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

12 TANYA MACK; SUZANNE JONES;
13 CAITLIN GOODWIN, MINA NICOLLE
14 ULASZEK BENJAMIN; TERRI DORAN;
and EMMA HEINICHEN on behalf of
themselves and all others similarly situated,

15 Plaintiffs

16 v.

17 LLR, INC. and LULAROE, LLC,

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

ASSIGNED FOR ALL PURPOSES TO
HON. JESUS G. BERNAL

Consolidated With:

- 2:17-cv-07252-JBG(AFMx)
- 2:17-cv-07259-JGB(Ex)
- 2:17-cv-07308-JGB(AFMx)
- 2:17-cv-07310-JGB(Ex)

CLASS ACTION

**FIRST AMENDED CONSOLIDATED
CLASS ACTION COMPLAINT**

JURY TRIAL DEMANDED

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

6 **I. NATURE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 from the BBB.

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

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

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

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

23 18. Plaintiffs bring this suit based on Defendants' practices of putting defective
24 products that are not fit for their ordinary purpose of use into the stream of commerce and
25 for failing to disclose material facts that were within their exclusive knowledge, namely,
26 that the Products were defective, of poor quality, and not fit for their ordinary purpose of
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1 use.¹ Plaintiffs allege claims on behalf of themselves and all others similarly situated for
2 unfair and unlawful violations of the Unfair Competition Law, Cal. Bus. & Prof. Code
3 §§ 17200, *et seq.*, the Consumers Legal Remedies Act, Cal. Bus. & Prof. Code §§ 1750,
4 *et seq.*, the California False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*,
5 the Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code §§ 17.50, *et seq.*, the
6 Oregon Unlawful Trade Practices Act, O.R.S. §§ 646.605, *et seq.*, breach of the implied
7 warranty of merchantability, and unjust enrichment.

8 **II. THE PARTIES**

9 **A. Individual and Representative Plaintiffs**

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

11 20. Plaintiff Jones purchased leggings made by Defendants between
12 approximately October 2016 and February 2017 from various Fashion Consultants.
13 Specifically, before her purchases, Plaintiff Jones saw images of the leggings during
14 Facebook “pop-up” sales by Fashion Consultants. The images showed women wearing
15 Defendants’ leggings in various settings—there was nothing in the public representations
16 to suggest the leggings would arrive with or immediately develop tears or holes. The
17 Fashion Consultants were authorized by Defendants to upload these pictures and/or live
18 video of Defendants’ Products on Facebook for the purpose of selling them to Customers,
19 such as Plaintiff Jones. Moreover, Defendants authorized the Fashion Consultants to
20 represent that the Products were made by LuLaRoe. Before purchasing Products from
21 Defendants, Plaintiff Jones relied on the images of the Products she saw on Facebook, the
22 fact that they were by LuLaRoe, and the fact that they appeared to be new and in good
23 condition allowed her to reasonably believe they were suitable for ordinary use—the
24 images gave her no reason to believe the Products were in fact defective and would
25 develop holes and rips shortly after using them. Additionally, based on the images and
26 Defendants’ representations regarding sizing, Plaintiff Jones had no reason to believe that
27

28 _____
¹ Plaintiffs do not allege claims for affirmative misrepresentations.

1 the actual sizing of the Products varied from pair to pair, rendering some Products
2 completely unfit for ordinary use. Plaintiff Jones saw no disclosures that the Products
3 were defective, of poor quality, or not fit for their ordinary purpose of use.

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

8 22. Plaintiff Jones would like to purchase additional leggings in the future,
9 however, she will not know whether they are defective or not because she purchases them
10 online and cannot see them before she pays for them. Plaintiff Jones would not have
11 purchased the leggings, or would have paid less for them, had Defendants disclosed that
12 they were defective, of poor quality, or not fit for their ordinary purpose of use.

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

14 24. Plaintiff Goodwin purchased leggings made by Defendants on or about
15 January 28, 2017, from a Fashion Consultant. Specifically, before her purchase, Plaintiff
16 Goodwin saw images of the leggings during Facebook “pop-up” sales by Fashion
17 Consultants. The Fashion Consultants were authorized by Defendants to upload pictures
18 and/or live video of Defendants’ Products on Facebook for the purpose of selling them to
19 Customers, such as Plaintiff Goodwin. Moreover, Defendants authorized the Fashion
20 Consultants to represent that the Products were by LuLaRoe. Plaintiff Goodwin relied on
21 the images of the Products she saw on Facebook, the fact that they were by LuLaRoe, and
22 the fact that they appeared to be new and in good condition allowed her to reasonably
23 believe they were suitable for ordinary use—the images gave her no reason to believe the
24 Products were in fact defective and would arrive with and/or develop holes and rips
25 shortly after using them. Additionally, based on the images and Defendants’
26 representations regarding sizing, Plaintiff Goodwin had no reason to believe that the
27 actual sizing of the Products varied from pair to pair, rendering some Products completely
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1 unfit for ordinary use. Plaintiff Goodwin saw no disclosures that the Products were
2 defective, of poor quality, or not fit for their ordinary purpose of use.

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

10 26. Plaintiff Goodwin would like to purchase additional leggings in the future,
11 however, she will not know whether they are defective or not because she purchases them
12 online and cannot see them before she pays for them. Plaintiff Goodwin would not have
13 purchased the leggings, or would have paid less for them, had Defendants disclosed that
14 they were defective, of poor quality, or not fit for their ordinary purpose of use.

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

16 28. Plaintiff Mack purchased Defendants' leggings between May 2016 and
17 March 2017 from a Fashion Consultant. Specifically, before her purchase, Plaintiff Mack
18 saw images of the leggings during Facebook "pop-up" sales by Fashion Consultants. The
19 Fashion Consultants were authorized by Defendants to upload pictures and/or live video
20 of Defendants' Products on Facebook for the purpose of selling them to Customers, such
21 as Plaintiff Mack. Moreover, Defendants authorized the Fashion Consultants to represent
22 that the Products were by LuLaRoe. Plaintiff Mack relied on the images of the Products
23 she saw on Facebook, the fact that they were by LuLaRoe, and the fact that they appeared
24 to be new and in good condition allowed her to reasonably believe they were suitable for
25 ordinary use—the images gave her no reason to believe the Products were in fact
26 defective and would arrive with and/or develop holes and rips shortly after using them.
27 Additionally, based on the images and Defendants' representations regarding sizing,
28 Plaintiff Mack had no reason to believe that the actual sizing of the Products varied from

1 pair to pair, rendering some Products completely unfit for ordinary use. Plaintiff Mack
2 saw no disclosures that the Products were defective, of poor quality, or not fit for their
3 ordinary purpose of use.

4 29. Plaintiff Mack purchased approximately 18 pairs of Defendants' leggings,
5 and of those, 15 pairs either had holes upon receipt of them or developed holes within the
6 first use.

7 30. Plaintiff Mack would like to purchase additional leggings in the future,
8 however, she will not know whether they are defective or not because she purchases them
9 online and cannot see them before she pays for them. Plaintiff Mack would not have
10 purchased the leggings, or would have paid less for them, had Defendants disclosed that
11 they were defective, of poor quality, or not fit for their ordinary purpose of use.

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

14 32. Plaintiff Benjamin purchased Defendants' leggings between August 2016
15 and February 2017 from various Fashion Consultants. Specifically, before her purchases,
16 Plaintiff Benjamin saw images of the leggings during Facebook "pop-up" sales by
17 Fashion Consultants. The Fashion Consultants were authorized by Defendants to upload
18 pictures and/or live video of Defendants' Products on Facebook for the purpose of selling
19 them to Customers, such as Plaintiff Benjamin. Moreover, Defendants authorized the
20 Fashion Consultants to represent that the Products were by LuLaRoe. Plaintiff Benjamin
21 relied on the images of the Products she saw on Facebook, the fact that they were by
22 LuLaRoe, and the fact that they appeared to be new and in good condition allowed her to
23 reasonably believe they were suitable for ordinary use—the images gave her no reason to
24 believe the Products were in fact defective and would develop holes and rips shortly after
25 using them. Additionally, based on the images and Defendants' representations regarding
26 sizing, Plaintiff Benjamin had no reason to believe that the actual sizing of the Products
27 varied from pair to pair, rendering some Products completely unfit for ordinary use.
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1 Plaintiff Benjamin saw no disclosures that the Products were defective, of poor quality, or
2 not fit for their ordinary purpose of use.

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

8 34. Plaintiff Benjamin would like to purchase additional leggings in the future,
9 however, she will not know whether they are defective or not because she purchases them
10 online and cannot see them before she pays for them. Plaintiff Benjamin would not have
11 purchased the leggings, or would have paid less for them, had Defendants disclosed that
12 they were defective, of poor quality, or not fit for their ordinary purpose of use.

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

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

1 saw no disclosures that the Products were defective, of poor quality, or not fit for their
2 ordinary purpose of use.

3 37. Plaintiff Doran purchased Defendants’ leggings which ripped or developed
4 holes within the first or second use. Plaintiff Doran was denied a refund.

5 38. Plaintiff Doran would like to purchase additional leggings in the future,
6 however, she will not know whether they are defective or not because she purchases them
7 online and cannot see them before she pays for them. Plaintiff Doran would not have
8 purchased the leggings, or would have paid less for them, had Defendants disclosed that
9 they were defective, of poor quality, or not fit for their ordinary purpose of use.

10 39. Plaintiff Emma Heinichen is a resident and citizen of San Francisco,
11 California.

12 40. Plaintiff Heinichen purchased leggings made by Defendants in 2017 from a
13 Fashion Consultant. Specifically, before her purchase, Plaintiff Heinichen saw images of
14 the leggings during Facebook “pop-up” sales by Fashion Consultants. The Fashion
15 Consultants were authorized by Defendants to upload pictures and/or live video of
16 Defendants’ Products on Facebook for the purpose of selling them to Customers, such as
17 Plaintiff Heinichen. The Fashion Consultant who sold Plaintiff Heinichen the leggings
18 had a Facebook page dedicated only to selling LuLaRoe. The Fashion Consultant would
19 post photos multiple times per day and tag Plaintiff Heinichen in posts that would say
20 “like and share this photo and comment your favorite type of fruit to enter the drawing for
21 a free pair of leggings.” Moreover, Defendants authorized the Fashion Consultants to
22 represent that the Products were by LuLaRoe. Plaintiff Heinichen relied on the images of
23 the Products she saw on Facebook, the fact that they were by LuLaRoe, and the fact that
24 they appeared to be new and in good condition allowed her to reasonably believe they
25 were suitable for ordinary use—the images gave her no reason to believe the Products
26 were in fact defective and would arrive with and/or develop holes and rips shortly after
27 using them. Additionally, based on the images and Defendants’ representations regarding
28 sizing, Plaintiff Heinichen had no reason to believe that the actual sizing of the Products

1 varied from pair to pair, rendering some Products completely unfit for ordinary use.
2 Plaintiff Heinichen saw no disclosures that the Products were defective, of poor quality, or
3 not fit for their ordinary purpose of use.

4 41. Plaintiff Heinichen purchased Defendants' leggings which ripped or
5 developed holes within the first or second use. Plaintiff Heinichen was unable to receive
6 a refund for all of the defective leggings she purchased. Plaintiff Heinichen would not
7 have purchased the leggings, or would have paid less for them, had Defendants disclosed
8 that they were defective, of poor quality, or not fit for their ordinary purpose of use.

9 42. Defendants, through their Fashion Consultants and website,
10 www.lularoe.com, marketed and sold LuLaRoe branded leggings. Leggings by their own
11 definition provide covering of the legs. Since Defendants' leggings were defective in that
12 they arrived with and/or immediately developed holes and tears among other things, they
13 did not provide covering. Hence, Defendants' business practices were fraudulent and/or
14 misleading because Defendants did not disclose that the Products or leggings were
15 defective, of poor quality, or not fit for their ordinary purpose of use.

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

23 **B. Defendants**

24 44. LuLaRoe, LLC is a direct sales and multi-level marketing company with its
25 headquarters in Corona, California.

26 45. LLR, Inc. is a multilevel-marketing company headquartered in Corona,
27 California.

28

1 46. LuLaRoe, LLC and LLR, Inc. are collectively referred to herein as
2 “Defendants” unless otherwise stated.

3 **III. JURISDICTION AND VENUE**

4 47. This Court has original jurisdiction of this action under the Class Action
5 Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has original
6 jurisdiction because the aggregate claims of the members of the putative Class exceed
7 \$5 million, exclusive of costs, and at least one of the members of the proposed Class is a
8 citizen of a different state than Defendants.

9 48. The Central District of California has personal jurisdiction over Defendants
10 because they conduct substantial business in this District and it is in this District where
11 Defendants have employed, and continue to employ, the advertising, marketing,
12 manufacturing, and sales activities detailed herein.

13 49. Venue is proper in this District pursuant to 28 U.S.C. § 1391, because
14 Defendants conduct operations, including sales and advertising, and thus transact
15 substantial business within this District. Specifically, Defendants sell and ship goods to
16 Fashion Consultants who reside within this District and authorize these Fashion
17 Consultants to advertise and sell the Products within this District.

18 **IV. CALIFORNIA LAW APPLIES TO THE CLAIMS IN THIS CASE**

19 50. Application of California law is appropriate in this case.

20 51. Defendants maintain their headquarters in Corona, California, and their legal
21 departments and marketing departments, which were involved in the decision to advertise
22 and sell the Products, are also likely located in California.

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

25 53. In addition, Patrick Winget, Defendants’ chief merchandise officer and chief
26 designer (“CMO”), along with approximately twenty-one other employees, some of which
27 inspect the Products, work at and maintain an office in Carson, California.
28

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

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

9 **V. FACTUAL ALLEGATIONS**

10 **A. Defendants' Business Model and Rapid Success**

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

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

19 58. Fashion Consultants are authorized and encouraged by Defendants to sell the
20 Products to their family and friends at parties, at home or online known as "pop-ups."
21 Defendants also authorize Fashion Consultants to advertise that the Products are by
22 LuLaRoe, and authorize them to use Defendants' images of the Products to share with
23 Customers.

24 59. It has been reported that Defendants have over approximately 80,000 Fashion
25 Consultants. Reports indicate that the company "on boards" approximately 150 to 200
26 new retail sellers every day, with the goal of getting 300 new Fashion Consultants per
27 day.
28

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

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

15 62. In order to become a Fashion Consultant, one can visit Defendants’ website
16 at www.lularoe.com and click on the tab, “Join the Movement.” The website boasts:
17 “Becoming a LuLaRoe Fashion Consultant can provide you opportunity to have the
18 means, the time, and the flexibility to pursue your passions and to more fully enjoy the
19 company of those you love.”² In reality, however, many of the Fashion Consultants are
20 ultimately caught in crosshairs between Defendants and the friends and family who they
21 sold defective Products to.

22 63. Critics of Defendants believe that the high cost to become a Fashion
23 Consultant is simply to convince the potential retail sellers that it is a real business that
24 will provide a real return on investment. Turning a profit, however, is difficult.
25 “[Defendants] estimate[] the average commission that reps earn is a paltry \$85 per year,
26 according to Tracy Coenen, a forensic accountant and critic of the MLM industry, citing a

27 _____
28 ² Join the Movement, <http://www.lularoe.com/join-the-movement-page> (last visited
September 14, 2018).

1 2015 income disclosure statement from LuLaRoe. In a January post on her blog, Coenen
2 described LuLaRoe as a ‘grand scheme made to look like a real business.’”³

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

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

12 **B. Defendants’ Defective Products**

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

16 67. With respect to their Products, Defendants have stated: “Our leggings are
17 ultra-stretchy and super soft. They’re as close to your own skin as you can get with all the
18 perks of, ahem, not being naked. You can sport them at your favorite Pilates class or
19 throw on some cute booties and wear them out for a girls night!”⁴

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

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24
25
26 ³ LuLaRoe’s business is booming, but some sellers are fuming, [http://www.wtsp.com/
27 money/consumer/lularoes-business-is-booming-but-some-sellers-are-fuming/420039
28 896?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+wtsp%2F
opstories+\(WTSP.com+10+News+Top+Stories](http://www.wtsp.com/money/consumer/lularoes-business-is-booming-but-some-sellers-are-fuming/420039896?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+wtsp%2Ftopstories+(WTSP.com+10+News+Top+Stories) (last visited September 14, 2018).

⁴ Adult Leggings, <http://www.lularoe.com/adult-leggings> (last visited March 14, 2017).

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

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

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

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

- The quality has become extremely poor. The leggings developed holes within minutes of wearing them. (Complaint submitted by Blakely P. on 3/7/2017.)
- Multiple items purchased have had holes, literally fallen apart in my hands, uneven lengths (leggings, one leg 4 inches longer than the other) and poor customer service. (Complaint submitted by Shannon G. on 3/4/2017.)
- LuLaRoe is telling all staff and consultants to write positive reviews here – this info came directly from a high level “coach”. Be WARY of this slimy company. (Complaint submitted by Deanne S. 3/4/2017.)
- The leggings are garbage. I wore a pair from Vietnam for 4 hours and the whole seat of the pants developed tiny holes. (Complaint submitted by Lynz on 3/4/2017.)
- I purchased two pairs of leggings brand new from two separate consultants. Both got holes within the first few hours of wearing them. Lularoe won't return them, so I'm just out \$60. Stay far away! (Complaint submitted by Anon on 3/4/2017.)
- This company's products are horrible. I purchase[d] a pair of leggings and they ripped the first day I ever wore them. I tried to exchange them and was not refunded or given another pattern. (Complaint submitted by Katie on 3/3/2017.)
- I ordered my first pair of LulaRoe Leggings, my first purchase from them in general, in December. After my first time wearing them, [I] found numerous pin holes in the butt area. I contacted the consultant I bought them from, she had me return them to her to exchange them. However, I had to pay for the shipping to both return the item and receive the new pair! So, now I've paid nearly \$10 extra, and I'm afraid this pair will rip as well. (Complaint submitted by Nicole H. on 3/2/2017.)

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

9 73. Additionally, Defendants' spokespersons have publicly responded to online
10 articles exposing Defendants for their defective Products. Defendants' responses can be
11 traced back to at least early January of 2017.⁵

12 74. Moreover, there is a Facebook group specifically dedicated to Customers
13 who bought Defendants' defective Products called, LuLaRoe Defective/Ripped/Torn
14 Leggings And Clothes. As of September 14, 2018, there are approximately
15 59,000 members.

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

20 **D. Defendants Had Exclusive Knowledge That the Products Were**
21 **Defective**

22 76. Defendants have exclusive knowledge prior to sale that their leggings are
23 defective, i.e., not according to the represented sizing or that they have holes or will
24 develop holes during normal use. Defendants know the specifications of the clothing they
25 order from their manufacturers, and the types of material being used. Defendants also
26

27 ⁵ See This clothing company is facing claims that its 'pants rip like wet toilet paper',
28 <http://www.businessinsider.com/lularoe-customers-complain-popular-leggings-are-tearing-2017-2> (last visited September 14, 2018).

1 visit the manufacturing factories and monitor the manufacturing process. In fact,
2 Defendants admit that they “weaken the fibers” during the manufacturing process.

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

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

11 79. Despite having exclusive knowledge regarding the defective nature of the
12 Products, Defendants concealed these material facts from Customers by failing to make
13 disclosures on their website and by failing to authorize their Fashion Consultants to make
14 disclosures about the defective nature of the Products to Customers. Plaintiffs and
15 Customers are not made aware that the Products are defective, of poor quality, or not fit
16 for their ordinary purpose of use until after their purchase and receipt of them.

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

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

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

27 82. While Fashion Consultants are supposed to contact Defendants to return the
28 defective Product(s) and receive a credit, they have reported that when placing a call to

1 Defendants in order to return damaged goods, they are placed on hold for an hour, and
2 then disconnected. Fashion Consultants also report that emails sent to Defendants
3 regarding the defective Products go unanswered. It is therefore unsurprising that
4 Defendants have earned themselves an “F” rating on the BBB.

5 83. Based on Defendants’ unfair policies and tactics, Fashion Consultants will
6 not provide refunds and in the few cases where they will offer an exchange, it will not be
7 for the same item that a Customer purchased. This is because one of Defendants’
8 gimmicks is that they only make a limited number of patterns, roughly anywhere from
9 2,000-2,500 of a particular print per item. As a result, Defendants have been able to
10 create a high demand for a particular pattern, which are called “Unicorns.” In other
11 words, a highly sought after pattern is a “Unicorn” and allows Fashion Consultants to
12 charge significantly more. Customers who received damaged “Unicorn[s]” never
13 received refunds, though and, if in the rare circumstance was allowed by a Fashion
14 Consultant to make an exchange, could not and did not receive the same item due to the
15 limited numbers of patterns that Defendants offer.

16 84. Additionally, to the extent a Fashion Consultant allows an exchange, a
17 Customer is responsible for paying for the cost of shipping the defective Product to the
18 Fashion Consultant, and for the Fashion Consultant’s cost of shipping the replacement
19 item to the Customer.

20 85. Moreover, many Fashion Consultants report that they will only exchange
21 unworn and unwashed clothing with tags attached that were originally purchased from
22 them within a limited number of days. This excludes thousands of Customers who wore
23 the Product once, sometimes for as little as a few minutes, at which point, the Product
24 became ripped, torn, or developed a hole. Customers who purchased Products during a
25 party hosted by multiple Fashion Consultants may not know the Fashion Consultant from
26 whom they purchased the Products from, and hence, will be unable to exchange the
27 Product(s).

28

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

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

7 87. After the filing of Plaintiffs' original Class Action Complaint on March 23,
8 2017, and Plaintiffs' compliance with the Consumers Legal Remedies Act, Cal. Civ. Code
9 § 1782(a) ("CLRA"), Defendants instituted their "Happiness Policy," "LuLaRoe Limited
10 Warranty," and "Make Good Program" (collectively the "Exchange Policies") as an
11 attempt to salvage some of their reputation in Customers' eyes.

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

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

19 **The Happiness Policy**

20 90. In short, the Happiness Policy states that Customers may return the clothing
21 they are unhappy with to the Fashion Consultant they purchased it from within 30 days to
22 receive "full refund, credit or exchange[]", or within the first 90 days to receive credit or
23 exchange. First, Defendants have placed an asterisk next to the word, "exchange" to
24 disclose that due to the limited nature of the prints, the same Products may not be
25 available. Thus, even if an exchange is processed, it is highly unlikely that the particular
26 design in the Customer's size will be available, as Customers have repeatedly complained
27 about. The replacement leggings may also cost less than the amount paid for the original
28

1 Product. Customers choose specific designs and thus a similar “replacement” is
2 inadequate.

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

14 **The LuLaRoe Limited Warranty**

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

24 **The Make Good Program**

25 93. The Make Good Program is supposed to cover Customers who do not qualify
26 for the Happiness Policy or the LuLaRoe Limited Warranty. The Make Good Program is
27 available for Customers who bought Defendants’ clothing between January 1, 2016 and
28 April 24, 2017, and who submit a claim no later than July 31, 2017. Defendants never,

1 however, provided notice directly to Customers about the Make Good Program.

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

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

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

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

24 **CLASS ACTION ALLEGATIONS**

25 98. Plaintiffs bring this action on behalf of themselves pursuant to Rule 23(a),
26 (b)(2), (b)(3), and/or (c)(4) of the Federal Rules of Civil Procedure and on behalf of the
27 following proposed Classes initially defined as follows:
28

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

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

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

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

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

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

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

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

23 102. Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3). There are numerous
24 questions of law and fact common to the Class, which predominate over any questions
25 affecting only individual members of the Class. Among the questions of law and fact
26 common to the Class are:

27 (a) Whether Defendants concealed material facts concerning the quality of their
28 Products;

- 1 (b) Whether Defendants were in possession of exclusive facts regarding the
2 quality of their Products;
- 3 (c) Whether Defendants authorized Fashion Consultants to disclose the quality
4 issues with the Products;
- 5 (d) Whether Defendants failed to employ quality control measures to avoid
6 shipping defective Products;
- 7 (e) Whether Defendants engaged in unfair or unlawful business practices under
8 California law;
- 9 (f) Whether Defendants violated the California Consumers Legal Remedies
10 Act;
- 11 (g) Whether Defendants violated the Texas Deceptive Trade Practices Act;
- 12 (h) Whether Defendants violated the Oregon Unlawful Trade Practices Act;
- 13 (i) Whether Defendants breached the implied warranty of merchantability;
- 14 (j) Whether Defendants were unjustly enriched;
- 15 (k) Whether Class members are entitled to damages and/or restitution, and in
16 what amounts; and
- 17 (l) Whether Defendants should be enjoined from continuing the practices
18 alleged herein.

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

24 104. Adequacy. Fed. R. Civ. P. 23(a)(4). Plaintiffs will fairly and adequately
25 assert and protect the interests of the Class, and retained counsel experienced in
26 prosecuting class actions. Plaintiffs are adequate representatives and will fairly and
27 adequately protect the interests of the Class.

28 105. Superiority of Class Action. Fed. R. Civ. P. 23(b)(3). A class action is
superior to all other available methods for the fair and efficient adjudication of this
lawsuit, because individual litigation of the claims of all members of the Class is
economically unfeasible and procedurally impracticable. While the aggregate damages

1 sustained by the Class are in the millions of dollars, the individual damages incurred by
2 each member of the Class resulting from Defendants’ wrongful conduct are too small to
3 warrant the expense of individual lawsuits. The likelihood of individual Class members
4 prosecuting their own separate claims is remote, and, even if every member of the Class
5 could afford individual litigation, the court system would be unduly burdened by
6 individual litigation of such cases.

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

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

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

19 **COUNT I**

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

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

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

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

6 112. Plaintiffs' unfair business practices claim is not based on affirmative
7 misrepresentations, but solely on Defendants' practice of putting defective products into
8 the stream of commerce that were not fit for their ordinary purpose of use.

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

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

21 115. Pursuant to Business and Professions Code § 17204, Plaintiffs and the Class
22 are entitled to an order of this Court enjoining such conduct on the part of Defendants,
23 restitution, and any orders and judgments that may be necessary.
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COUNT II

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

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

6 117. A business act or practice is “unlawful” under the UCL if it violates any
7 other law or regulation.

8 118. Defendants’ unlawful business practices and acts, as described herein,
9 breached and continue to breach the implied warranty of merchantability, Cal. Com. Code
10 § 2314(2)(c); the Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5),
11 § 1770(a)(7), and § 1770(a)(9); California’s False Advertising Law, Cal. Bus. & Prof.
12 Code §§ 17500, *et seq.*; the Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code
13 § 17.50(1) and § 17.50(3); and the Oregon Unlawful Trade Practices Act, ORS
14 § 646.608(1)(t), as alleged herein, by manufacturing and selling Products that are
15 unsuitable for normal use and the ordinary purposes for which the Products are used.

16 119. Plaintiffs reserve the right to identify other violations of law as the facts
17 develop.

18 120. As a result of Defendants’ unlawful business practices, Plaintiffs have
19 suffered injury in fact and a loss of money or property in terms of purchasing the Products
20 that are unsuitable for their ordinary use as coverage for legs. Plaintiffs would not have
21 purchased the Products, or at the price they paid, had they known the truth about the
22 Products.

23 121. Pursuant to Business and Professions Code § 17204, Plaintiffs and the Class
24 are entitled to an order of this Court enjoining such conduct on the part of Defendants,
25 restitution, and any orders and judgments that may be necessary.
26
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COUNT III

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

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

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

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

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

126. Defendants violated the California Consumers Legal Remedies Act (the “CLRA”), by failing to disclose material facts that were within their exclusive knowledge, namely, that the Products were defective, of poor quality, and were not fit for their ordinary purposes of use, or for covering the legs. Defendants did not disclose these material facts on the Products, on their website, or through their Fashion Consultants. The undisclosed and concealed material facts went to the functionality of the Products.

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

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

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

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

1 128. As described herein, by purchasing Defendants’ Products, Plaintiffs and the
2 Class suffered damage by the wrongful acts and practices of Defendants described herein,
3 namely, the failure to disclose material facts, in violation of California Civil Code § 1781.
4 Absent these acts or practices, Plaintiffs and Class members would not have purchased
5 Defendants’ Products.

6 129. Pursuant to California Civil Code § 1780(a)(2), Plaintiffs, on behalf of
7 themselves and all Class members, request that this Court enjoin Defendants from
8 continuing to engage in the unlawful and deceptive methods, acts or practices alleged
9 herein. Unless Defendants are permanently enjoined from continuing to engage in such
10 violations of the CLRA, consumers will continue to be harmed by Defendants’ acts or
11 practices in the same way as those acts or practices have harmed Plaintiffs and Class
12 members.

13 130. Plaintiffs provided notice to Defendants of the alleged violations of the
14 CLRA and the UCL in compliance with Cal. Civ. Code § 1782(a). Plaintiffs now seek
15 damages on behalf of themselves and all others similarly situated and all other appropriate
16 relief.

17 **COUNT IV**

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

21 131. Plaintiff Benjamin incorporates by reference and realleges all paragraphs
22 previously alleged herein.

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

25 133. Defendants failed to disclose material facts that were within their exclusive
26 knowledge, namely, the poor quality of the Products, and that they were not fit for their
27 ordinary purposes of use, or for covering the legs. Defendants did not disclose these
28 material facts on the Products, on their website, or through their Fashion Consultants. The
undisclosed and concealed material facts went to the functionality of the Products.

1 134. By failing to disclose material facts that were within their exclusive
2 knowledge, namely, the poor quality of the Products and that they were not fit for their
3 ordinary purposes of use, Defendants violated the following provisions of the DTPA:

4 (a) Tex. Bus. & Com. Code § 17.50(1): the use or employment of a false,
5 misleading, or deceptive acts or practices as defined in § 17.46(b)(5), § 17.46(b)(7),
6 § 17.46(b)(9), § 17.46(b)(20), and § 17.46(b)(24) of the DTPA that were
7 detrimentally relied upon by Plaintiff Benjamin and each member of the Texas
8 Subclass; and

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

11 135. Defendants' violations of the DTPA were committed knowingly and
12 intentionally as those terms are defined in § 17.45(9) and § 17.45(13) of the DTPA.

13 136. Defendants' conduct was a producing and/or proximate cause of actual
14 damages to Plaintiff Benjamin and each member of the Texas Subclass.

15 137. Plaintiff Benjamin and Texas Subclass members demand judgment against
16 Defendants for compensatory damages in an amount to be determined at trial (Plaintiff
17 Benjamin and Texas Subclass members will seek treble damages for the intentional and
18 knowing conduct of Defendants), together with reasonable attorneys' fees and costs.

19 **COUNT V**

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

23 138. Plaintiff Doran incorporates by reference and realleges all paragraphs
previously alleged herein.

24 139. Plaintiff Doran, each member of the Oregon Subclass, and Defendants are
25 "person[s]" as defined in the Oregon Unlawful Trade Practices Act ("UPTA"). ORS
26 § 646.605(4).

27 140. The UPTA prohibits a business practice that fails to disclose any known
28 material defect or material nonconformity. ORS § 646.608(1).

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

3 142. Defendants’ Products are “good[s]” within the meaning of ORS
4 § 646.605(6).

5 143. Defendants violated the UPTA by failing to disclose and omitting from their
6 labeling, advertising, and marketing materials material information regarding the
7 defective nature of the Products. Specifically, Defendants failed to disclose material facts
8 that were within their exclusive knowledge, namely, that the Products were defective, of
9 poor quality, or not fit for their ordinary purpose of use.

10 144. Defendants’ unlawful and reckless practices, including the concealment,
11 omission, and suppression of material facts regarding the Products, were directed at
12 consumers and had a tendency or capacity to mislead and create a false impression in
13 consumers in violation of the UPTA.

14 145. Defendants knew or should have known of the falsity of their omissions at all
15 material times.

16 146. Based on Defendants’ fraudulent omissions regarding the suitability of the
17 Products, Plaintiff Doran and the Oregon Subclass were deceived into purchasing
18 defective Products that were not fit for the ordinary purpose of use.

19 147. As a direct and proximate result of Defendants’ violations of the UPTA,
20 Plaintiff Doran and the members of the Oregon Subclass have suffered injury and incurred
21 actual damage, including the cost of purchasing the defective Products.

22 148. Plaintiff Doran and the Oregon Subclass are entitled to recover the greater of
23 actual damages or \$200, pursuant to ORS § 646.638(1). Plaintiff Doran and the Oregon
24 Subclass are also entitled to punitive damages because Defendants engaged in reckless
25 conduct amounting to a particularly aggravated, deliberate disregard of the rights of
26 others. Plaintiff Doran and the Oregon Subclass are further entitled to injunctive relief to
27 enjoin Defendants from continuing to engage in the unlawful and deceptive methods, acts
28

1 or practices alleged herein, and further relief as the Court may be deemed necessary or
2 appropriate.

3 **COUNT VI**

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

6 149. Plaintiffs incorporate by reference and reallege all paragraphs previously
7 alleged herein.

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

12 151. "Defendants" are "manufacturers" and "retail sellers," and the Products
13 Defendants sold are "consumer goods."

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

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

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

1 155. The exception to any applicable vertical privity requirement applies here.
2 Plaintiffs and Class members are intended third party beneficiaries of Defendants’
3 arrangements with Fashion Consultants. Defendants enter into contracts with the Fashion
4 Consultants with the intention that the Fashion Consultants become Defendants’
5 authorized and exclusive sellers of Defendants’ Products to Plaintiffs and Class members.
6 The cost to become a Fashion Consultant is significant; therefore individuals do not
7 become Fashion Consultants to obtain a discount.

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

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

2 ***Unjust Enrichment***
3 ***On Behalf of Plaintiffs, the National Class, and the State Subclasses***

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

6 159. This claim is based on Defendants' practice of selling, through Fashion
7 Consultants, Products that are defective, of poor quality, and not fit for their ordinary
8 purpose of use.

9 160. Plaintiffs and Class members conferred benefits on Defendants by
10 purchasing the Products.

11 161. Plaintiffs would not have purchased the leggings, or would have paid less for
12 them, had Defendants disclosed that they were defective, of poor quality, or not fit for
13 their ordinary purpose of use,

14 162. Defendants have been unjustly enriched in retaining the revenues derived
15 from Plaintiffs' and Class members' purchases of the defective Products that were not fit
16 for the ordinary purposes for which they are used. Retention of those monies under these
17 circumstances is unjust and inequitable because Defendants sold, through Fashion
18 Consultants, Products that were not fit for the purpose for which the Products are used.

19 163. Because Defendants' retention of the benefits conferred on them by Plaintiffs
20 and Class members is unjust and inequitable, Defendants must pay restitution to Plaintiffs
21 and Class members for their unjust enrichment, as ordered by the Court.

22 **COUNT VIII**

23 ***Breach of Implied Warranty in Tort***
24 ***On Behalf of Plaintiff Goodwin and the Ohio Subclass***

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

27 165. Defendants' leggings are defective.
28

1 166. The fabric of the leggings is so “soft” that it tears from ordinary use, and in
2 some instances, before it is even removed from the package.

3 167. Plaintiff Goodwin bought Defendants’ leggings.

4 168. Plaintiff Goodwin is not in privity with Defendants.

5 169. Plaintiff Goodwin’s LuLaRoe leggings had holes in them when she removed
6 them from the package.

7 170. Plaintiff requested a refund, but was told by the Fashion Consultant that
8 Defendants did not offer refunds for defective Products.

9 171. The defect in the LuLaRoe leggings was present when the leggings left the
10 hands of Defendants.

11 172. This defect was the direct and proximate cause of injury to Plaintiff Goodwin
12 and the Ohio Subclass.

13 173. As a direct and proximate result of Defendants’ breach of warranty, Plaintiff
14 Goodwin and the other Ohio Subclass members were caused to suffer loss attributable to
15 the purchase of the defective Product.

16 **COUNT IX**

17 ***Breach of Express Warranty under the UCC***
18 ***On Behalf of Plaintiff Goodwin and the Ohio Subclass***

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

21 175. This cause of action is plead in the alternative to the Tenth Claim for Relief
22 (Breach of Implied Warranty in Tort).

23 176. Defendants made specific descriptions of the goods as well as affirmations of
24 fact and promises in the form of marketing representations about the leggings, as stated
25 above.

26 177. The affirmations of fact made by Defendants were made to induce Plaintiff
27 Goodwin and Ohio Subclass members to purchase the Products.

28

1 178. Plaintiff Goodwin and Ohio Subclass members relied on Defendants’
2 affirmations in purchasing the Products.

3 179. All conditions precedent to Defendants’ liability under the warranty have
4 been performed by Plaintiff Goodwin and Ohio Subclass members or have been waived.

5 180. Defendants knew there were problems with the leggings. Once again,
6 Defendants’ head of production has stated that “the leggings may get holes because we
7 weaken the fibers to make them buttery soft and that we have done all we can to fix them.
8 The best solution would be to no longer use the brushing technique. But then they’re not
9 buttery soft.”

10 181. Defendants breached the terms of the express warranty because the Products
11 did not conform to the description provided by Defendants, to wit: Defendants’
12 acknowledged “special brushing” manufacturing and processing technique used to make
13 the leggings “buttery soft” actually weakens the fibers in these leggings, causing them to
14 rip, tear, and form holes nearly immediately.

15 182. As a result of Defendants’ breach of warranty, Plaintiff Goodwin and Ohio
16 Subclass members have been damaged in the amount to be determined according to proof
17 at the time of trial.

18 **COUNT X**

19 ***Fraud***
20 ***On Behalf of Plaintiff Goodwin and the Ohio Subclass***

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

23 184. Defendants represented through their website and Fashion Consultants that
24 they sold LuLaRoe branded leggings and that their LuLaRoe leggings could be worn in
25 the presence of others.

26 185. For example, at www.lularoe.com/adult-legging/, Defendant stated with
27 respect to LuLaRoe leggings: “They’re as close to your own skin as you can get with all
28 of the perks of, ahem, not being naked. You can sport them at your favorite Pilates class

1 or throw on some cute booties, and wear them out for a girls night! Your LuLaRoe
2 leggings will be a great statement piece wherever you are!”

3 186. With the intent of misleading the Ohio Subclass members and no present
4 intent to perform in providing Products that were fit for their ordinary purpose of use,
5 Defendants omitted material facts that were within their knowledge regarding the
6 defective nature of their Products, namely, that they were defective, of poor quality, or not
7 fit for their ordinary purpose of use.

8 187. The facts concealed or not disclosed by Defendants with respect to the
9 defective Products at issue are material in that Plaintiff Goodwin and Ohio Subclass
10 members would have considered these facts to be a substantial factor in deciding whether
11 to purchase Defendants’ Products, and the price to pay for Defendants’ Products.
12 Defendants concealed these material facts from Fashion Consultants and Customers,
13 and/or did not authorize Fashion Consultants to disclose material facts to Customers
14 regarding the defective nature of the Products. Defendants also failed to disclose the true
15 quality of the Products on the Products themselves or on their website.

16 188. Defendants failed to disclose material facts that were within their exclusive
17 knowledge, namely that the Products were defective, of poor quality, or not fit for their
18 ordinary purpose of use. Defendants did not disclose these material facts on the Products,
19 on their website, or through their Fashion Consultants. The undisclosed and concealed
20 material facts went to the functionality of the Products.

21 189. If Plaintiff Goodwin and Ohio Subclass members had known that a defect in
22 the leggings would cause them to tear, making them inappropriate for wearing around
23 others, they would not have purchased the Products at all, or at the prices they paid.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs and the Class demand judgment against Defendants as
26 follows:
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1 A. An order certifying that this action may be maintained as a class action, that
2 Plaintiffs be appointed Class Representatives, and Plaintiffs' counsel be appointed Class
3 Counsel;

4 B. A judgment awarding Plaintiffs and all members of the Class damages as
5 alleged above incurred by Plaintiffs and Class members as a result of Defendants' breach
6 of the implied warranty of merchantability and violations of the statutes described herein;

7 C. A judgment awarding Plaintiffs and all members of the Class damages,
8 restitution, and all other appropriate relief as a result of Defendants' practices;

9 D. An order enjoining Defendants from continuing to sell Products that are
10 defective and not fit for their ordinary purpose of use and from continuing to violate the
11 laws as described herein;

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

14 F. Such other and further relief as may be deemed necessary or appropriate.

15 **JURY DEMAND**

16 Plaintiffs hereby demand a trial by jury.

17
18 Dated: September 14, 2018

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