States.

14. Contrary to Defendant's representation, the Necktie and similar misrepresented neckties are wholly and/or substantially manufactured or produced with component parts that are manufactured outside of the United States.

15. Based upon information and belief, the offending Necktie purchased by Plaintiff, and presumably all other similar offending Lands' End neckties, are wholly made and/or manufactured in China and/or include component parts such as fabric and thread which are not in fact made or manufactured in the United States, as represented by Defendant.

16. Defendant markets, and continues to market, and represents to the general public via its website that certain Lands' End products, including the Necktie purchased by Plaintiff and neckties purchased by the putative Class,

⁶ See <http://www.landsend.com/aboutus/values/quality/>

1 are “Made in USA.” In addition, Defendant fraudulently concealed the
2 material facts at issue in this matter by misrepresenting to the general public
3 the true country of origin of the offending products. Defendant possesses
4 superior knowledge of the true facts that were not disclosed, thereby tolling
5 the running of any applicable statute of limitations.

6 17. Consumers are particularly vulnerable to these deceptive and fraudulent
7 practices. Most consumers possess limited knowledge of the likelihood that
8 products, including the component products therein, claimed to be made in
9 the United States are in fact made in foreign countries. This is a material
10 factor in Plaintiff and many similarly situated consumers’ purchasing
11 decisions, as they believe they are purchasing superior goods while
12 supporting American companies and American jobs.

13 18. Consumers generally believe that “Made in USA” products are of higher
14 quality than their foreign-manufactured counterparts. Due to Defendants’
15 scheme to defraud the market, members of the general public were
16 fraudulently induced to purchase Defendant’s products at inflated prices.

17 19. On information and belief, Defendant charged excess monies for Lands’ End
18 products in comparison to Defendant’s competitors during the entirety of the
19 relevant four-year statutory time period, based on Plaintiff and similarly
20 situated consumers’ reliance on Defendant’s false “Made in USA”
21 representation. California and Federal laws are designed to protect
22 consumers from such false representations and predatory conduct.
23 Defendant’s scheme to defraud consumers for its own self-interest and
24 monetary gain is ongoing and will victimize consumers daily for the
25 foreseeable future unless altered by judicial intervention.

26 20. On or about August 29, 2014, Plaintiff purchased the Necktie online via
27 Defendant’s website. At the time of Plaintiff’s purchase, the description of
28 the offending product on Defendant’s website was described using the

1 “Made in U.S.A” country of origin designation, when the product actually
2 was made and/or contained component parts made outside of the United
3 States.⁷ Accordingly, Defendant is not entitled to lawfully represent and/or
4 advertise the Necktie and similar neckties as “Made in USA.”

5 21. In each case when Plaintiff and putative Class members purchased a necktie
6 misrepresented as “Made in USA”, they relied upon Defendant’s “Made in
7 USA” representation in their purchasing decision, which is typical of most
8 U.S. consumers, and they were deceived as a result of Defendant’s actions.
9 These purchasing decisions were supported by the “Made in USA”
10 representation made by Defendants, which is absent from most of
11 Defendants’ competitors. Plaintiff believed at the time she purchased the
12 Necktie that she was purchasing a superior quality product, as well as
13 supporting U.S. jobs and the U.S. economy.

14 22. Plaintiff suffered an “injury in fact” because Plaintiff’s money was taken by
15 Defendant as a result of Defendant’s false “Made in USA” representation set
16 forth on Defendant’s website.

17 23. Component parts made in the U.S.A. are subject to strict regulatory
18 requirements, including but not limited to environmental, labor, and safety
19 standards. Foreign made component parts are not subject to the same U.S.
20 manufacturing standards and are often inherently of lower quality than their
21 U.S. made counterparts. Foreign made products and component parts are
22 also routinely less reliable and less durable than their U.S. made
23 counterparts. As such, the Necktie and similar offending neckties are of
24 inferior quality due to Defendant’s decision to import a foreign-made
25 product and represent to consumers that they are “Made in USA.”

26 24. As such, on information and belief, the Necktie and similar offending
27 neckties, which are foreign made and/or composed of foreign-made
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⁷ See Plaintiff’s Exhibit A and Exhibit B.

1 component parts, are of inferior quality, less reliable, fail more often and
2 result in lower overall customer satisfaction than if the products were truly
3 “Made in USA” as marketed, advertised and/or represented by Defendant.

4 25. On information and belief, the Necktie and similar offending neckties are
5 not worth the purchase price paid by Plaintiff and putative Class members.
6 The precise amount of damages will be proven at the time of trial, in large
7 part, by expert testimony.

8 26. Plaintiff and Class members were undoubtedly injured as a result of
9 Defendant’s false “Made in USA” representations that are at issue in this
10 matter.

11 CLASS ACTION ALLEGATIONS

12 27. Plaintiff realleges and incorporates by reference all of the above paragraphs
13 of this Complaint as though fully stated herein.

14 28. Plaintiff brings this action individually and on behalf of all others similarly
15 situated against Defendant, pursuant to Federal Rules of Civil Procedure,
16 Rules 23(a), 23(b)(1), 23(b)(2) and 23(b)(3).

17 29. Plaintiff represents, and is a member of the Nationwide Class, (“the Class”)
18 consisting of:

19 All persons within California who purchased one or more
20 of Defendant’s neckties that were advertised with a
21 “Made in USA,” but were in fact foreign-made and/or
22 composed of foreign-made component parts, within the
23 four years prior to the filing of the Complaint.

24 30. Defendant and its employees and/or agents are excluded from the Class.
25 Plaintiff does not know the number of members in the Class, but Plaintiff
26 currently believes that there are hundreds of thousands, if not more,
27 members of the Class within the State of California. This matter should
28 therefore be certified as a Class Action to assist in the expeditious litigation
of this matter.

1 31. The numerosity requirement of Fed. R. Civ. P. Rule 23(a)(1) is satisfied for
2 each of the aforementioned Class because the members of the Class are so
3 numerous and geographically disbursed that joinder of all Class members is
4 impractical and the disposition of their claims in the Class action will
5 provide substantial benefits both to the parties and to the court. The Class
6 can be identified through Defendant's records and/or Defendant's agents'
7 records.

8 32. There is a well-defined community of interest in the questions of law and
9 fact involved affecting the parties to be represented. Common questions of
10 fact and law exist in this matter that predominate over questions that may
11 affect individual Class members, satisfying the requirement of Fed. R. Civ.
12 P., Rule 23(a)(2), including but not limited to:

- 13 a. Whether Defendant participated in or committed the wrongful conduct
14 alleged herein;
- 15 b. Whether Defendant's acts, transactions, or course of conduct
16 constitute the violations of law alleged herein;
- 17 c. Whether the members of the Class sustained and/or continue to
18 sustain damages attributable to Defendant's conduct, and, if so, the
19 proper measure and appropriate formula to be applied in determining
20 such damages; and
- 21 d. Whether the members of the Class are entitled to injunctive and/or
22 any other equitable relief.

23 33. Plaintiff's claims are typical of the claims of all other members of the Class
24 and involve the same violations of law by Defendant as other Class
25 members' claims. Plaintiff and members of the Class also sustained
26 damages arising out of Defendant's common course of conduct complained
27 herein. Accordingly, Plaintiff satisfies the "typicality" requirement of Fed.
28 R. Civ. P., Rule 23(a)(3) with respect to the Class.

1 34. As a person in who purchased one or more of Defendant's products, that
2 were falsely advertised with a "Made in USA" country of origin designation,
3 but were in fact foreign-made and/or composed of foreign-made component
4 parts, Plaintiff is asserting claims that are typical of the Class. Plaintiff will
5 fairly and adequately represent and protect the interests of other members of
6 the Class in that Plaintiff has no interests antagonistic to any member of the
7 Class. Thus, Fed. R. Civ. P., Rule 23(a)(4) is satisfied.

8 35. This suit seeks only damages and injunctive relief for recovery of economic
9 injury on behalf of the Class, and it expressly is not intended to request any
10 recovery for personal injury and claims related thereto. Plaintiff reserves the
11 right to expand the Class definition to seek recovery on behalf of additional
12 persons as warranted as facts are learned in further investigation and
13 discovery.

14 36. Plaintiff and the members of the Class have all suffered irreparable harm as
15 a result of the Defendant's unlawful and wrongful conduct. Absent a
16 representative lass action, members of the Class will continue to face the
17 potential for irreparable harm described herein. In addition, these violations
18 of law will be allowed to proceed without remedy and Defendant will likely
19 continue such illegal conduct. Because of the size of the individual Class
20 member's claims, few, if any, Class members could afford to seek legal
21 redress for the wrongs complained of herein. Furthermore, even if separate
22 actions could be brought by individual purchasers, the resulting multiplicity
23 of lawsuits would cause undue hardship and expense for both the Court and
24 the litigants, as well as create the risk of inconsistent rulings and
25 adjudications that might be dispositive of the interests of similarly situated
26 purchasers, thereby substantially impeding purchasers' ability to protect
27 their interests, while establishing incompatible standards of conduct for
28

1 Defendant. Thus, the proposed Class satisfies the requirements of Fed. R.
2 Civ. P., Rule 23(b)(1).

3 37. Defendant has acted and/or refused to act on grounds generally applicable to
4 the Plaintiff and other members of the Class, thereby rendering class
5 certification and final injunctive relief and corresponding declaratory relief
6 with respect to members of the Class as a whole appropriate. Thus,
7 certification is proper under Fed. R. Civ. P. Rule 23(b)(2).

8 38. As discussed above, numerous common questions of fact and law exist in
9 this matter. These questions predominate over the individual questions
10 presented in this action. Thus, the predominance requirement of Fed. R.
11 Civ. P. Rule 23(b)(3) is satisfied.

12 39. Plaintiff has retained counsel experienced in handling class action claims
13 and claims involving violations of the consumer laws, and specifically
14 violations of the California Business and Professions Code.

15 40. A class action is a superior method for the fair and efficient adjudication of
16 this controversy. Class-wide damages are essential to induce Defendant to
17 comply with federal and California law. The interest of Class members in
18 individually controlling the prosecution of separate claims against Defendant
19 is small because the damages suffered by individual members of the Class
20 may be minimal. As a result, the expense and burden and litigation would
21 prevent Class members from individually redressing the wrongs done to
22 them. A representative class action is both the appropriate vehicle by which
23 to adjudicate these claims and is essential to the interests of justice.
24 Furthermore, a class action regarding the issues presented in this matter
25 creates no significant problems of manageability. Therefore, the superiority
26 and manageability requirements of 23(b)(3) are satisfied.

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FIRST CAUSE OF ACTION

VIOLATION OF CAL. CIV. CODE SECTION 1750, ET SEQ.

[CALIFORNIA’S CONSUMERS LEGAL REMEDIES ACT]

41. Plaintiff realleges and incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

42. Plaintiff brings this cause of action pursuant to section 1750 on behalf of herself and on behalf of the putative Class.

43. California Civil Code section 1750 et seq., entitled the Consumers Legal Remedies Act (hereinafter “CLRA”), provides a list of “unfair or deceptive” practices in a “transaction” relating to the sale of “goods” or “services” to a “consumer.” The Legislature’s intent in promulgating the CLRA is expressed in Civil Code Section 1760, which provides, *inter alia*, that its terms are to be:

Construed liberally and applied to promote its underlying purposes, which are to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection.

44. Defendant’s neckties purchased by Plaintiff and the Class constitute “goods” as defined pursuant to Civil Code Section 1761(a).

45. Plaintiff, and the Class members, are each a “consumer” as defined pursuant to Civil Code Section 1761(d).

46. Each of Plaintiff’s and the Class members’ purchases of Defendant’s neckties constituted a “Transaction” as defined pursuant to Civil Code Section 1761(e).

47. Civil Code Section 1770(a)(4) and (9) provide that:

The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful: Using deceptive representations or designations of geographic origin in connection with goods or services [and] [a]dvertising goods or services with intent not to sell them as advertised.”

1 48. Defendant violated Civil Code Section 1770(a)(4) and (9) by marketing and
2 misrepresenting that its neckties are “Made in USA” when they actually
3 foreign-made and/or contain component parts that are manufactured outside
4 of the United States.

5 49. On information and belief, Defendant’s violations of the CLRA set forth
6 herein were done with awareness of the fact that the conduct alleged was
7 wrongful and was motivated solely for Defendant’s self-interest, monetary
8 gain and increased profit. Plaintiff further alleges that Defendant committed
9 these acts knowing the harm that would result to Plaintiff and Defendant
10 engaged in such unfair and deceptive conduct notwithstanding such this
11 knowledge.

12 50. Plaintiff suffered an “injury in fact” because Plaintiff’s money was taken by
13 Defendant as a result of Defendant’s false “Made in USA” representations
14 set forth on the Defendant’s website in the marketing and description of
15 Defendant’s Necktie and similar offending neckties as described above,
16 when they knew, or should have known, that the representations were
17 unsubstantiated, false, and misleading and that the omissions were of
18 material facts they were obligated to disclose.

19 51. As a direct and proximate result of Defendant’s violations of the CLRA,
20 Plaintiff and members of the Class are entitled to a declaration that
21 Defendant violated the Consumer Legal Remedies Act.

22 52. Plaintiff and the Class are also entitled to and seek injunctive relief
23 prohibiting such conduct in the future.

24 53. Pursuant to section 1782(d) of the California Civil Code ("section 1782(d)"),
25 Plaintiff and the Class seek a Court order enjoining the above-described
26 wrongful acts and practices of Defendant and for restitution and
27 disgorgement.
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54. Pursuant to section 1782(d), by letter dated June 19, 2015, Plaintiff notified Defendant in writing sent by FedEx mail to Defendant through Defendant's counsel of the particular violations of section 1770 and demanded that Defendant rectify the problems associated with the actions detailed above by, among other things, initiating a corrective advertising campaign to inform consumer's of the true origin of the Necktie(s) falsely advertised as "Made in U.S.A." Defendant has not agreed to rectify the problems associated with the actions detailed above by initiating corrective advertising or giving notice to all affected consumers within thirty days of the date of written notice pursuant to section 1782. Therefore, Plaintiff and the Class further seek claims for actual, punitive, and statutory damages, as deemed appropriate.

55. Pursuant to section 1780(e) of the California Civil Code ("section 1780(e)"), Plaintiff and the Class make claims for damages and attorneys' fees and costs.

56. Additionally, Plaintiff and the Class demand judgment against Defendant for damages, restitution, pre and post judgment interest, injunctive and declaratory relief, corrective advertising, costs and attorneys' fees incurred in bringing this action, and any and all other relief that this Court may deem appropriate.

SECOND CAUSE OF ACTION

VIOLATION OF BUS. & PROF. CODE, SECTION 17200, ET SEQ.

[CALIFORNIA'S UNFAIR COMPETITION LAW]

57. Plaintiff realleges and incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

58. As alleged herein, Defendant has marketed and sold the neckties purchased by Plaintiff and the Class in a way that misleads consumers, including Plaintiff and the putative class, into believing that Defendant's Necktie, and

1 other similarly advertised neckties, are “Made in U.S.A.” despite the fact that
2 these products are actually foreign-made and/or composed of materials from
3 outside the United States.

4 59. Plaintiff and Defendant are each “person[s]” as defined by California Bus. &
5 Prof. Code § 17201. California Business & Professions Code § 17204
6 authorizes a private right of action on both an individual and representative
7 basis.

8 60. “Unfair competition” is defined by Bus. & Prof. Code section § 17200 as
9 encompassing several types of business “wrongs,” four of which are at issue
10 here: (1) an “unlawful” business act or practice, (2) an “unfair” business act
11 or practice, (3) a “fraudulent” business act or practice, and (4) “unfair,
12 deceptive, untrue or misleading advertising.” The definitions in §§ 17200, et
13 seq. are drafted in the disjunctive, meaning that each of these “wrongs”
14 operates independently from the others.

15 61. By and through Defendant’s conduct alleged in further detail above and
16 herein, Defendant engaged in conduct which constitutes unlawful, unfair,
17 and/or fraudulent business practices prohibited by Bus. & Prof. Code
18 §§ 17200 et seq.

19 *A. Unlawful Prong*

20 62. A business act or practice is “unlawful” under the UCL if it violates any
21 other law or regulation.

22 63. California’s Bus. & Prof. Code § 17200 prohibits any “unlawful,”
23 “fraudulent,” or “unfair” business act or practice and any false or misleading
24 advertising. In the course of conducting business, Defendant committed
25 unlawful business practices by, among other things, making the
26 representations (which also constitute advertising within the meaning of
27 section 17200) and omissions of material facts, as set forth more fully
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herein, and violating *inter alia* §§ 17500 et seq., §§ 1750 of the California Civil Code and the common law.

64. As further alleged below and herein, because Defendant has violated California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500, et seq., Defendant has consequently violated California's Bus. & Prof. Code §§ 17200 et seq., which provides a cause of action for an "unlawful" business act or practice perpetrated on members of the California public.

65. Further, pursuant to 15 U.S.C. § 45(a)(1), the FTCA prohibits "unfair or deceptive acts or practices in or affecting commerce," and specifically prohibits false advertisements. 15 U.S.C. § 52(a).

66. Beginning at a date currently unknown through the time of this Complaint, Defendant has committed acts of unfair competition, including those described above, by engaging in a pattern of "unlawful" business practices, within the meaning of Bus. & Prof. Code § 17200 et seq. by manufacturing, distributing, advertising and/or marketing Defendant's products with a false representation that the products referenced herein are "Made in USA" when Defendant's products are in fact foreign-made and/or composed of component parts manufactured outside of the United States.

67. Defendant had other reasonably available alternatives to further its legitimate business interest, other than the conduct described herein, such as selling the offending Necktie, and other similarly advertised products, without falsely stating and/or misrepresenting the product's origin.

B. "Unfair" Prong

68. California Bus. & Prof. Code section 17200 also prohibits any unfair business act or practice.

69. Beginning at a date currently unknown and continuing up through the time of this Complaint, Defendant has committed acts of unfair competition that

are prohibited by Bus. & Prof. Code § 17200 et seq. Defendant engaged in a pattern of “unfair” business practices that violate the wording and intent of the statutes by engaging conduct and practices that threaten an incipient violation of law/s or violate the policy or spirit of law/s by, among other things, engaging in false advertising by misrepresenting and omitting material facts regarding Defendant’s products with a false country of origin designation, in violation of Bus. & Prof. Code section 17500 et seq. by falsely representing that the products referenced herein are “Made in USA,” when Defendant’s products are in fact foreign-made and/or composed of component parts manufactured outside of the United States.

70. Further, Defendant engaged in a pattern of “unfair” business practices that violate the wording and intent of the abovementioned statute/s by engaging in practices that are immoral, unethical, oppressive or unscrupulous, the utility of such conduct, if any, being far outweighed by the harm done to consumers and against public policy by, among other things, engaging in false advertising by misrepresenting and omitting material facts regarding Defendant’s products with a false country of origin designation, in violation of Bus. & Prof. Code section 17500 et seq. by falsely representing that the products referenced herein are “Made in USA” when Defendant’s products are in fact foreign-made and/or composed of component parts manufactured outside of the United States.

71. Alternatively, Defendant engaged in a pattern of “unfair” business practices that violate the wording and intent of the abovementioned statute/s by, among other things, engaging in false advertising by misrepresenting and omitting material facts regarding Defendant’s products with a false country of origin designation, in violation of Bus. & Prof. Code section 17500 et seq. by falsely representing that the products referenced herein are “Made in USA;” wherein: (1) the injury to the consumer was substantial; (2) the

injury was not outweighed by any countervailing benefits to consumers or competition; and (3) the injury was not of the kind that consumers themselves could not have reasonably avoided.

C. “Fraudulent” Prong

72. California Bus. & Prof. Code section 17200 also prohibits any “fraudulent business act or practice.”

73. Beginning at a date currently unknown and continuing up through the time of this Complaint, Defendant engaged in acts of unfair competition, including those described above and herein, prohibited and in violation of Bus. & Prof. Code §§ 17200 et seq. by engaging in a pattern of “fraudulent” business practices within the meaning of Bus. & Prof. Code §§ 17200 et seq. by manufacturing, distributing, and/or marketing Defendant’s offending Necktie and similar neckties with a false country of origin designation, in violation of the consumer protection, unfair competition, and truth in advertising laws mentioned herein, by falsely representing that the products referenced herein are “Made in USA” when Defendant’s products are in fact foreign-made and/or composed of component parts manufactured outside of the United States.

74. Defendant’s actions, claims, nondisclosures and misleading statements, as more fully set forth above, were also false, misleading and/or likely to deceive the consuming public within the meaning of section 17200.

75. Defendant engaged in fraudulent acts and business practices by knowingly or negligently representing to Plaintiff, and other similarly situated consumers, whether by conduct, orally, or in writing by misrepresenting that Defendant’s product is “Made in U.S.A.” while it is actually foreign-made and/or composed of component parts manufactured outside of the United States.

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- 1 76. Plaintiff reserves the right to allege further conduct that constitutes other
2 fraudulent business acts or practices. Such conduct is ongoing and continues
3 to this date.
- 4 77. Plaintiff and other members of the Class have in fact been deceived as a
5 result of their reliance on Defendant's material representations and
6 omissions, which are described above. As a result of this reliance,
7 Defendant has caused harm to Plaintiff and other members of the Class
8 who each purchased the Necktie and other similar offending neckties from
9 Defendant falsely advertised as "Made in U.S.A." Plaintiff and the other
10 members of the Class have suffered injury in fact and lost money as a
11 result of these unlawful, unfair, and fraudulent practices.
- 12 78. As a result of Defendant's unfair conduct and deception, Plaintiff and
13 members of the putative Class have been injured because had they been
14 aware that Defendant's product was not "Made in USA," but rather was
15 foreign-made, they would have not purchased Defendant's product, or would
16 have paid less for the product, or would have purchased different product
17 from another manufacturer.
- 18 79. The fraudulent, unlawful and unfair business practices and false and
19 misleading advertising of Defendant, as described above, presents a
20 continuing threat to Plaintiff and similarly situated consumers in that they
21 will continue to be misled into purchasing Defendant's products under the
22 false premise that Defendant's products are "Made in U.S.A".
- 23 80. As a result of the repeated violations described above and herein, Defendant
24 has received and continues to receive unjust revenue and profit at the
25 expense of their competitors and the public.
- 26 81. Unless Defendant is enjoined from continuing to engage in the unlawful,
27 unfair, fraudulent, untrue, and deceptive business acts and practices as
28 described herein, Plaintiff and consumers residing within California, will

1 continue to be exposed to and harmed by Defendant's unlawful, unfair,
2 and/or fraudulent business practices.

3 82. Plaintiff and the Class seek restitution of excess monies paid to Defendant
4 by Plaintiff and the Class relating to the false "Made in USA"
5 representations set forth on the Defendant's website in the marketing and
6 description of Defendant's offending Necktie and similar neckties purchased
7 by the Class.

8 83. Additionally, Plaintiff and the Class demand judgment against Defendant for
9 damages, restitution, pre and post judgment interest, injunctive and
10 declaratory relief, corrective advertising, costs and attorneys' fees incurred
11 in bringing this action, and any and all other relief that this Court may deem
12 appropriate.

13 84. As a direct and proximate result of Defendant's unlawful, unfair and
14 fraudulent conduct described herein, Defendant has been and will continue
15 to be unjustly enriched by the receipt of ill-gotten gains from customers,
16 including Plaintiff, who unwittingly provided money to Defendant based on
17 Defendant's fraudulent "Made in USA" representations when Defendant's
18 products are in fact foreign-made and/or composed of component parts
19 manufactured outside of the United States.

20 85. Plaintiff suffered an "injury in fact" because Plaintiff's money was taken by
21 Defendant as a result of Defendant's false "Made in USA" representations
22 set forth on the Defendant's website in the marketing and description of the
23 offending neckties purchased by Plaintiff and the Class. Had Plaintiff and
24 members of the putative Class been made aware that Defendant's product
25 was not "Made in USA," but rather was foreign-made, they would have not
26 purchased Defendant's product, or would have paid less for the product, or
27 would have purchased different product from another manufacturer.

28 //

86. In prosecuting this action for the enforcement of important rights affecting the public interest, Plaintiff seeks the recovery of attorneys' fees, which is available to a prevailing plaintiff in class action cases such as this matter.

THIRD CAUSE OF ACTION

VIOLATION OF BUS. & PROF. CODE §§ 17500, ET SEQ.

[CALIFORNIA'S FALSE ADVERTISING LAW]

87. Plaintiff realleges and incorporates by reference all of the above paragraphs as though fully stated herein.

88. Plaintiff brings this cause of action on behalf of herself and on behalf of the putative Class.

89. Plaintiff and Defendant are both "person[s]" as defined by Cal. Bus. & Prof. Code § 17506. Cal. Bus. & Prof. Code § 17535 authorizes a private right of action on both an individual and representative basis.

90. The misrepresentations, acts, and non-disclosures by Defendant of the material facts detailed herein constitute false and misleading advertising and therefore violate Cal. Bus. & Prof. Code §§ 17500, et seq.

91. At all times relevant, Defendant's advertising and promotion regarding its Necktie, and similar neckties, being "Made in USA" was untrue misleading, and likely to deceive the reasonable consumer and the public, and, in fact, has deceived Plaintiff and consumers similarly situated by representing that Defendant's product was "Made in USA" when in fact Defendant knew and failed to disclose or truthfully advertise that its product was in fact foreign-made and predominately and/or entirely composed of materials manufactured outside of the United States.

92. Defendant engaged in the false and/or misleading advertising as alleged herein with the intent to directly or indirectly induce the purchase of Defendant's product, which Defendant knew, or had reason to know, was not in fact "Made in USA" as Defendant advertised to Plaintiff and the

1 public.

2 93. In making and publicly disseminating the statements and/or omissions
3 alleged herein, Defendant knew or should have known that the statements
4 and/or omissions were untrue or misleading, and acted in violation of
5 California Business & Professions Code §§ 17500 *et seq.*

6 94. Plaintiff and members of the putative Class have suffered injury in fact and
7 have lost money and/or property as a result of Defendant's false advertising,
8 as more fully set forth herein. Plaintiff and members of the Class have been
9 injured because they were induced to purchase and overpay for Defendant's
10 product based on the belief that Defendant's product was "Made in USA."
11 Plaintiff and members of the putative Class have been injured because had
12 they been made aware that Defendant's product was not "Made in USA,"
13 but rather was foreign-made, they would have not purchased Defendant's
14 product, or would have paid less for the product, or would have purchased
15 different product from another manufacturer.

16 95. At a date presently unknown to Plaintiff, but at least four years prior to the
17 filing of this action, and as set forth above, Defendant has committed acts of
18 untrue and misleading advertising, as defined by Bus. & Prof. Code §§
19 17500 *et seq.*, by engaging in the false advertising and promotion of the
20 Necktie and similar neckties as "Made in USA" on Defendant's website.

21 96. The false and misleading advertising of Defendant, as described above,
22 presents a continuing threat to consumers, as Defendant continues to use the
23 deceptive labels and advertising, which will continue to mislead consumers
24 who purchase Defendant's products under false or misleading premises.

25 97. As a result of the conduct described above, Defendant has been unjustly
26 enriched at the expense of Plaintiff and members of the putative Class.
27 Specifically, Defendant has been unjustly enriched by obtaining revenues
28 and profits that would not have otherwise been obtained absent Defendant's

1 false, misleading, and deceptive conduct.

2 98. As a direct and proximate result of the aforementioned unlawful, unfair,
3 and/or fraudulent acts and representations of Defendant, Defendant has
4 improperly obtained and continues to hold monies rightfully belonging to
5 Plaintiff and other similarly situated consumers who were led to purchase,
6 purchase more of, or pay more for Defendant's products due to the unlawful
7 acts of Defendant, during the Class Period.

8 99. Plaintiff seeks an order requiring Defendant to restore these wrongfully
9 obtained monies and disgorge all ill-gotten revenues and/or profits, together
10 with interest thereupon; and enjoin Defendant from continuing to violate
11 Cal. Bus. & Prof. Code §§ 17200 et seq. and §§ 17500 et seq., as
12 discussed above and herein.

13 100. Unless Defendant is enjoined from continuing to engage in the unlawful,
14 unfair, fraudulent, untrue, and deceptive business acts and practices as
15 described herein, Plaintiff and consumers residing within California, will
16 continue to be exposed to and harmed by Defendant's unlawful, unfair,
17 and/or fraudulent business practices.

18 101. Plaintiff also seeks attorneys' fees and costs pursuant to, *inter alia*,
19 California Civil Code Section 1021.5.

20 **FOURTH CAUSE OF ACTION**

21 **NEGLIGENT MISREPRESENTATION**

22 102. Plaintiff realleges and incorporates by reference all of the above paragraphs
23 of this Complaint as though fully stated herein.

24 103. At a date presently unknown to Plaintiff, but at least four years prior to the
25 filing of this action, and as set forth above, Defendant represented to the
26 public, including Plaintiff, by misrepresenting and marketing on Defendant's
27 website that Defendant's Necktie and other similar Necktie and similar
28 neckties were "Made in U.S.A.", as described further detail above.

1 104. Defendant made the representations herein alleged with the intention of
2 inducing the public, including Plaintiff and putative class members, to
3 purchase Defendant's product.

4 105. Plaintiff and other similarly situated persons in California saw, believed, and
5 relied upon Defendant's advertising representations and, in reliance on them,
6 purchased Defendant's product.

7 106. At all times relevant, Defendant made the misrepresentations herein alleged
8 when Defendant knew, or should have known, these representations to be
9 untrue, and Defendant had no reasonable basis for believing the
10 representations to be true.

11 107. As a proximate result of Defendant's negligent misrepresentations, Plaintiff
12 and other similarly situated consumers were induced to purchase, purchase
13 more of, or pay more for, Defendant's product in reliance on the
14 misrepresentations and omissions of Defendant as alleged in detail above,
15 and incurred damages in an amount to be determined at trial, during the
16 Class Period.

17 108. In prosecuting this action for the enforcement of important rights affecting
18 the public interest, Plaintiff seeks the recovery of attorneys' fees, which is
19 available to a prevailing plaintiff in class action cases such as this matter.

20 **FIFTH CAUSE OF ACTION**

21 **INTENTIONAL MISREPRESENTATION**

22 109. Plaintiff realleges and incorporates by reference all of the above paragraphs
23 of this Complaint as though fully stated herein.

24 110. At a date presently unknown to Plaintiff, but at least four years prior to the
25 filing of this action, and as set forth above, Defendant represented to the
26 public, including Plaintiff, by misrepresenting and marketing on Defendant's
27 website that Defendant's Necktie and other similar Necktie and similar
28 neckties were "Made in U.S.A.", as described further detail above.

111. Defendant intentionally made the representations herein alleged with the intention of inducing the public, including Plaintiff and putative class members, to purchase Defendant's product.

112. These representations by Defendant were misleading because Defendant's offending products were not "Made in U.S.A." as advertised by Defendant. Defendant knew, or should have known, that Defendant's product was not "Made in U.S.A." but nevertheless made representations that it was with the intention that consumers rely on its representations.

113. Plaintiff and other similarly situated persons in California saw, believed, and relied upon Defendant's advertising representations and, in reliance on them, purchased Defendant's product.

114. At all times relevant, Defendant made the misrepresentations herein alleged when Defendant knew, or had reason to know, these representations to be untrue, and Defendant had no reasonable basis for believing the representations to be true.

115. As a proximate result of Defendant's intentional misrepresentations, Plaintiff and other similarly situated consumers were induced to purchase, purchase more of, or pay more for, Defendant's product in reliance on the misrepresentations and omissions of Defendant as alleged in detail above, and incurred damages in an amount to be determined at trial, during the Class Period.

116. Plaintiff and other consumers similarly situated, in purchasing and using the products as herein alleged, relied on Defendant's representations, including Defendant's representation that Defendant's product was "Made in U.S.A." to their damage and/or detriment as herein alleged.

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117. Plaintiff alleges the “who, what, when, where, and how” of the alleged deception by Defendant as follows:

- a. The “who” is Defendant: LANDS’ END, INC.;
- b. The “what” is Defendant’s representation that Defendant’s Necktie is “Made in U.S.A.”;
- c. The “when” is the date that Plaintiff purchased the product and the Class Period of four years prior to the filing of the Complaint initiating this action;
- d. The “where” is Defendant’s website;
- e. The “how” is the allegation that Defendant misrepresented and/or omitted that Defendant’s Necktie and similar neckties were not “Made in U.S.A.” as advertised by Defendant, but on the contrary, Made in China and/or composed of foreign materials not from the United States.

118. By engaging in the acts described above, Defendant is guilty of malice, oppression, and fraud, and each Plaintiff is therefore entitled to recover exemplary or punitive damages.

119. In prosecuting this action for the enforcement of important rights affecting the public interest, Plaintiff seeks the recovery of attorneys’ fees, which is available to a prevailing plaintiff in class action cases such as this matter.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiff and the Class members the following relief against Defendant:

- That the Court determine that this action may be maintained as a Class Action by certifying this case as a California Class Action as to the Class;
- That the Court certify Plaintiff to serve as the Class representative in this matter;

KAZEROUNI LAW GROUP, APC
245 FISCHER AVENUE, SUITE D1
COSTA MESA, CA 92626

- That Defendant's wrongful conduct alleged herein be adjudged and decreed to violate the consumer protection statutory claims asserted herein;
- That Plaintiff and each of the other members of the Class recover the amounts by which Defendant has been unjustly enriched and Defendant be ordered to restore these wrongfully obtained monies and disgorge all ill-gotten revenues and/or profits, together with interest thereupon;
- That Defendant be enjoined from continuing the wrongful conduct alleged herein and required to comply with all applicable laws;
- That Plaintiff and each of the other members of the Class recover their costs of suit, including reasonable attorneys' fees and expenses as provided by law; and
- That Plaintiff and the members of the Class be granted any other relief the Court may deem just and proper.

TRIAL BY JURY

120. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled, and demands, a trial by jury.

Dated: July 29, 2015

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s/ ABBAS KAZEROUNIAN
ABBAS KAZEROUNIAN, ESQ.
MONA AMINI, ESQ.
ATTORNEYS FOR PLAINTIFF

[ADDITIONAL PLAINTIFF'S COUNSEL]

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LAW OFFICES OF TODD M. FRIEDMAN, P.C.

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Beverly Hills, CA 90211
Telephone: (877) 206-4741
Facsimile: (866) 633-0228

PLAINTIFF'S EXHIBIT A

Lands' End Website
Screenshot of the Lands' End Webpage
Featuring the Necktie

In the Case of

Elaine Oxina, Individually and On Behalf of All Others Similarly Situated,

v.

Lands' End, Inc.

**KAZEROUNI LAW GROUP, APC
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TEL. (800) 400-6808**

PLAINTIFF'S EXHIBIT B

Photograph of the Necktie
Showing the Necktie's Tag

In the Case of

Elaine Oxina, Individually and On Behalf of All Others Similarly Situated,

v.

Lands' End, Inc.

**KAZEROUNI LAW GROUP, APC
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COSTA MESA, CALIFORNIA 92626
TEL. (800) 400-6808**



PLAINTIFF'S EXHIBIT C

Redlined Revisions to the Amended Complaint

In the Case of

Elaine Oxina, Individually and On Behalf of All Others Similarly Situated,

v.

Lands' End, Inc.

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Facsimile: (800) 520-5523

[ADDITIONAL COUNSEL ON SIGNATURE PAGE]*Attorneys for Plaintiff,*
Elaine Oxina**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA****ELAINE OXINA;
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

LANDS' END, INC.,

Defendant.

Case No.: 3:14-cv-02577-MMA-NLS**SECOND AMENDED CLASS
ACTION COMPLAINT FOR:**

- 1) VIOLATION OF CAL. CIVIL
CODE §§ 1750, ET SEQ.
(THE CONSUMERS LEGAL
REMEDIES ACT);**
- 2) VIOLATION OF BUSINESS &
PROFESSIONS CODE §§ 17200,
ET SEQ. (CALIFORNIA UNFAIR
COMPETITION LAW); AND**
- 3) VIOLATION OF BUSINESS &
PROFESSIONS CODE §§ 17500,
ET SEQ. (CALIFORNIA FALSE
ADVERTISING LAW);**
- 4) NEGLIGENT
MISREPRESENTATION; AND**
- 5) INTENTIONAL
MISREPRESENTATION,**

JURY TRIAL DEMANDED

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SECOND AMENDED CLASS ACTION COMPLAINT**PAGE 1 OF 27.**

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INTRODUCTION

1. ELAINE OXINA (hereinafter “Plaintiff”) brings this Second Amended Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of LANDS’ END, INC. (hereinafter “Defendant”) in unlawfully engaging in false and misleading advertising, unfair competition, and deceptive conduct toward consumers by advertising Defendant’s neckties, including the necktie purchased by Plaintiff, with the false representation that Defendant’s product was “Made in U.S.A.”, Defendant’s falsely advertised products are sold via Defendant’s website, catalogue, and in various stores throughout the United States.¹ Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.

2. As stated by the California Supreme Court in *Kwikset v. Superior Court* (January 27, 2011) 51 Cal4th 310, 328-29:

Simply stated: labels matter. The marketing industry is based on the premise that labels matter, that consumers will choose one product over another similar product based on its label and various tangible and intangible qualities that may come to associate with a particular source...In particular, **to some consumers**, the “Made in U.S.A.” label matters. A range of motivations may fuel this preference, from the desire to support domestic jobs to beliefs about quality, to concerns about overseas environmental or labor conditions, to simple patriotism. The Legislature has recognized the materiality of this representation by specifically outlawing deceptive and fraudulent “Made in America” representations. (Cal. Bus. & Prof. Code section 17533.7; see also Cal. Civ. Code § 1770, subd. (a)(4) (prohibiting deceptive representations of geographic origin)). The object of section 17533.7 “is to protect consumers from being misled when they purchase products in the belief that they are advancing

¹ Plaintiff purchased the mislabeled Lands’ End necktie, which in part is the subject matter of this lawsuit, from Defendant’s website, at the following web address: http://www.landsend.com/products/kids-plaid-necktie/id_178450 on or about August 29, 2014.

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the interest of the United States and its industries and workers...”

3. The “Made in USA” claim is prominently displayed on the Defendant’s website under Defendant’s description of the misrepresented products²; and specifically, under the description of the offending “Kids To-be-tied Plaid Necktie” (hereinafter “Necktie”) purchased by Plaintiff.³ The Necktie, however, is actually made in China, as indicated by the fabric tag attached to the Necktie,⁴ contrary to Defendant’s representation to Plaintiff and similarly situated consumers, and in violation of California and/or Federal laws.

4. On information and belief, the Necktie and substantially similar neckties sold by Defendant are manufactured outside of the United States, contrary to the “Made in USA” claim prominently posted on Defendants’ website, where Plaintiff purchased the offending necktie.

JURISDICTION AND VENUE

5. This Court also has jurisdiction over this matter pursuant to the Class Action Fairness Act (CAFA) because the amount in controversy in this matter exceeds \$5,000,000.00 as to all putative Class members, inclusive of attorneys’ fees and costs, and injunctive relief. 28 U.S.C. Sections 1332(d), 1453, and 1711-1715.

6. This Court also has diversity jurisdiction over this matter under 28 U.S.C. § 1332 in that Plaintiff is a resident and citizen of the State of California while Defendant is incorporated under the laws of the State of Delaware.

² Plaintiff seeks class wide relief on behalf of all purchasers of any Lands’ End neckties advertised as “Made in USA” that are in fact foreign-made and/or incorporate foreign-made component parts, contrary to Defendant’s representations.

³ A true and correct copy of a screenshot of Defendant’s website featuring the Necktie attached hereto as Exhibit A.

⁴ A true and correct copy of a photograph of the Necktie showing its tag attached hereto as Exhibit B.

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7. Venue is proper in the United States District Court for the Southern District of California pursuant to 28 U.S.C. § 1391 for the following reasons: (i) Plaintiff resides in the City of Chula Vista, County of San Diego, State of California, which is within this judicial district; (ii) the conduct complained of herein occurred within this judicial district; and, (iii) many of the acts and transactions giving rise to this action occurred in this district because Defendant:

- (a) is authorized to conduct business in this district and has intentionally availed itself of the laws and markets within this district;
- (b) does substantial business within this district;
- (c) is subject to personal jurisdiction in this district because it has availed itself of the laws and markets within this district; and,
- (d) the harm to Plaintiff occurred within this district.

PARTIES

8. Plaintiff is an individual residing in the City of Chula Vista, County of San Diego, State of California.

9. Defendant is a corporation that is organized and exists under the laws of the State of Delaware and doing business in the State of California as “Lands’ End Direct Merchants, Inc.”

10. Defendant is an American clothing retailer that conducts business through mail order and internet sales, at numerous retail stores in the United States, and distributed through a large number of Sears department stores. One of the products sold by Defendant is the Necktie purchased online by Plaintiff from Defendant’s website.⁵

⁵ Plaintiff purchased the mislabeled Lands’ End necktie, which in part is the subject matter of this lawsuit, from Defendant’s website, at the following web address: http://www.landsend.com/products/kids-plaid-necktie/id_178450 on or about August 29, 2014.

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FACTUAL ALLEGATIONS

11. Plaintiff realleges and incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

12. Defendant Land' End, Inc. represents itself as an "all-American" company committed to creating honest, well-crafted goods and "clothing that sets the highest standards for enduring quality, style and value." Specifically, Defendant's website states "[its] people are passionate about quality. So [they] search out the finest natural or high-tech fabrics, working with vendors and artisans in the United States whenever possible. [They] take the time to craft products made for years of satisfying wear. And [they] never reduce a product quality for the sake of a little extra profit."⁶

13. Defendant manufactures, markets and/or sells Lands' End products, including the neckties purchased by Plaintiff and the putative Class, that have been represented on Defendant's website as "Made in USA" when the products are in fact made or manufactured outside of the United States.

14. Contrary to Defendant's representation, the Necktie and similar misrepresented neckties are wholly and/or substantially manufactured or produced with component parts that are manufactured outside of the United States.

15. Based upon information and belief, the offending Necktie purchased by Plaintiff, and presumably all other similar offending Lands' End neckties, are wholly made and/or manufactured in China and/or include component parts such as fabric and thread which are not in fact made or manufactured in the United States, as represented by Defendant.

16. Defendant markets, and continues to market, and represents to the general public via its website that certain Lands' End products, including the Necktie purchased by Plaintiff and neckties purchased by the putative Class,

⁶ See <http://www.landsend.com/aboutus/values/quality/>

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are “Made in USA.” In addition, Defendant fraudulently concealed the material facts at issue in this matter by misrepresenting to the general public the true country of origin of the offending products. Defendant possesses superior knowledge of the true facts that were not disclosed, thereby tolling the running of any applicable statute of limitations.

17. Consumers are particularly vulnerable to these deceptive and fraudulent practices. Most consumers possess limited knowledge of the likelihood that products, including the component products therein, claimed to be made in the United States are in fact made in foreign countries. This is a material factor in Plaintiff and many similarly situated consumers’ purchasing decisions, as they believe they are purchasing superior goods while supporting American companies and American jobs.

18. Consumers generally believe that “Made in USA” products are of higher quality than their foreign-manufactured counterparts. Due to Defendants’ scheme to defraud the market, members of the general public were fraudulently induced to purchase Defendant’s products at inflated prices.

19. On information and belief, Defendant charged excess monies for Lands’ End products in comparison to Defendant’s competitors during the entirety of the relevant four-year statutory time period, based on Plaintiff and similarly situated consumers’ reliance on Defendant’s false “Made in USA” representation. California and Federal laws are designed to protect consumers from such false representations and predatory conduct. Defendant’s scheme to defraud consumers for its own self-interest and monetary gain is ongoing and will victimize consumers daily for the foreseeable future unless altered by judicial intervention.

20. On or about August 29, 2014, Plaintiff purchased the Necktie online via Defendant’s website. At the time of Plaintiff’s purchase, the description of the offending product on Defendant’s website was described using the

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“Made in U.S.A” country of origin designation, when the product actually was made and/or contained component parts made outside of the United States.⁷ Accordingly, Defendant is not entitled to lawfully represent and/or advertise the Necktie and similar neckties as “Made in USA.”

21. In each case when Plaintiff and putative Class members purchased a necktie misrepresented as “Made in USA”, they relied upon Defendant’s “Made in USA” representation in their purchasing decision, which is typical of most U.S. consumers, and they were deceived as a result of Defendant’s actions. These purchasing decisions were supported by the “Made in USA” representation made by Defendants, which is absent from most of Defendants’ competitors. Plaintiff believed at the time she purchased the Necktie that she was purchasing a superior quality product, as well as supporting U.S. jobs and the U.S. economy.

22. Plaintiff suffered an “injury in fact” because Plaintiff’s money was taken by Defendant as a result of Defendant’s false “Made in USA” representation set forth on Defendant’s website.

23. Component parts made in the U.S.A. are subject to strict regulatory requirements, including but not limited to environmental, labor, and safety standards. Foreign made component parts are not subject to the same U.S. manufacturing standards and are often inherently of lower quality than their U.S. made counterparts. Foreign made products and component parts are also routinely less reliable and less durable than their U.S. made counterparts. As such, the Necktie and similar offending neckties are of inferior quality due to Defendant’s decision to import a foreign-made product and represent to consumers that they are “Made in USA.”

24. As such, on information and belief, the Necktie and similar offending neckties, which are foreign made and/or composed of foreign-made

⁷ See Plaintiff’s Exhibit A and Exhibit B.

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component parts, are of inferior quality, less reliable, fail more often and result in lower overall customer satisfaction than if the products were truly “Made in USA” as marketed, advertised and/or represented by Defendant.

25. On information and belief, the Necktie and similar offending neckties are not worth the purchase price paid by Plaintiff and putative Class members. The precise amount of damages will be proven at the time of trial, in large part, by expert testimony.

26. Plaintiff and Class members were undoubtedly injured as a result of Defendant’s false “Made in USA” representations that are at issue in this matter.

CLASS ACTION ALLEGATIONS

27. Plaintiff realleges and incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

28. Plaintiff brings this action individually and on behalf of all others similarly situated against Defendant, pursuant to Federal Rules of Civil Procedure, Rules 23(a), 23(b)(1), 23(b)(2) and 23(b)(3).

29. Plaintiff represents, and is a member of the Nationwide Class, (“the Class”) consisting of:

All persons within California who purchased one or more of Defendant’s neckties that were advertised with a “Made in USA,” but were in fact foreign-made and/or composed of foreign-made component parts, within the four years prior to the filing of the Complaint.

30. Defendant and its employees and/or agents are excluded from the Class. Plaintiff does not know the number of members in the Class, but Plaintiff currently believes that there are hundreds of thousands, if not more, members of the Class within the State of California. This matter should therefore be certified as a Class Action to assist in the expeditious litigation of this matter.

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31. The numerosity requirement of Fed. R. Civ. P. Rule 23(a)(1) is satisfied for each of the aforementioned Class because the members of the Class are so numerous and geographically disbursed that joinder of all Class members is impractical and the disposition of their claims in the Class action will provide substantial benefits both to the parties and to the court. The Class can be identified through Defendant's records and/or Defendant's agents' records.

32. There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. Common questions of fact and law exist in this matter that predominate over questions that may affect individual Class members, satisfying the requirement of Fed. R. Civ. P., Rule 23(a)(2), including but not limited to:

- a. Whether Defendant participated in r committed the wrongful conduct alleged herein;
- b. Whether Defendant's acts, transactions, or course of conduct constitute the violations of law alleged herein;
- c. Whether the members of the Class sustained and/or continue to sustain damages attributable to Defendant's conduct, and, if so, the proper measure and appropriate formula to be applied in determining such damages; and
- d. Whether the members of the Class are entitled to injunctive and/or any other equitable relief.

33. Plaintiff's claims are typical of the claims of all other members of the Class and involve the same violations of law by Defendant as other Class members' claims. Plaintiff and members of the Class also sustained damages arising out of Defendant's common course of conduct complained herein. Accordingly, Plaintiff satisfies the "typicality" requirement of Fed. R. Civ. P., Rule 23(a)(3) with respect to the Class.

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34. As a person in who purchased one or more of Defendant's products, that were falsely advertised with a "Made in USA" country of origin designation, but were in fact foreign-made and/or composed of foreign-made component parts, Plaintiff is asserting claims that are typical of the Class. Plaintiff will fairly and adequately represent and protect the interests of other members of the Class in that Plaintiff has no interests antagonistic to any member of the Class. Thus, Fed. R. Civ. P., Rule 23(a)(4) is satisfied.

35. This suit seeks only damages and injunctive relief for recovery of economic injury on behalf of the Class, and it expressly is not intended to request any recovery for personal injury and claims related thereto. Plaintiff reserves the right to expand the Class definition to seek recovery on behalf of additional persons as warranted as facts are learned in further investigation and discovery.

36. Plaintiff and the members of the Class have all suffered irreparable harm as a result of the Defendant's unlawful and wrongful conduct. Absent a representative class action, members of the Class will continue to face the potential for irreparable harm described herein. In addition, these violations of law will be allowed to proceed without remedy and Defendant will likely continue such illegal conduct. Because of the size of the individual Class member's claims, few, if any, Class members could afford to seek legal redress for the wrongs complained of herein. Furthermore, even if separate actions could be brought by individual purchasers, the resulting multiplicity of lawsuits would cause undue hardship and expense for both the Court and the litigants, as well as create the risk of inconsistent rulings and adjudications that might be dispositive of the interests of similarly situated purchasers, thereby substantially impeding purchasers' ability to protect their interests, while establishing incompatible standards of conduct for

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Defendant. Thus, the proposed Class satisfies the requirements of Fed. R. Civ. P., Rule 23(b)(1).

37. Defendant has acted and/or refused to act on grounds generally applicable to the Plaintiff and other members of the Class, thereby rendering class certification and final injunctive relief and corresponding declaratory relief with respect to members of the Class as a whole appropriate. Thus, certification is proper under Fed. R. Civ. P. Rule 23(b)(2).

38. As discussed above, numerous common questions of fact and law exist in this matter. These questions predominate over the individual questions presented in this action. Thus, the predominance requirement of Fed. R. Civ. P. Rule 23(b)(3) is satisfied.

39. Plaintiff has retained counsel experienced in handling class action claims and claims involving violations of the consumer laws, and specifically violations of the California Business and Professions Code.

40. A class action is a superior method for the fair and efficient adjudication of this controversy. Class-wide damages are essential to induce Defendant to comply with federal and California law. The interest of Class members in individually controlling the prosecution of separate claims against Defendant is small because the damages suffered by individual members of the Class may be minimal. As a result, the expense and burden and litigation would prevent Class members from individually redressing the wrongs done to them. A representative class action is both the appropriate vehicle by which to adjudicate these claims and is essential to the interests of justice. Furthermore, a class action regarding the issues presented in this matter creates no significant problems of manageability. Therefore, the superiority and manageability requirements of 23(b)(3) are satisfied.

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FIRST CAUSE OF ACTION

VIOLATION OF CAL. CIV. CODE SECTION 1750, ET SEQ.

[CALIFORNIA'S CONSUMERS LEGAL REMEDIES ACT]

41. Plaintiff realleges and incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

42. Plaintiff brings this cause of action pursuant to section 1750 on behalf of herself and on behalf of the putative Class.

43. California Civil Code section 1750 et seq., entitled the Consumers Legal Remedies Act (hereinafter "CLRA"), provides a list of "unfair or deceptive" practices in a "transaction" relating to the sale of "goods" or "services" to a "consumer." The Legislature's intent in promulgating the CLRA is expressed in Civil Code Section 1760, which provides, *inter alia*, that its terms are to be:

Construed liberally and applied to promote its underlying purposes, which are to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection.

44. Defendant's products purchased by Plaintiff and the Class constitute "goods" as defined pursuant to Civil Code Section 1761(a).

45. Plaintiff, and the Class members, are each a "consumer" as defined pursuant to Civil Code Section 1761(d).

46. Each of Plaintiff's and the Class members' purchases of Defendant's neckties constituted a "Transaction" as defined pursuant to Civil Code Section 1761(e).

47. Civil Code Section 1770(a)(4) and (9) provide that:

The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful: Using deceptive representations or designations of geographic origin in connection with goods or services [and] [a]dvertising goods or services with intent not to sell them as advertised."

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48. Defendant violated Civil Code Section 1770(a)(4) and (9) by marketing and misrepresenting that its neckties are “Made in USA” when they actually foreign-made and/or contain component parts that are manufactured outside of the United States.

49. On information and belief, Defendant’s violations of the CLRA set forth herein were done with awareness of the fact that the conduct alleged was wrongful and was motivated solely for Defendant’s self-interest, monetary gain and increased profit. Plaintiff further alleges that Defendant committed these acts knowing the harm that would result to Plaintiff and Defendant engaged in such unfair and deceptive conduct notwithstanding such this knowledge.

50. Plaintiff suffered an “injury in fact” because Plaintiff’s money was taken by Defendant as a result of Defendant’s false “Made in USA” representations set forth on the Defendant’s website in the marketing and description of Defendant’s Necktie and similar offending neckties as described above, when they knew, or should have known, that the representations were unsubstantiated, false, and misleading and that the omissions were of material facts they were obligated to disclose.

51. As a direct and proximate result of Defendant’s violations of the CLRA, Plaintiff and members of the Class are entitled to a declaration that Defendant violated the Consumer Legal Remedies Act.

52. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

53. Pursuant to section 1782(d) of the California Civil Code (“section 1782(d)”), Plaintiff and the Class seek a Court order enjoining the above-described wrongful acts and practices of Defendant and for restitution and disgorgement.

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54. Pursuant to section 1782(d), by letter dated June 19, 2015, Plaintiff notified Defendant in writing sent by FedEx mail to Defendant through Defendant's counsel of the particular violations of section 1770 and demanded that Defendant rectify the problems associated with the actions detailed above by, among other things, initiating a corrective advertising campaign to inform consumer's of the true origin of the Necktie(s) falsely advertised as "Made in U.S.A." Defendant has not agreed to rectify the problems associated with the actions detailed above by initiating corrective advertising or giving notice to all affected consumers within thirty days of the date of written notice pursuant to section 1782. Therefore, Plaintiff and the Class further seek claims for actual, punitive, and statutory damages, as deemed appropriate.

55. Pursuant to section 1780(e) of the California Civil Code ("section 1780(e)"), Plaintiff and the Class make claims for damages and attorneys' fees and costs.

56. Additionally, Plaintiff and the Class demand judgment against Defendant for damages, restitution, pre and post judgment interest, injunctive and declaratory relief, corrective advertising, costs and attorneys' fees incurred in bringing this action, and any and all other relief that this Court may deem appropriate.

SECOND CAUSE OF ACTION

VIOLATION OF BUS. & PROF. CODE, SECTION 17200, ET SEQ.

[CALIFORNIA'S UNFAIR COMPETITION LAW]

57. Plaintiff realleges and incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

58. As alleged herein, Defendant has marketed and sold the neckties purchased by Plaintiff and the Class in a way that misleads consumers, including Plaintiff and the putative class, into believing that Defendant's Necktie, and

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other similarly advertised neckties, are "Made in U.S.A." despite the fact that these products are actually foreign-made and/or composed of materials from outside the United States.

59. Plaintiff and Defendant are each "person[s]" as defined by California Bus. & Prof. Code § 17201. California Business & Professions Code § 17204 authorizes a private right of action on both an individual and representative basis.

60. "Unfair competition" is defined by Bus. & Prof. Code section § 17200 as encompassing several types of business "wrongs," four of which are at issue here: (1) an "unlawful" business act or practice, (2) an "unfair" business act or practice, (3) a "fraudulent" business act or practice, and (4) "unfair, deceptive, untrue or misleading advertising." The definitions in §§ 17200, et seq. are drafted in the disjunctive, meaning that each of these "wrongs" operates independently from the others.

61. By and through Defendant's conduct alleged in further detail above and herein, Defendant engaged in conduct which constitutes unlawful, unfair, and/or fraudulent business practices prohibited by Bus. & Prof. Code §§ 17200 et seq.

A. Unlawful Prong

62. A business act or practice is "unlawful" under the UCL if it violates any other law or regulation.

63. California's Bus. & Prof. Code § 17200 prohibits any "unlawful," "fraudulent," or "unfair" business act or practice and any false or misleading advertising. In the course of conducting business, Defendant committed unlawful business practices by, among other things, making the representations (which also constitute advertising within the meaning of section 17200) and omissions of material facts, as set forth more fully

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herein, and violating *inter alia* §§ 17500 et seq., §§ 1750 of the California Civil Code and the common law.

64. As further alleged below and herein, because Defendant has violated California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500, et seq., Defendant has consequently violated California's Bus. & Prof. Code §§ 17200 et seq., which provides a cause of action for an "unlawful" business act or practice perpetrated on members of the California public.

65. Further, pursuant to 15 U.S.C. § 45(a)(1), the FTCA prohibits "unfair or deceptive acts or practices in or affecting commerce," and specifically prohibits false advertisements. 15 U.S.C. § 52(a).

66. Beginning at a date currently unknown through the time of this Complaint, Defendant has committed acts of unfair competition, including those described above, by engaging in a pattern of "unlawful" business practices, within the meaning of Bus. & Prof. Code § 17200 et seq. by manufacturing, distributing, advertising and/or marketing Defendant's products with a false representation that the products referenced herein are "Made in USA" when Defendant's products are in fact foreign-made and/or composed of component parts manufactured outside of the United States.

67. Defendant had other reasonably available alternatives to further its legitimate business interest, other than the conduct described herein, such as selling the offending Necktie, and other similarly advertised products, without falsely stating and/or misrepresenting the product's origin.

B. "Unfair" Prong

68. California Bus. & Prof. Code section 17200 also prohibits any unfair business act or practice.

69. Beginning at a date currently unknown and continuing up through the time of this Complaint, Defendant has committed acts of unfair competition that

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are prohibited by Bus. & Prof. Code § 17200 et seq. Defendant engaged in a pattern of “unfair” business practices that violate the wording and intent of the statutes by engaging conduct and practices that threaten an incipient violation of law/s or violate the policy or spirit of law/s by, among other things, engaging in false advertising by misrepresenting and omitting material facts regarding Defendant’s products with a false country of origin designation, in violation of Bus. & Prof. Code section 17500 et seq. by falsely representing that the products referenced herein are “Made in USA,” when Defendant’s products are in fact foreign-made and/or composed of component parts manufactured outside of the United States.

70. Further, Defendant engaged in a pattern of “unfair” business practices that violate the wording and intent of the abovementioned statute/s by engaging in practices that are immoral, unethical, oppressive or unscrupulous, the utility of such conduct, if any, being far outweighed by the harm done to consumers and against public policy by, among other things, engaging in false advertising by misrepresenting and omitting material facts regarding Defendant’s products with a false country of origin designation, in violation of Bus. & Prof. Code section 17500 et seq. by falsely representing that the products referenced herein are “Made in USA” when Defendant’s products are in fact foreign-made and/or composed of component parts manufactured outside of the United States.

71. Alternatively, Defendant engaged in a pattern of “unfair” business practices that violate the wording and intent of the abovementioned statute/s by, among other things, engaging in false advertising by misrepresenting and omitting material facts regarding Defendant’s products with a false country of origin designation, in violation of Bus. & Prof. Code section 17500 et seq. by falsely representing that the products referenced herein are “Made in USA;” wherein: (1) the injury to the consumer was substantial; (2) the

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injury was not outweighed by any countervailing benefits to consumers or competition; and (3) the injury was not of the kind that consumers themselves could not have reasonably avoided.

C. "Fraudulent" Prong

72. California Bus. & Prof. Code section 17200 also prohibits any "fraudulent business act or practice."

73. Beginning at a date currently unknown and continuing up through the time of this Complaint, Defendant engaged in acts of unfair competition, including those described above and herein, prohibited and in violation of Bus. & Prof. Code §§ 17200 et seq. by engaging in a pattern of "fraudulent" business practices within the meaning of Bus. & Prof. Code §§ 17200 et seq, by manufacturing, distributing, and/or marketing Defendant's offending Necktie and similar neckties with a false country of origin designation, in violation of the consumer protection, unfair competition, and truth in advertising laws mentioned herein, by falsely representing that the products referenced herein are "Made in USA" when Defendant's products are in fact foreign-made and/or composed of component parts manufactured outside of the United States.

74. Defendant's actions, claims, nondisclosures and misleading statements, as more fully set forth above, were also false, misleading and/or likely to deceive the consuming public within the meaning of section 17200.

75. Defendant engaged in fraudulent acts and business practices by knowingly or negligently representing to Plaintiff, and other similarly situated consumers, whether by conduct, orally, or in writing by misrepresenting that Defendant's product is "Made in U.S.A." while it is actually foreign-made and/or composed of component parts manufactured outside of the United States.

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1 76. Plaintiff reserves the right to allege further conduct that constitutes other
 2 fraudulent business acts or practices. Such conduct is ongoing and continues
 3 to this date.

4 77. Plaintiff and other members of the Class have in fact been deceived as a
 5 result of their reliance on Defendant's material representations and
 6 omissions, which are described above. As a result of this reliance,
 7 Defendant has caused harm to Plaintiff and other members of the Class
 8 who each purchased the Necktie and other similar offending neckties from
 9 Defendant falsely advertised as "Made in U.S.A." Plaintiff and the other
 10 members of the Class have suffered injury in fact and lost money as a
 11 result of these unlawful, unfair, and fraudulent practices.

12 78. As a result of Defendant's unfair conduct and deception, Plaintiff and
 13 members of the putative Class have been injured because had they been
 14 aware that Defendant's product was not "Made in USA," but rather was
 15 foreign-made, they would have not purchased Defendant's product, or would
 16 have paid less for the product, or would have purchased different product
 17 from another manufacturer.

18 79. The fraudulent, unlawful and unfair business practices and false and
 19 misleading advertising of Defendant, as described above, presents a
 20 continuing threat to Plaintiff and similarly situated consumers in that they
 21 will continue to be misled into purchasing Defendant's products under the
 22 false premise that Defendant's products are "Made in U.S.A".

23 80. As a result of the repeated violations described above and herein, Defendant
 24 has received and continues to receive unjust revenue and profit at the
 25 expense of their competitors and the public.

26 81. Unless Defendant is enjoined from continuing to engage in the unlawful,
 27 unfair, fraudulent, untrue, and deceptive business acts and practices as
 28 described herein, Plaintiff and consumers residing within California, will

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1 continue to be exposed to and harmed by Defendant's unlawful, unfair,
2 and/or fraudulent business practices.

3 82. Plaintiff and the Class seek restitution of excess monies paid to Defendant
4 by Plaintiff and the Class relating to the false "Made in USA"
5 representations set forth on the Defendant's website in the marketing and
6 description of Defendant's offending Necktie and similar neckties purchased
7 by the Class.

8 83. Additionally, Plaintiff and the Class demand judgment against Defendant for
9 damages, restitution, pre and post judgment interest, injunctive and
10 declaratory relief, corrective advertising, costs and attorneys' fees incurred
11 in bringing this action, and any and all other relief that this Court may deem
12 appropriate.

13 84. As a direct and proximate result of Defendant's unlawful, unfair and
14 fraudulent conduct described herein, Defendant has been and will continue
15 to be unjustly enriched by the receipt of ill-gotten gains from customers,
16 including Plaintiff, who unwittingly provided money to Defendant based on
17 Defendant's fraudulent "Made in USA" representations when Defendant's
18 products are in fact foreign-made and/or composed of component parts
19 manufactured outside of the United States.

20 85. Plaintiff suffered an "injury in fact" because Plaintiff's money was taken by
21 Defendant as a result of Defendant's false "Made in USA" representations
22 set forth on the Defendant's website in the marketing and description of the
23 offending neckties purchased by Plaintiff and the Class. Had Plaintiff and
24 members of the putative Class been made aware that Defendant's product
25 was not "Made in USA," but rather was foreign-made, they would have not
26 purchased Defendant's product, or would have paid less for the product, or
27 would have purchased different product from another manufacturer.

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86. In prosecuting this action for the enforcement of important rights affecting the public interest, Plaintiff seeks the recovery of attorneys' fees, which is available to a prevailing plaintiff in class action cases such as this matter.

THIRD CAUSE OF ACTION

VIOLATION OF BUS. & PROF. CODE §§ 17500, ET SEQ.

[CALIFORNIA'S FALSE ADVERTISING LAW]

87. Plaintiff realleges and incorporates by reference all of the above paragraphs as though fully stated herein.

88. Plaintiff brings this cause of action on behalf of herself and on behalf of the putative Class.

89. Plaintiff and Defendant are both "person[s]" as defined by Cal. Bus. & Prof. Code § 17506. Cal. Bus. & Prof. Code § 17535 authorizes a private right of action on both an individual and representative basis.

90. The misrepresentations, acts, and non-disclosures by Defendant of the material facts detailed herein constitute false and misleading advertising and therefore violate Cal. Bus. & Prof. Code §§ 17500, et seq.

91. At all times relevant, Defendant's advertising and promotion regarding its Necktie, and similar neckties, being "Made in USA" was untrue misleading, and likely to deceive the reasonable consumer and the public, and, in fact, has deceived Plaintiff and consumers similarly situated by representing that Defendant's product was "Made in USA" when in fact Defendant knew and failed to disclose or truthfully advertise that its product was in fact foreign-made and predominately and/or entirely composed of materials manufactured outside of the United States.

92. Defendant engaged in the false and/or misleading advertising as alleged herein with the intent to directly or indirectly induce the purchase of Defendant's product, which Defendant knew, or had reason to know, was not in fact "Made in USA" as Defendant advertised to Plaintiff and the

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1 public.

2 93. In making and publicly disseminating the statements and/or omissions
3 alleged herein, Defendant knew or should have known that the statements
4 and/or omissions were untrue or misleading, and acted in violation of
5 California Business & Professions Code §§ 17500 et seq.

6 94. Plaintiff and members of the putative Class have suffered injury in fact and
7 have lost money and/or property as a result of Defendant's false advertising,
8 as more fully set forth herein. Plaintiff and members of the Class have been
9 injured because they were induced to purchase and overpay for Defendant's
10 product based on the belief that Defendant's product was "Made in USA."
11 Plaintiff and members of the putative Class have been injured because had
12 they been made aware that Defendant's product was not "Made in USA,"
13 but rather was foreign-made, they would have not purchased Defendant's
14 product, or would have paid less for the product, or would have purchased
15 different product from another manufacturer.

16 95. At a date presently unknown to Plaintiff, but at least four years prior to the
17 filing of this action, and as set forth above, Defendant has committed acts of
18 untrue and misleading advertising, as defined by Bus. & Prof. Code §§
19 17500 et seq., by engaging in the false advertising and promotion of the
20 Necktie and similar neckties as "Made in USA" on Defendant's website.

21 96. The false and misleading advertising of Defendant, as described above,
22 presents a continuing threat to consumers, as Defendant continues to use the
23 deceptive labels and advertising, which will continue to mislead consumers
24 who purchase Defendant's products under false or misleading premises.

25 97. As a result of the conduct described above, Defendant has been unjustly
26 enriched at the expense of Plaintiff and members of the putative Class.
27 Specifically, Defendant has been unjustly enriched by obtaining revenues
28 and profits that would not have otherwise been obtained absent Defendant's

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1 false, misleading, and deceptive conduct.

2 98. As a direct and proximate result of the aforementioned unlawful, unfair,
3 and/or fraudulent acts and representations of Defendant, Defendant has
4 improperly obtained and continues to hold monies rightfully belonging to
5 Plaintiff and other similarly situated consumers who were led to purchase,
6 purchase more of, or pay more for Defendant's products due to the unlawful
7 acts of Defendant, during the Class Period.

8 99. Plaintiff seeks an order requiring Defendant to restore these wrongfully
9 obtained monies and disgorge all ill-gotten revenues and/or profits, together
10 with interest thereupon; and enjoin Defendant from continuing to violate
11 Cal. Bus. & Prof. Code §§ 17200 et seq. and §§ 17500 et seq., as
12 discussed above and herein.

13 100. Unless Defendant is enjoined from continuing to engage in the unlawful,
14 unfair, fraudulent, untrue, and deceptive business acts and practices as
15 described herein, Plaintiff and consumers residing within California, will
16 continue to be exposed to and harmed by Defendant's unlawful, unfair,
17 and/or fraudulent business practices.

18 101. Plaintiff also seeks attorneys' fees and costs pursuant to, *inter alia*,
19 California Civil Code Section 1021.5.

20 **FOURTH CAUSE OF ACTION**

21 **NEGLIGENT MISREPRESENTATION**

22 102. Plaintiff realleges and incorporates by reference all of the above paragraphs
23 of this Complaint as though fully stated herein.

24 103. At a date presently unknown to Plaintiff, but at least four years prior to the
25 filing of this action, and as set forth above, Defendant represented to the
26 public, including Plaintiff, by misrepresenting and marketing on Defendant's
27 website that Defendant's Necktie and other similar Necktie and similar
28 neckties were "Made in U.S.A.", as described further detail above.

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104. Defendant made the representations herein alleged with the intention of inducing the public, including Plaintiff and putative class members, to purchase Defendant's product.

105. Plaintiff and other similarly situated persons in California saw, believed, and relied upon Defendant's advertising representations and, in reliance on them, purchased Defendant's product.

106. At all times relevant, Defendant made the misrepresentations herein alleged when Defendant knew, or should have known, these representations to be untrue, and Defendant had no reasonable basis for believing the representations to be true.

107. As a proximate result of Defendant's negligent misrepresentations, Plaintiff and other similarly situated consumers were induced to purchase, purchase more of, or pay more for, Defendant's product in reliance on the misrepresentations and omissions of Defendant as alleged in detail above, and incurred damages in an amount to be determined at trial, during the Class Period.

108. In prosecuting this action for the enforcement of important rights affecting the public interest, Plaintiff seeks the recovery of attorneys' fees, which is available to a prevailing plaintiff in class action cases such as this matter.

FIFTH CAUSE OF ACTION

INTENTIONAL MISREPRESENTATION

109. Plaintiff realleges and incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

110. At a date presently unknown to Plaintiff, but at least four years prior to the filing of this action, and as set forth above, Defendant represented to the public, including Plaintiff, by misrepresenting and marketing on Defendant's website that Defendant's Necktie and other similar Necktie and similar neckties were "Made in U.S.A.", as described further detail above.

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111. Defendant intentionally made the representations herein alleged with the intention of inducing the public, including Plaintiff and putative class members, to purchase Defendant's product.

112. These representations by Defendant were misleading because Defendant's offending products were not "Made in U.S.A." as advertised by Defendant. Defendant knew, or should have known, that Defendant's product was not "Made in U.S.A." but nevertheless made representations that it was with the intention that consumers rely on its representations.

113. Plaintiff and other similarly situated persons in California saw, believed, and relied upon Defendant's advertising representations and, in reliance on them, purchased Defendant's product.

114. At all times relevant, Defendant made the misrepresentations herein alleged when Defendant knew, or had reason to know, these representations to be untrue, and Defendant had no reasonable basis for believing the representations to be true.

115. As a proximate result of Defendant's intentional misrepresentations, Plaintiff and other similarly situated consumers were induced to purchase, purchase more of, or pay more for, Defendant's product in reliance on the misrepresentations and omissions of Defendant as alleged in detail above, and incurred damages in an amount to be determined at trial, during the Class Period.

116. Plaintiff and other consumers similarly situated, in purchasing and using the products as herein alleged, relied on Defendant's representations, including Defendant's representation that Defendant's product was "Made in U.S.A." to their damage and/or detriment as herein alleged.

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117. Plaintiff alleges the “who, what, when, where, and how” of the alleged deception by Defendant as follows:

- a. The “who” is Defendant: LANDS’ END, INC.;
- b. The “what” is Defendant’s representation that Defendant’s Necktie is “Made in U.S.A.”;
- c. The “when” is the date that Plaintiff purchased the product and the Class Period of four years prior to the filing of the Complaint initiating this action;
- d. The “where” is Defendant’s website;
- e. The “how” is the allegation that Defendant misrepresented and/or omitted that Defendant’s Necktie and similar neckties were not “Made in U.S.A.” as advertised by Defendant, but on the contrary, Made in China and/or composed of foreign materials not from the United States.

118. By engaging in the acts described above, Defendant is guilty of malice, oppression, and fraud, and each Plaintiff is therefore entitled to recover exemplary or punitive damages.

119. In prosecuting this action for the enforcement of important rights affecting the public interest, Plaintiff seeks the recovery of attorneys’ fees, which is available to a prevailing plaintiff in class action cases such as this matter.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiff and the Class members the following relief against Defendant:

- That the Court determine that this action may be maintained as a Class Action by certifying this case as a California Class Action as to the Class;
- That the Court certify Plaintiff to serve as the Class representative in this matter;

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- That Defendant's wrongful conduct alleged herein be adjudged and decreed to violate the consumer protection statutory claims asserted herein;
- That Plaintiff and each of the other members of the Class recover the amounts by which Defendant has been unjustly enriched and Defendant be ordered to restore these wrongfully obtained monies and disgorge all ill-gotten revenues and/or profits, together with interest thereupon;
- That Defendant be enjoined from continuing the wrongful conduct alleged herein and required to comply with all applicable laws;
- That Plaintiff and each of the other members of the Class recover their costs of suit, including reasonable attorneys' fees and expenses as provided by law; and
- That Plaintiff and the members of the Class be granted any other relief the Court may deem just and proper.

TRIAL BY JURY

120. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled, and demands, a trial by jury.

Dated: July 29, 2015

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s/ ABBAS KAZEROUNIAN
ABBAS KAZEROUNIAN, ESQ.
MONA AMINI, ESQ.
ATTORNEYS FOR PLAINTIFF

[ADDITIONAL PLAINTIFF'S COUNSEL]

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SECOND AMENDED CLASS ACTION COMPLAINT

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Kazerouni Law Group, APC, 245 Fischer Avenue, Unit D1, Costa Mesa, CA 92626.

On July 29, 2015, I served the within document(s):

**PLAINTIFF'S SECOND AMENDED COMPLAINT; AND
PLAINTIFF'S EXHIBITS A, B, and C**

- ☒ CM/ECF - by transmitting electronically the document(s) listed above to the electronic case filing system on this date before 11:59 p.m. The Court's CM/ECF system sends an e-mail notification of the filing to the parties and counsel of record who are registered with the Court's CM/ECF system.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 29, 2015, at Riverside, California.

/s/ Mona Amini

MONA AMINI, ESQ.

PROOF OF SERVICE

Case No.: 3:14-CV-02577-MMA-NLS