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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

JASON CARMODY, individually and
on behalf of those similarly situated;

PLAINTIFF,

v.

BIG 5 SPORTING GOODS Corp;
ROMEO & JULIETTE, Inc., doing
business as BEARPAW; and DOES 1
through 20, inclusive

DEFENDANTS.

Case No. 37-2016-00002469-CU-BT-
CTL

**SECOND AMENDED
COMPLAINT**

CLASS ACTION

- (1) Business & Professions Code §
17200 et seq. (UCL)
- (2) Business & Professions Code §
17500 et seq. (FAL)
- (3) Civil Code § 1770 et seq.
(CLRA)

Demand For Jury

Plaintiff Jason Carmody, individually and on behalf of all others similarly
situated (hereinafter "Plaintiff"), hereby complains and alleges on information and
belief as follows:

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1 INTRODUCTION:

2 1. This is a class action brought on behalf of California consumers. Defendants
3 have misrepresented to consumers, and continue to misrepresent to consumers,
4 that the Bearpaw Lassen WP hiking boot is waterproof. It is not. By their
5 actions, Defendants have misled consumers to purchase their products based
6 on the false pretenses that the boots will perform a function they do not
7 perform. Consumers would not have otherwise purchased the Defendants'
8 product absent the false representations, which enabled Defendants to reap
9 windfall profits from the sale of cheaper goods than those that deliver the
10 promised function. Defendants' conduct violates Section 17500 of the
11 California Business & Professions Code, in addition to other state and federal
12 laws.

13
14 PARTIES:

15 2. Plaintiff is an individual who at all times herein relevant resided, and continues
16 to reside in, the State of California, County of San Diego. Plaintiff seeks relief
17 in his individual capacity and on behalf of others similarly situated. Plaintiff
18 seeks to represent a class consisting of all other consumers who purchased a
19 pair of Defendants' Bearpaw shoes that are labeled as waterproof and are not
20 in fact waterproof in California, whether in a store or online, within four years
21 prior to the date when this class action was commenced.

22 3. Defendant BIG 5 SPORTING GOODS Corp. is a California corporation which
23 sells brand-name and private-label equipment, apparel, and footwear for
24 outdoor activities such as camping, hunting, fishing, tennis, golf, and
25 snowboarding.

26 4. Defendant ROMEO & JULIETTE, Inc., doing business as BEARPAW, is a
27 California corporation that imports and distributes footwear under the brand
28 BearPaw.

- 1 5. Defendants conducted the illegal scheme described herein in San Diego
2 County, California, and throughout the state of California.
- 3 6. Plaintiff is unaware of the true names, identities or capacities, whether
4 individual, corporate, associate or otherwise, of those Defendants sued herein
5 as Does 1 through 20, inclusive. Plaintiff therefore sues said Defendants by
6 such fictitious names. Plaintiff will seek leave to amend this Complaint to set
7 forth the true names and capacities of these Defendants when they are
8 ascertained.
- 9 7. Plaintiff is informed and believes and on that basis alleges that Defendants
10 sued herein as Does 1 through 20, inclusive, and each of them, are in some way
11 responsible for the acts and events complained of herein, and proximately
12 caused the injuries and damages to Plaintiff which are described in this
13 Complaint. Plaintiff will seek leave of court to amend this Complaint to more
14 specifically set forth these Defendants' wrongful conduct when it has been
15 ascertained.
- 16 8. Plaintiff is informed and believes and on that basis alleges that at all times
17 herein mentioned, Defendants, and each of them, were the parent companies,
18 subsidiary companies, agents and/or employees of the Defendants and, in
19 doing the things herein complained of, were acting within the course and scope
20 of such parent/subsidiary relationship, agency and/or employment, and that
21 each and every defendant when acting as a principal, was negligent in the
22 selection and hiring of each and every other defendant as an agent, employee
23 and/or joint venturer. All actions of each defendant as alleged herein were
24 ratified and approved by every other defendant or their officers or managing
25 agents.

26 Factual Allegations:
27
28

- 1 9. Plaintiff Jason Carmody purchased a pair of Bearpaw Lassen WP hiking boots
- 2 from the Big 5 Sporting Goods Store located at 12630 Poway Road in Poway,
- 3 California on or about September 18, 2015.
- 4 10. Defendants market the Bearpaw Lassen WP hiking boot as waterproof.
- 5 11. On information and belief, Plaintiff believes the 'WP' in the name Bearpaw
- 6 Lassen WP stands for 'Waterproof.'
- 7 12. The boots Mr. Carmody purchased displayed a cloth tag reading
- 8 "WATERPROOF" sewn on near the heel.
- 9 13. On information and belief, Plaintiff believes a cloth tag reading
- 10 "WATERPROOF" is sewn on to every pair of Bearpaw Lassen WP hiking
- 11 boots.
- 12 14. On information and belief, Plaintiff believes the tag described in the preceding
- 13 paragraph is place on the boot by Defendant ROMEO & JULIETTE, Inc..
- 14 15. The boots Mr. Carmody purchased displayed a paper tag reading "WATER
- 15 PROOF BIG 5 Sporting Goods" affixed with a plastic string.
- 16 16. On information and belief, Plaintiff believes a paper tag reading "WATER
- 17 PROOF BIG 5 Sporting Goods" is attached to every pair of Bearpaw Lassen
- 18 WP hiking boots.
- 19 17. On information and belief, Plaintiff believes the tag described in the preceding
- 20 paragraph is place on the boot by Defendant BIG 5 SPORTING GOODS
- 21 Corp..
- 22 18. On its website, Defendant BIG 5 SPORTING GOODS Corp. claims "The
- 23 Lassen WP is a lightweight, waterproof hiking boot that's sure to keep your
- 24 feet dry when crossing a creek or unexpected patch of water."
- 25 19. The cloth tag reading "WATERPROOF" was a motivating factor for the
- 26 plaintiff in purchasing the boots.
- 27 20. Mr. Carmody relied upon the cloth tag reading "WATERPROOF" in
- 28 purchasing the boots.

- 1 21. The paper tag "WATER PROOF BIG 5 Sporting Goods" was a motivating
2 factor for the plaintiff in purchasing the boots.
- 3 22. Mr. Carmody relied upon the cloth tag reading "WATERPROOF" in
4 purchasing the boots in purchasing the boots.
- 5 23. Mr. Carmody purchased the boots to use on an extended hiking trip he had
6 planned a few weeks later.
- 7 24. Mr. Carmody wore the boots prior to his planned trip. It was during his
8 everyday use that Mr. Carmody noticed his feet becoming wet through the
9 shoe.
- 10 25. Mr. Carmody first noticed the Bearpaw Lassen WP hiking boots were not
11 waterproof while walking on city streets after a drizzly day.
- 12 26. Mr. Carmody's feet were not fully submerged in water when he first noticed
13 the Bearpaw Lassen WP hiking boots were not waterproof.
- 14 27. Based on the representations made by Defendants, Mr. Carmody believed the
15 Bearpaw Lassen WP hiking boots would "keep [his] feet dry when crossing a
16 creek."
- 17 28. After realizing water was getting through the boot, Mr. Carmody tested the
18 boot at home in his bathtub. Upon being submerged, Mr. Carmody's foot was
19 completely soaked through.
- 20 29. Mr. Carmody was not able to take his Bearpaw Lassen WP hiking boots on his
21 extended hiking trip.
- 22 30. Contrary to Defendants' advertising, the Bearpaw Lassen WP hiking boot is not
23 waterproof.
- 24 31. Defendants have fraudulently concealed the material facts at issue herein and
25 have affirmatively misrepresented the Bearpaw Lassen WP hiking boot as
26 waterproof.
- 27 32. Defendants represented to California consumers, including Mr. Carmody, that
28 the Bearpaw Lassen WP hiking boot is waterproof.

- 1 33. That representation was false.
- 2 34. There are well-recognized industry-wide standards governing the degree of
3 water resistance necessary to label footwear water-resistant and/or waterproof.
- 4 35. Wearing only water-resistant boots in situations that require waterproof
5 protection could result in injury.
- 6 36. Hydrostatic head testing is the industry yardstick testing standard that measures
7 the degree of water resistance in footwear.
- 8 37. In hydrostatic head testing, water-resistant boots generally resist approximately
9 200 millimeters of water pressure; waterproof boots resist at least 1,000
10 millimeters of water pressure.
- 11 38. The SATRA TM77 test is a commonly conducted, industry-recognized test to
12 determine and verify degree of water resistance in footwear.
- 13 39. As longtime sellers and makers of footwear, Defendants are aware of the
14 industry-wide standards and common footwear industry testing procedures.
- 15 40. Defendant Big 5 Sporting Goods Corp. did not conduct hydrostatic head
16 testing to determine the veracity of the waterproof claim prior to placing
17 waterproof labeling on the Bearpaw Lassen WP hiking boot.
- 18 41. Defendant Big 5 Sporting Goods Corp. did not conduct a SATRA TM77 test to
19 determine the veracity of the waterproof claim prior to placing waterproof
20 labeling on the Bearpaw Lassen WP hiking boot.
- 21 42. Defendant Big 5 Sporting Goods Corp. did not conduct any tests to determine
22 the veracity of the waterproof claim prior to placing waterproof labeling on the
23 Bearpaw Lassen WP hiking boot.
- 24 43. Prior to placing waterproof labeling on it, Defendant Big 5 Sporting Goods
25 Corp. knew or should have known the Bearpaw Lassen WP hiking boot does
26 not resist at least 1,000 millimeters of water pressure.
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- 1 44. Defendant Big 5 Sporting Goods Corp. did not conduct hydrostatic head
2 testing to determine the veracity of the waterproof claim prior to offering the
3 Bearpaw Lassen WP hiking boot for sale to California consumers.
- 4 45. Defendant Big 5 Sporting Goods Corp. did not conduct a SATRA TM77 test to
5 determine the veracity of the waterproof claim prior to offering the Bearpaw
6 Lassen WP hiking boot for sale to California consumers.
- 7 46. Defendant Big 5 Sporting Goods Corp. did not conduct any tests to determine
8 the veracity of the waterproof claim prior to offering the Bearpaw Lassen WP
9 hiking boot for sale to California consumers.
- 10 47. Prior to offering it for sale to California consumers, Defendant Big 5 Sporting
11 Goods Corp. knew or should have known the Bearpaw Lassen WP hiking boot
12 does not resist at least 1,000 millimeters of water pressure.
- 13 48. Defendant Romeo & Juliette Inc. did not conduct hydrostatic head testing to
14 determine the veracity of the waterproof claim prior to placing waterproof
15 labeling on the Bearpaw Lassen WP hiking boot.
- 16 49. Defendant Romeo & Juliette Inc. did not conduct a SATRA TM77 test to
17 determine the veracity of the waterproof claim prior to placing waterproof
18 labeling on the Bearpaw Lassen WP hiking boot.
- 19 50. Defendant Romeo & Juliette Inc. did not conduct any tests to determine the
20 veracity of the waterproof claim prior to placing waterproof labeling on the
21 Bearpaw Lassen WP hiking boot.
- 22 51. Prior to placing waterproof labeling on it, Defendant Romeo & Juliette Inc.
23 knew or should have known the Bearpaw Lassen WP hiking boot does not
24 resist at least 1,000 millimeters of water pressure.
- 25 52. Defendant Romeo & Juliette Inc. did not conduct hydrostatic head testing to
26 determine the veracity of the waterproof claim prior to offering the Bearpaw
27 Lassen WP hiking boot for sale to California consumers.
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1 53. Defendant Romeo & Juliette Inc. did not conduct a SATRA TM77 test to
2 determine the veracity of the waterproof claim prior to offering the Bearpaw
3 Lassen WP hiking boot for sale to California consumers.

4 54. Defendant Romeo & Juliette Inc. did not conduct any tests to determine the
5 veracity of the waterproof claim prior to offering the Bearpaw Lassen WP
6 hiking boot for sale to California consumers.

7 55. Prior to offering it for sale to California consumers, Defendant Romeo &
8 Juliette Inc. knew or should have known the Bearpaw Lassen WP hiking boot
9 does not resist at least 1,000 millimeters of water pressure.

10 56. Defendants did not independently and/or adequately review or investigate any
11 third party claims as to the degree of water resistance of the Bearpaw Lassen
12 WP hiking boot prior to placing waterproof labeling on the boots and/or
13 offering the boots for sale to California consumers, if any such claims were
14 made.

15 57. On information and belief, Plaintiff believes Defendants knew the Bearpaw
16 boots were not waterproof at the time they represented they were waterproof.

17 58. On information and belief, Plaintiff believes Defendants made the
18 representation the Bearpaw boots were waterproof recklessly and without
19 regard for its truth.

20 59. Defendants intended for California consumers, including Mr. Carmody, to rely
21 on their representations that the Bearpaw boots were waterproof.

22 60. California consumers, including Mr. Carmody, reasonably relied on
23 Defendants' representation that the Bearpaw boots were waterproof.

24 61. California consumers, including Mr. Carmody, were harmed by paying a
25 premium for a product that did not have the attributes for which they paid.

26 62. It was the reliance on Defendants' misrepresentation was a substantial factor in
27 causing harm to California consumers, including Mr. Carmody.
28

1 63. The disclosure of this information about the true nature of the product was
2 required and necessary in order to make Defendants' representations not
3 misleading.

4 64. Defendants possess superior knowledge of the true facts which were not
5 disclosed, which were affirmatively misrepresented, and which were necessary
6 to discover Defendants' wrongful conduct. Therefore, any applicable statutes
7 of limitation are tolled.

8 65. By misrepresenting the characteristics, features, and benefits of the product as
9 described above, Defendants violated the prohibitions on false and misleading
10 advertising of § 17500 of the California Business and Professions Code.

11 66. By violating provisions of the Business and Professions Code and by acting in
12 the unfair and fraudulent manner described herein, Defendants also violated
13 the California Unfair Competition Law, Business and Professions Code §
14 17200 et seq.

15 67. Defendants also have, for the same reasons, violated the prohibitions against
16 representing that goods have characteristics, uses, and benefits they do not
17 have included in the California Consumers Legal Remedies Act, Civil Code §§
18 1750, 1770 et seq.

19 68. Consequently, by this Complaint and on behalf of the California purchasers of
20 Defendants' Bearpaw Lassen WP hiking boot, Plaintiff seeks, inter alia, an
21 injunction to halt Defendants' unlawful, unfair, and fraudulent conduct,
22 restitution to compensate consumers for the monetary losses, and disgorgement
23 of all of Defendants' wrongfully earned profits and other gains from the
24 wrongful conduct alleged herein.

25
26 **JURISDICTION AND VENUE**

27 69. This court has subject matter jurisdiction over this action pursuant to Business
28 and Professions Code §§ 17203, 17204, 17535 and Civil Code § 1780. This

1 Court has personal jurisdiction over the parties because Defendants conducted
2 and continue to conduct business in the State of California, County of San
3 Diego, and Defendants misrepresented the benefits, characteristics, and
4 features of products sold in the State of California, County of San Diego.
5 Defendants have sufficient minimum contacts with California and intentionally
6 availed themselves of the laws of the State of California by advertising and
7 conducting transactions therein. Defendants are incorporated in the state of
8 California.

9 70. Venue is proper because a substantial portion of the misconduct alleged herein
10 occurred in the County of San Diego, and the Plaintiff specifically purchased
11 Defendants' products in San Diego County.

12 71. Venue is proper in this Court pursuant to California Code of Civil Procedure
13 §§ 395 and 395.5, Business and Professions Code §§ 17203, 17204 and 17535,
14 and Civil Code § 1780(c) because Defendants do business in this County,
15 Plaintiff resides in this County and Plaintiff's transaction took place in this
16 County.

17 72. Pursuant to section 1782 of the California Civil Code, the plaintiff provided
18 notice to ROMEO & JULIETTE, Inc., doing business as BEARPAW and BIG
19 5 SPORTING GOODS Corp. of the particular alleged violations of Section
20 1770 and a demand that the defendants correct, repair, replace or otherwise
21 rectify the violations, in writing, sent by certified mail, return receipt
22 requested. That mail was received and signed for. There has been no
23 appropriate correction, repair, replacement or other remedy given and/or
24 agreed to be given. The instant Complaint is being filed at least 30 days after
25 the receipt of that notice.

26 73. Federal subject matter jurisdiction over this action does not exist. Plaintiff is
27 informed and believes that the parties in this action do not meet the diversity
28 requirements of the Class Action Fairness Act, Pub. L. 109-2, 119 Stat. 4

1 (2005), 28 U.S.C. § 1711 et seq., which requires Plaintiff to bring this action in
2 California State Court. The amount of damage that the plaintiff or any
3 particular member of the class may have suffered is far below \$75,000.00.
4 Plaintiff and each individual class member disclaim any individual recovery
5 greater than \$75,000.00 (including damages, exemplary damages, and
6 awardable attorneys’ fees and costs), and specifically limit their total claims to
7 \$75,000.00 or less per plaintiff and individual class member. Damages,
8 exemplary damages, attorneys’ fees and costs may not be aggregated to meet
9 the minimum jurisdictional amount.

10 74. Plaintiff and the members of the class assert no federal question. Therefore,
11 their state law claims mandate that this action be heard in a California state
12 court.

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16 **CLASS ALLEGATIONS**

17 75. Plaintiff realleges and incorporates by reference every allegation contained in
18 all paragraphs above, as if set forth at this point.

19 76. This action may be properly maintained as a class action pursuant to Cal. Civ.
20 Proc. Code § 382 and Cal. Civ. Code §§ 1752, 1780, and 1781.

21 77. Plaintiff brings this Complaint on behalf of all persons who purchased
22 Bearpaw Lassen boots from Defendants in the State of California that were
23 advertised and/or packaged as “Waterproof” but are not in fact waterproof.
24 Specifically excluded from the class are any entities in which any Defendant
25 has a controlling interest; any of Defendants’ parent companies, subsidiaries,
26 or affiliates; and any of Defendants’ officers and directors, members of their
27 immediate families, their heirs, and their successors and assigns.

28

1 78. Plaintiff is informed and believes that the class consists of thousands of
2 persons who purchased Defendants' Bearpaw boots in the State of California.
3 Defendants sell thousands of pairs of boots each year in California. The
4 members of the class are so numerous that separate joinder of each member is
5 impractical. Appropriate discovery can determine the exact number of class
6 members. The disposition of class members' claims in a class action format
7 will provide substantial benefits to the parties and the Court.

8 79. The claims of the representative Plaintiff raise questions of law and fact that
9 are common to questions of law and fact raised by the claims of each member
10 of the class.

11 80. The claims of the representative Plaintiff are typical of the claims of each
12 member of the class. Plaintiff has the same interest in this matter as all other
13 members of the class.

14 81. The prosecution of separate claims by each individual member of the class
15 would create a risk of inconsistent or varying adjudications.

16 82. The questions of law or fact common to the claims of the representative
17 Plaintiff and the claims of each member of the class predominate over any
18 questions of law or fact affecting individual members of the class. Class
19 representation is superior to other available methods for fair and efficient
20 adjudication of this controversy.

21 83. Questions of law and/or fact that are common to the claim include but are not
22 limited to:

23 (A) Whether Defendants are offering and selling products in
24 California and are misrepresenting the characteristics, uses, benefits, and
25 features of these products.

26 (B) Whether Defendants engaged in unfair, deceptive, and/or unlawful
27 practices that violated the Unfair Competition Law § 17200 et seq.

28

1 (C) Whether Defendants engaged in untrue and misleading advertising
2 in violation of the Business and Professions Code § 17500 et seq.

3 (D) Whether Defendants engaged in unlawful conduct in violation of
4 the Consumers Legal Remedies Act, Cal. Civ. Code § 1750 et seq.

5 84. A class certified for injunctive relief is appropriate because Defendants have
6 acted or refused to act on grounds generally applicable to the class, thereby
7 making appropriate final injunctive relief with respect to the class as a whole.

8 85. Conjunctively or alternatively, a class certified for damages is also appropriate.
9 Common questions of law and fact predominate over individual questions. For
10 instance, all injuries sustained by any member of the class arise out of the
11 singular conduct of Defendants in uniformly providing misleading information
12 regarding products and in offering and selling their products through unfair and
13 illegal conduct and false and misleading advertising and misrepresentations.

14 86. A class action is superior to other available methods for the fair and efficient
15 adjudication of this controversy. Even if any class member could afford
16 individual litigation, it would be unduly burdensome to the courts in which the
17 individual litigation would proceed. The class action device is preferable to
18 individual litigation because it provides the benefits of unitary adjudication,
19 economies of scale, and comprehensive adjudication by a single court.

20 87. Plaintiff's claims are typical of the claims of the class in that the claims of all
21 members of the class result from Defendants' actions in advertising or labeling
22 products as "Waterproof" which were, in fact, not waterproof.

23 88. There is no conflict between the representative Plaintiff and other members of
24 the class with respect to this action, or with respect to the claims for relief
25 herein set forth.

26 89. The named Plaintiff is the representative party for the class and is able to and
27 will fairly and adequately protect the interests of the class.
28

1 FIRST CAUSE OF ACTION: VIOLATION OF THE UNFAIR COMPETITION
2 LAW (On behalf of plaintiff and against all defendants) (Business and Professions
3 Code § 17200, et seq.)

4 90. Plaintiff repleads and incorporates by reference, as if fully set forth again
5 herein, the allegations contained in all prior paragraphs of this complaint.

6 91. The Unfair Competition Law (“UCL”) defines unfair competition as meaning
7 and including any “unlawful, unfair or fraudulent business act or practice and
8 unfair, deceptive, untrue or misleading advertising....” (Bus. & Prof. Code §
9 17200). Unlawful business acts are those which are in violation of federal,
10 state, county, or municipal statutes or codes, as well as federal and state
11 regulations.

12 92. The acts, practices, misrepresentations of omissions of Defendants violated
13 Business & Professions Code § 17500, which makes it unlawful for any
14 person, with intent to dispose of personal property, to make or disseminate in
15 any advertising device any statement concerning that personal property which
16 is untrue or misleading, and which is known, or which by the exercise of
17 reasonable care should be known, to be untrue or misleading. As alleged
18 above, during the relevant time period, a number of Defendants’ boots have
19 been unlawfully labeled "Waterproof" or the equivalent, because the products
20 are not waterproof.

21 93. The acts, practices, misrepresentations and omissions of Defendants were
22 intended to result and did result in the sale of boots to the consuming public
23 and violated and continue to violate the Consumers Legal Remedies Act,
24 California Civil Code § 1750, et seq., by violating at least Civil Code §
25 1770(a)(5). Defendants have misrepresented that a characteristic and benefit of
26 the Bearpaw Lassen WP hiking boot is that it is waterproof. Defendants have
27 advertised and labeled their boots as waterproof with the intent to sell them as
28 falsely advertised.

- 1 94. Defendants' actions constitute unfair business acts and practices by
2 misrepresenting features, characteristics, and benefits of their product, which is
3 likely to mislead and has misled the general public. Such conduct offends
4 public policy, is unethical and causes substantial injury to consumers.
- 5 95. Defendants maintained an unfair business advantage over their competitors
6 who would otherwise be forced to sell waterproof products, which are more
7 costly to produce, at much lower profit margins, if not at a loss, in order to
8 compete with Defendants in the marketplace.
- 9 96. Defendants' actions constitute fraudulent business acts and/or practices by
10 misrepresenting that a characteristic and benefit of the Bearpaw Lassen WP
11 hiking boot is that it is waterproof when in fact it is not. Such business acts and
12 practices are fraudulent under the UCL.
- 13 97. Plaintiff, as a representative of a class of persons with common or general
14 interest, is entitled to bring an action to enjoin Defendants' wrongful practices
15 and to obtain restitution for the monies paid to Defendants by reason of the
16 wrongful practices. Plaintiff may bring such action on behalf of the class of
17 people with common or general interest, pursuant to Business & Professions
18 Code § 17200, et seq.
- 19 98. As a direct and proximate result of Defendants' unfair competition in violation
20 of the UCL, Plaintiff individually lost money, and the members of the public
21 who have purchased Defendants' products have lost money in sums to be
22 proven at the time of trial. Plaintiff requests this Court order, as it is
23 empowered to order, restitution to all persons from whom Defendants unfairly
24 and/or unlawfully took money.
- 25 99. Defendants' unfair competition in violation of the Act presents a continuing
26 threat to members of the general public in that. Defendants are continuing, and
27 will continue, unless enjoined, to commit unlawful, unfair, and/or fraudulent
28 business acts or practices. Plaintiff requests that this Court order, as it is

1 empowered to order, a preliminary and permanent injunction against such acts
2 and practices.

3 100. Plaintiff seeks recovery of all attorneys' fees and litigation expenses
4 pursuant to California Code of Civil Procedure § 1021.5 and/or California
5 Civil Code § 1780(d). Alternatively, Plaintiff seeks recovery of all attorneys'
6 fees and all litigation expenses pursuant to the substantial benefit doctrine;
7 Plaintiff also seeks recovery of all attorneys' fees and other litigation expenses
8 to be paid under the common fund doctrine or other authority requiring
9 Defendants to pay Plaintiffs' attorneys' fees and litigation expenses.

10

11 SECOND CAUSE OF ACTION: VIOLATION OF THE FALSE ADVERTISING
12 LAW (On behalf of plaintiff and against all defendants) (Bus & Prof. § 17500 et
13 seq.)

14 101. Plaintiff repleads and incorporates by reference, as if fully set forth again
15 herein, the allegations contained in all prior paragraphs of this complaint.

16 102. Defendants knew or should have known that the packaging, as alleged
17 above, is untrue, deceptive, misleading or materially incomplete, as part of a
18 plan or scheme with the intent, design or purpose not to sell such products as
19 represented. In order not to mislead consumers, Defendants should have
20 adequately disclosed the fact that the boots were not waterproof.

21 103. Defendants have committed acts of untrue and misleading advertising, as
22 defined by Business & Professions Code § 17500, by engaging in the acts and
23 practices described above with the intent to induce members of the public to
24 purchase their boots. At the time that Defendants made the above-referenced
25 misrepresentations in their advertisements and/or packaging labels, they knew
26 or should have known that the advertising was untrue and misleading.

27 104. Defendants' untrue and misleading advertising, as described above, presents
28 a continuing threat to members of the general public in that Defendants are

1 continuing, and will continue unless enjoined, to commit such violations of
2 Business & Professions Code § 17500. This court is empowered to, and
3 should, grant preliminary and permanent injunctive relief against such acts and
4 practices.

5 105. As a direct and proximate result of the acts and practices alleged above,
6 members of the general public who purchased the Bearpaw Lassen WP hiking
7 boot, from Defendants lost and continue to lose monies in a sum currently
8 unknown but subject to proof at the time of trial. This Court is empowered to,
9 and should, order restitution to all persons from whom Defendants unfairly
10 and/or unlawfully took money in order to accomplish complete justice.

11
12 THIRD CAUSE OF ACTION: VIOLATION OF THE CONSUMER LEGAL
13 REMEDIES ACT (On behalf of plaintiff and against all defendants) (Civ. Code §
14 1750 et seq.)

15 106. Plaintiff repleads and incorporates by reference, as if fully set forth again
16 herein, the allegations contained in all prior paragraphs of this complaint.

17 107. The Consumer Legal Remedies Act defines certain unfair methods of
18 competition and unfair or deceptive acts or practices which, if undertaken by a
19 person in a transaction intended to result, or which results in the sale or lease of
20 goods or services to any consumer are unlawful. (Civil Code § 1770). These
21 acts include, but are not limited to, advertising goods or services with intent
22 not to sell them as advertised, and making false or misleading statements of
23 fact concerning reasons for, existence of, or amounts of price reductions. The
24 Consumer Legal Remedies Act provides for injunctive relief.

25 108. The acts, practices, misrepresentations and omissions of Defendants were
26 intended to result and did result in the sale of boots to the consuming public
27 and violated and continue to violate the Consumers Legal Remedies Act,
28 California Civil Code § 1770(a)(5).

1 109. Defendants have represented that their Bearpaw Lassen WP hiking boot has
2 the characteristic and benefit of being waterproof, which they do not have.

3 110. Defendants advertised and labeled their Bearpaw Lassen WP hiking boot as
4 waterproof with the intent not to sell them as so advertised and labeled.

5 111. Defendants' unfair methods of competition and unfair or deceptive acts or
6 practices, as outlined in the Consumer Legal Remedies Act, present a
7 continuing threat to members of the general public in that Defendants are
8 continuing, and will continue unless enjoined, to commit such violations of
9 Civil Code § 1750. This court is empowered to, and should, grant preliminary
10 and permanent injunctive relief against such acts and practices.

11 112. Plaintiff also seeks damages, restitution, punitive damages, and any other
12 monetary relief that the Court deems proper under this cause of action.

13 113. Plaintiff seeks recovery of all attorneys' fees and litigation expenses
14 pursuant to California Code of Civil Procedure § 1021.5 and/or California
15 'Civil Code § 1780(d).

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23 **PRAYER:**

24 Wherefore, Plaintiff, on behalf of himself and all other purchasers of the
25 Defendants' pressure boots at issue herein, prays that this court award damages
26 and provide relief as follows:

- 27 1. Certify this action as a class action;

28

- 1 2. Order declaratory relief finding that Defendants have engaged in unfair,
2 unlawful, or fraudulent business acts or practices in violation of California
3 Business & Professions Code § 17200, et. seq.
- 4 3. Order that Defendants be required to pay restitution, through disgorgement or
5 otherwise, to all persons from whom Defendants unlawfully, unfairly, or
6 fraudulently took money in the form of a full refund of all sales of products
7 during the time of the false advertising took place, including accrued interest;
- 8 4. Damages, restitution, statutory penalties and punitive damages under the
9 Consumer Legal Remedies Act.
- 10 5. Issue a temporary restraining order and a preliminary and permanent injunction
11 enjoining Defendants and their officers, directors, agents, distributors, servants,
12 employees, attorneys; and all others in active concert or participation with
13 Defendants, or any of them jointly and severally, during the pendency of this
14 action and permanently thereafter from falsely representing the origin of the
15 products sold by Defendants;
- 16 6. Award pre-judgment and post-judgment interest at the maximum rate allowed
17 by law and costs of suit;
- 18 7. Award Plaintiff attorneys' fees and all litigation expenses pursuant to the
19 California Code of Civil Procedure § 1021.5 or California Civil Code §
20 1780(d). Alternatively, for all attorneys' fees and all litigation expenses to be
21 awarded pursuant to the substantial benefit doctrine or other authority requiring
22 Defendants to pay Plaintiffs attorneys' fees and litigation expenses.
23 Alternatively, for attorneys' fees and other litigation expenses to be paid under
24 the common fund doctrine or any other provision of law; and
- 25 8. Order such other and further relief as the Court may deem just and proper.

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27 Dated: July 29, 2016

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By:  _____

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Mark Potter, Esq.
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury for all claims for which a jury is permitted.

Dated: July 29, 2016

Law Offices of Mark Potter

By:  _____

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Mark Potter, Esq.
Attorneys for Plaintiff