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 County of San Diego  
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 11 **FOR THE COUNTY OF SAN DIEGO**  
 12 **UNLIMITED JURISDICTION**

13 GORDON HENRY LOVETTE,  
 14 individually, and on behalf of all others  
 15 similarly situated,

16 Plaintiff,

17 vs.

18 ZALE DELAWARE, INC., and DOES 1 –  
 19 10, inclusive,

20 Defendant.

Case No. 37-2018-00055549-CU-NP-CTL

**CLASS ACTION COMPLAINT**

- (1) Violation of the California False Advertising Act (Cal. Business & Professions Code §§ 17500 *et seq.*); and
- (2) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*)
- (3) Violation of the Consumer Legal Remedies Act.

**Jury Trial Demanded**

1 Plaintiff GORDON HENRY LOVETTE ("Plaintiff"), individually and on behalf of all  
2 other members of the public similarly situated, allege as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this class action Complaint against Defendant ZALE  
5 DELAWARE, INC. (hereinafter "Defendant") to stop Defendant's practice of falsely  
6 advertising its jewelry repair service and to obtain redress for a California class of consumers  
7 ("Class Members") who changed position, within the applicable statute of limitations period, as  
8 a result of Defendant's false and misleading advertisements.

9 2. Defendant is a corporation with principal place of business in OH and state of  
10 incorporation in Delaware and is engaged in the sale and distribution of jewelry.

11 3. Defendant represents that its jewelry repair service would repair or replace  
12 jewelry if consumers abided by the terms of the service when this is in fact false. Defendant  
13 misrepresented and falsely advertised to Plaintiff and others similarly situated consumers their  
14 jewelry repair services (hereinafter "Class Products").

15 4. Plaintiff and others similarly situated purchased or attempt to purchase  
16 Defendant's jewelry repair service, and they did so on the basis that Defendant said that of  
17 Plaintiff and other similarly situated continued to bring in their jewelry for a semi-annual  
18 inspection, it would repair or replace any item if the jewelry becomes damaged.

19 5. Defendant's misrepresentations to Plaintiff and others similarly situated caused  
20 them to purchase or attempt Defendant's jewelry service, which Plaintiff and others similarly  
21 situated would not have purchased or attempted to purchase absent these misrepresentations by  
22 Defendant and its employees. In so doing, Defendant has violated California consumer  
23 protection statutes, including the Unfair Competition Law, False Advertising Law, and the  
24 Consumer Legal Remedies Act.

25 **NATURE OF THE CASE & COMMON ALLEGATIONS OF FACT**

26 6. Consumers purchase jewelry repair services advertised to be of a certain nature  
27 and quality, and in the case at bar, they did so under the impression that Defendant would repair  
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1 or replace damaged jewelry if consumers abided by the terms, wherein they had the jewelry  
2 inspected semi-annually by Defendant.

3 7. Consumers rely on the representations and advertisements of jewelry repair  
4 service providers in order to know which repair service to purchase. Details as to the nature and  
5 quality of the jewelry repair service, such as whether Defendant would repair or replace the  
6 jewelry when consumers abide by the terms of the service, in that they have Defendant inspect  
7 the jewelry semi-annually, are important and material to consumers at the time they purchase  
8 jewelry repairs services from a particular vendor, as consumers are sensitive to the nature and  
9 quality of the jewelry repair services they purchase, compared to what they could purchase from  
10 a competing vendor.

11 8. Defendant is engaged in the marketing and selling of jewelry repair services that  
12 do not conduct repairs even if consumers cooperate with the terms of the service agreement,  
13 and the true nature and quality of the jewelry repair services that Defendant sells is neither  
14 disclosed to consumers nor discoverable by the same at the time of purchase.

15 9. When consumers purchase jewelry repair services from jewelry repair vendors,  
16 they reasonably believe that they will receive services that is of the nature and quality that was  
17 advertised and disclosed at the time they agree to purchase said services.

18 10. Defendant profits from the sale of the jewelry repair services. Many consumers  
19 would not have purchased or attempted to purchase the jewelry repair services where Defendant  
20 would not repair their jewelry, even though consumers completed the mandatory bi-annual  
21 inspection, or they would have purchased jewelry repair services from a competitor.

22 11. In Plaintiff's case, Defendant refused to repair Plaintiff's jewelry, even though  
23 Plaintiff complied with the terms of the repair agreement, specifically Plaintiff submitted the  
24 jewelry to Defendant for a semi-annual inspection, than what was originally advertised to  
25 Plaintiff at the time he agreed to purchase jewelry repair services.

26 12. Defendant conceals the fact that its repair services is not going to be of the nature  
27 and quality advertised in order to deceive consumers into purchasing jewelry repair services  
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1 that is different from that which is advertised.

2 13. Defendant does not present consumers with a written copy of the correct terms  
3 of the purchase prior to purchase, in order to conceal the deception that is at issue in this case.

4 14. Defendant makes written and oral representations to consumers which contradict  
5 the actual nature and quality of the services that will be delivered to the consumer after the  
6 consumer purchases the services.

7 15. The aforementioned written and oral representations are objectively false, and  
8 constitute false advertising under Cal. Bus. & Prof. Code §§ 17500 *et. seq.* an unlawful, unfair,  
9 or deceptive business practices under Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, and further  
10 constitute a violation of Cal. Civ. Code §§ 1750 *et. seq.*

11 16. Defendant's violations of the law include without limitation the false advertising,  
12 marketing, representations, and sale of the falsely advertised Class Products to consumers in  
13 California.

14 17. On behalf of the class, Plaintiff seeks an injunction requiring Defendant to cease  
15 advertising and selling the Class Products in a manner that is deceptive, to disclose the true  
16 nature and quality of its services in a conspicuous manner at or prior to the point of sale, and an  
17 award of damages to the Class Members, together with costs and reasonable attorneys' fees.

18 **JURISDICTION AND VENUE**

19 18. This class action is brought pursuant to California Code of Civil Procedure § 382.  
20 All claims in this matter arise exclusively under California law. This Court has personal  
21 jurisdiction over Defendant ZALE DELAWARE, INC. because they conduct business and  
22 maintain retail locations to provide their jewelry repair services within this State.

23 19. This matter is properly brought in the Superior Court of the State of California  
24 for the County of San Diego, in that Plaintiff purchased the jewelry repair services from San  
25 Diego County, and Defendant provided the products to Plaintiff in that location.

26 **THE PARTIES**

27 20. Plaintiff GORDON HENRY LOVETTE is a citizen and resident of the State of  
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1 California, County of San Diego.

2 21. Defendant ZALE DELAWARE, INC. is a Delaware corporation and  
3 headquartered in Ohio.

4 22. Plaintiff is informed and believes, and thereon alleges, that each and all of the  
5 acts and omissions alleged herein were performed by, or is attributable to, Defendant and/or its  
6 employees, agents, and/or third parties acting on its behalf, each acting as the agent for the other,  
7 with legal authority to act on the other's behalf. The acts of any and all of Defendant's  
8 employees, agents, and/or third parties acting on its behalf, were in accordance with, and  
9 represent, the official policy of Defendant.

10 23. The above named Defendant, and its subsidiaries and agents, are collectively  
11 referred to as "Defendants." The true names and capacities of the Defendants sued herein as  
12 DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore  
13 sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE  
14 is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to  
15 amend the Complaint to reflect the true names and capacities of the DOE Defendants when such  
16 identities become known.

17 24. Plaintiff is informed and believes, and thereon alleges, that said Defendant is in  
18 some manner intentionally, negligently, or otherwise responsible for the acts, omissions,  
19 occurrences, and transactions of each and all its employees, agents, and/or third parties acting  
20 on its behalf, in proximately causing the damages herein alleged.

21 25. At all relevant times, Defendant ratified each and every act or omission  
22 complained of herein. At all relevant times, Defendant, aided and abetted the acts and omissions  
23 as alleged herein.

24 **PLAINTIFF'S FACTS**

25 26. In or around July of 2008, Plaintiff purchased jewelry repair services in  
26 conjunction with a diamond ring ("Ring"). Defendant represented that they would repair the  
27 Ring, so long as Plaintiff brought the Ring to Defendant for semi-annual inspections.  
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1           27. In reliance on these representations, Plaintiff purchased Defendant's jewelry  
2 repair service along with the purchase of the Ring.

3           28. From on or about July 2008 to the present, Plaintiff abided by the terms of the  
4 repair services, wherein Plaintiff brought the Ring to Defendant for inspection semi-annually.

5           29. In or around February of 2018, the diamonds on Plaintiff's Ring became loose  
6 and were in danger of falling off.

7           30. Plaintiff took the Ring for repairs to Defendant and asserted that Defendant must  
8 repair the Ring under the jewelry repair service he purchased in July 2008.

9           31. Defendant refused to repair the Ring. Defendant stated that it would not repair  
10 the Ring unless the diamond fell off the band. Defendant stated that the jewelry repair service  
11 does not include repairs for stabilizing loose diamonds on their jewelry products.

12           32. As a result of Defendant's refusal to repair the Ring, Plaintiff has experience  
13 economic loss due to the payment of valuable consideration for the jewelry repair service that  
14 he did not receive.

15           33. Had Plaintiff known that Defendant's jewelry repair service would not repair his  
16 Ring, even though he complied with all the requirements under the terms of the repair  
17 agreement, Plaintiff would not have purchased Defendant's jewelry repair service.

18           34. Furthermore, Plaintiff did not discover, nor could he have discovered, the true  
19 nature and quality of the jewelry repair service until after Plaintiff had purchased the jewelry  
20 repair service.

21           35. In fact, Defendant would not repair Plaintiff's Ring, even though he complied  
22 with the terms of the repair service, wherein Plaintiff brought the Ring to Defendant for  
23 inspection semi-annually.

24           36. For the jewelry repair service, Plaintiff paid more than valuable consideration.  
25 Plaintiff relied on the fact that the jewelry repairs services was being advertised as being of a  
26 particular nature and quality, namely that if Plaintiff complied with the terms of the jewelry  
27 repair service, then Defendant would repair his purchased jewelry when needed, at the time of  
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1 his purchase. Plaintiff was never informed, in writing, orally, or in any conspicuous manner,  
2 that he would purchase a jewelry repair service where Defendant would not repair his purchased  
3 jewelry when needed.

4 37. When purchasing Defendant's jewelry repair service, Defendant informed  
5 Plaintiff that he would be guaranteed repair service if he would comply with the regularly  
6 required inspections. Plaintiff relied on Defendant's statements about the nature and quality of  
7 the jewelry repair service in deciding to purchase said services from Defendant over other  
8 competitors. Plaintiff felt assured by Defendant that the jewelry repair service would be as  
9 represented by Defendant, namely that if Plaintiff completed the regular inspections, then  
10 Defendant would repair his jewelry as needed. Plaintiff would not have agreed to purchase  
11 Defendant's jewelry repair service if he had known that Defendant would deliver jewelry repair  
12 services of a nature and quality other than what Defendant represented.

13 38. Defendant never informed Plaintiff that they would not repair his jewelry even  
14 though Plaintiff complied with the semi-annual jewelry inspections, nor did Plaintiff provide  
15 his consent to receive such a service.

16 39. Knowledge of the true nature and quality of Defendant's jewelry repair service  
17 would have impacted Plaintiff's decision to purchase said services from Defendant over other  
18 brands or sellers of jewelry repair services. Plaintiff would have found it important to his  
19 purchase decision to know exactly what he was purchasing, and he believed that he was  
20 purchasing jewelry repair services where if Plaintiff complied with the terms and conditions,  
21 Defendant would repair his jewelry.

22 40. Plaintiff felt ripped off and cheated by Defendant for receiving jewelry repair  
23 services that was different in nature and quality that that which Defendant represented. Plaintiff  
24 believes that Defendant will continue its action of duping consumers into purchasing jewelry  
25 repair services that deviates significantly from Defendant's representations, namely in the form  
26 of telling consumers that if they complied with the terms and conditions of the services,  
27 Defendant would repair their jewelry, when it in fact is not, unless Defendant's practices are  
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1 halted by way of an injunction.

2 41. As a result of Defendant's fraudulent practices, described herein, Plaintiff has  
3 suffered emotional distress, wasted time, loss of money, and anxiety.

4 42. Plaintiff alleges on information and belief that it is Defendant's policy and  
5 practice to misrepresent the true nature and quality of its jewelry repair services. Plaintiff  
6 asserts that this practice constitutes a fraudulent omission of a material fact relating to the nature  
7 and quality of its products that would be important to a reasonable consumer to know at the  
8 time they purchase Defendant's jewelry repair services.

9 43. Plaintiff alleges on information and belief that Defendant's policy and practice  
10 is to materially misrepresent the nature and quality of its jewelry repair service, through said  
11 fraudulent omissions and misrepresentations, to induce consumers to reasonably rely on the said  
12 misrepresentations, in order to induce their purchase of jewelry repair service from Defendant  
13 over law abiding competitors.

14 44. Defendant has a duty to disclose the true nature and quality of its jewelry repair  
15 service, including whether its Defendant will not repair the jewelry even though Plaintiff  
16 complied with regular inspections, to consumers prior to the time they agree to purchase the  
17 jewelry repair service from Defendant. Defendant has a duty to disclose these material features  
18 of their products because such features would be highly important to a reasonable consumer.

19 45. Such sales tactics rely on falsities and have a tendency to mislead and deceive a  
20 reasonable consumer.

21 46. Defendant expressly represented to Plaintiff, through written statements, the true  
22 nature and quality of its products.

23 47. Plaintiff alleges that such representations were part of a common scheme to  
24 mislead consumers and incentivize them to purchase Defendant's jewelry repair service.

25 48. In purchasing the Class Products, Plaintiff relied upon Defendant's  
26 representations.

27 49. Such representations were clearly false because the true nature and quality of the  
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1 jewelry repair service was different than represented.

2 50. Plaintiff would not have purchased the products if he knew that the above-  
3 referenced statements made by Defendant were false.

4 51. Had Defendant properly marketed, advertised, and represented the Class  
5 Products, Plaintiff would not have purchased the products.

6 52. Plaintiff agreed to give his money, attention, and time to Defendant because of  
7 the nature and quality of the jewelry repair service that was advertised. Defendant benefited  
8 from falsely advertising the nature and quality of its jewelry repair service. Defendant benefited  
9 on the loss to Plaintiff and provided nothing of benefit to Plaintiff in exchange.

10 53. Had Defendant properly marketed, advertised, and represented the Class  
11 Products, no reasonable consumer who purchased or attempted to purchase the jewelry repair  
12 service would have believed that Defendant would repair the jewelry after consumer complete  
13 the required inspections.

14 54. Defendant's acts and omissions were intentional, and resulted from Defendant's  
15 desire to mislead consumers into purchasing jewelry repair service that will not repair jewelry,  
16 even though Plaintiff and consumers comply with the required inspections.

#### 17 CLASS ACTION ALLEGATIONS

18 55. Plaintiff brings this action, on behalf of himself and all others similarly situated,  
19 and thus, seeks class certification under California Code of Civil Procedure § 382.

20 56. The class Plaintiff seeks to represent (the "Class") is defined as follows:

21 All consumers, who, between the applicable statute of limitations  
22 and the present, purchased or attempted to purchase Class  
23 Products, and whose Class Products, namely Defendant's jewelry  
24 repair service, would not repair the jewelry even through the  
25 jewelry was inspected semi-annually.

26 57. As used herein, the term "Class Members" shall mean and refer to the members  
27 of the Class described above.

28 58. Excluded from the Class is Defendant, its affiliates, employees, agents, and  
attorneys, and the Court.

1           59. Plaintiff reserves the right to amend the Class, and to add additional subclasses,  
2 if discovery and further investigation reveals such action is warranted.

3           60. Upon information and belief, the proposed class is composed of thousands of  
4 persons. The members of the class are so numerous that joinder of all members would be  
5 unfeasible and impractical.

6           61. No violations alleged in this complaint are contingent on any individualized  
7 interaction of any kind between Class members and Defendant.

8           62. Rather, all claims in this matter arise from the identical, false, affirmative  
9 representations of the services, when in fact, such representations were false.

10           63. There are common questions of law and fact as to the Class Members that  
11 predominate over questions affecting only individual members, including but not limited to:

- 12           (a) Whether Defendant engaged in unlawful, unfair, or deceptive business  
13 practices in selling Class Products to Plaintiff and other Class Members;
- 14           (b) Whether Defendant made misrepresentations with respect to the Class  
15 Products sold to consumers;
- 16           (c) Whether Defendant profited from the sale of the wrongly advertised  
17 jewelry repair service;
- 18           (d) Whether Defendant violated California Bus. & Prof. Code § 17200, *et*  
19 *seq.*, California Bus. & Prof. Code § 17500, *et seq.*, and Cal. Civ. C.  
20 §1750 *et seq.*;
- 21           (e) Whether Plaintiff and Class Members are entitled to equitable and/or  
22 injunctive relief;
- 23           (f) Whether Defendant's unlawful, unfair, and/or deceptive practices harmed  
24 Plaintiff and Class Members; and
- 25           (g) The method of calculation and extent of damages for Plaintiff and Class  
26 Members.

27           64. Plaintiff is a member of the Class he seeks to represent  
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1 statements about the Class Products, namely, Defendant sold a jewelry repair service that was  
2 of a nature and quality different than advertised, and made false representations to Plaintiff and  
3 other putative class members in order to solicit these transactions.

4 75. Defendant knew that its representations and omissions were untrue and  
5 misleading, and deliberately made the aforementioned representations and omissions in order  
6 to deceive reasonable consumers like Plaintiff and other Class Members.

7 76. As a direct and proximate result of Defendant's misleading and false advertising,  
8 Plaintiff and the other Class Members have suffered injury in fact and have lost money or  
9 property, time, and attention. Plaintiff reasonably relied upon Defendant's representations  
10 regarding the Class Products. In reasonable reliance on Defendant's false advertisements,  
11 Plaintiff and other Class Members purchased the Class Products. In turn Plaintiff and other  
12 Class Members ended up with products that were different in ways that put them in danger, and  
13 therefore Plaintiff and other Class Members have suffered injury in fact.

14 77. Plaintiff alleges that these false and misleading representations made by  
15 Defendant constitute a "scheme with the intent not to sell that personal property or those  
16 services, professional or otherwise, so advertised at the price stated therein, or as so advertised."

17 78. Defendant advertised to Plaintiff and other putative class members, through  
18 written representations and omissions made by Defendant and its employees, that the Class  
19 Products would be of a particular nature and quality.

20 79. Thus, Defendant knowingly sold Class Products to Plaintiff and other putative  
21 class members.

22 80. The misleading and false advertising described herein presents a continuing  
23 threat to Plaintiff and the Class Members in that Defendant persists and continues to engage in  
24 these practices, and will not cease doing so unless and until forced to do so by this Court.  
25 Defendant's conduct will continue to cause irreparable injury to consumers unless enjoined or  
26 restrained. Plaintiff is entitled to preliminary and permanent injunctive relief ordering  
27 Defendant to cease its false advertising, as well as disgorgement and restitution to Plaintiff and  
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1 all Class Members Defendant's revenues associated with their false advertising, or such portion  
2 of those revenues as the Court may find equitable.

3 **SECOND CAUSE OF ACTION**

4 **Violation of Unfair Business Practices Act**

5 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

6 81. Plaintiff incorporates by reference each allegation set forth above as fully set  
7 forth herein.

8 82. Actions for relief under the unfair competition law may be based on any business  
9 act or practice that is within the broad definition of the UCL. Such violations of the UCL occur  
10 as a result of unlawful, unfair or fraudulent business acts and practices. A plaintiff is required  
11 to provide evidence of a causal connection between a defendants' business practices and the  
12 alleged harm--that is, evidence that the defendants' conduct caused or was likely to cause  
13 substantial injury. It is insufficient for a plaintiff to show merely that the Defendant's conduct  
14 created a risk of harm. Furthermore, the "act or practice" aspect of the statutory definition of  
15 unfair competition covers any single act of misconduct, as well as ongoing misconduct.

16 **UNFAIR**

17 83. California Business & Professions Code § 17200 prohibits any "unfair . . .  
18 business act or practice." Defendant's acts, omissions, misrepresentations, and practices as  
19 alleged herein also constitute "unfair" business acts and practices within the meaning of the  
20 UCL in that its conduct is substantially injurious to consumers, offends public policy, and is  
21 immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any  
22 alleged benefits attributable to such conduct. There were reasonably available alternatives to  
23 further Defendant's legitimate business interests, other than the conduct described herein.  
24 Plaintiff reserves the right to allege further conduct which constitutes other unfair business acts  
25 or practices. Such conduct is ongoing and continues to this date.

26 84. In order to satisfy the "unfair" prong of the UCL, a consumer must show that the  
27 injury: (1) is substantial; (2) is not outweighed by any countervailing benefits to consumers or  
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1 competition; and (3) is not one that consumers themselves could reasonably have avoided.

2 85. Here, Defendant's conduct has caused and continues to cause substantial injury  
3 to Plaintiff and members of the Class. Plaintiff and members of the Class have suffered injury  
4 in fact due to Defendant's decision to sell them falsely described Class Products. Thus,  
5 Defendant's conduct has caused substantial injury to Plaintiff and the members of the Class.

6 86. Moreover, Defendant's conduct as alleged herein solely benefits Defendant  
7 while providing no benefit of any kind to any consumer. Such deception utilized by Defendant  
8 convinced Plaintiff and members of the Class that the Class Products were a certain nature and  
9 quality in order to induce them to spend money on said Class Products. In fact, knowing that  
10 Class Products were not of this nature and quality, Defendant unfairly profited from their sale.  
11 Thus, the injury suffered by Plaintiff and the members of the Class is not outweighed by any  
12 countervailing benefits to consumers.

13 87. Finally, the injury suffered by Plaintiff and members of the Class is not an injury  
14 that these consumers could reasonably have avoided. After Defendant falsely represented the  
15 Class Products, Plaintiff and class members suffered injury in fact due to Defendant's sale of  
16 Class Products to them. Defendant failed to take reasonable steps to inform Plaintiff and class  
17 members that the Class Products were not advertised as having the nature and quality that they  
18 in fact have. As such, Defendant took advantage of Defendant's position of perceived power in  
19 order to deceive Plaintiff and the Class members to purchase a jewelry repair service where  
20 Defendant would not repair the jewelry even though Plaintiff complied with the required  
21 inspections. Therefore, the injury suffered by Plaintiff and members of the Class is not an injury  
22 which these consumers could reasonably have avoided.

23 88. Thus, Defendant's conduct has violated the "unfair" prong of California Business  
24 & Professions Code § 17200.

25 **FRAUDULENT**

26 89. California Business & Professions Code § 17200 prohibits any "fraudulent ...  
27 business act or practice." In order to prevail under the "fraudulent" prong of the UCL, a  
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1 consumer must allege that the fraudulent business practice was likely to deceive members of  
2 the public.

3 90. The test for “fraud” as contemplated by California Business and Professions  
4 Code § 17200 is whether the public is likely to be deceived. Unlike common law fraud, a §  
5 17200 violation can be established even if no one was actually deceived, relied upon the  
6 fraudulent practice, or sustained any damage.

7 91. Here, not only were Plaintiff and the Class members likely to be deceived, but  
8 these consumers were actually deceived by Defendant. Such deception is evidenced by the fact  
9 that Plaintiff agreed to purchase Class Products under the basic assumption that Defendant  
10 would repair the jewelry if Plaintiff would comply with semi-annual inspections, when in fact  
11 they would not, rather, they refused to repair Plaintiff’s jewelry, even though he complied with  
12 the semi-annual inspections. Plaintiff’s reliance upon Defendant’s deceptive statements is  
13 reasonable due to the unequal bargaining powers of Defendant and Plaintiff. For the same  
14 reason, it is likely that Defendant’s fraudulent business practice would deceive other members  
15 of the public.

16 92. As explained above, Defendant deceived Plaintiff and other Class Members by  
17 representing the Class Products as being a certain nature and quality when in reality they were  
18 a significantly different, and thus falsely represented the Class Products.

19 93. Thus, Defendant’s conduct has violated the “fraudulent” prong of California  
20 Business & Professions Code § 17200.

21 **UNLAWFUL**

22 94. California Business and Professions Code Section 17200, et seq. prohibits “any  
23 unlawful...business act or practice.”

24 95. As explained above, Defendant deceived Plaintiff and other Class Members by  
25 representing the Class Products as being of a nature and quality different from what they actually  
26 were.

27 96. Defendant used false advertising, marketing, and misrepresentations to induce  
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1 Plaintiff and Class Members to purchase the Class Products, in violation of California Business  
2 and Professions Code Section 17500, et seq.. Had Defendant not falsely advertised, marketed,  
3 or misrepresented the Class Products, Plaintiff and Class Members would not have purchased  
4 the Class Products. Defendant's conduct therefore caused and continues to cause economic  
5 harm to Plaintiff and Class Members.

6 97. This practice of making these representations by Defendant is therefore an  
7 "unlawful" business practice or act under Business and Professions Code Section 17200 *et seq.*

8 98. Defendant has thus engaged in unlawful, unfair, and fraudulent business acts  
9 entitling Plaintiff and Class Members to judgment and equitable relief against Defendant, as set  
10 forth in the Prayer for Relief. Additionally, pursuant to Business and Professions Code  
11 section 17203, Plaintiff and Class Members seek an order requiring Defendant to immediately  
12 cease such acts of unlawful, unfair, and fraudulent business practices and requiring Defendant  
13 to correct its actions.

14 **THIRD CAUSE OF ACTION**

15 **Violation of Consumer Legal Remedies Act**

16 **(Cal. Civ. Code §§ 1770 et seq.)**

17 99. Plaintiff incorporates the foregoing paragraphs as though the same were set forth  
18 at length herein.

19 100. Defendant's actions as detailed above constitute a violation of the Consumer  
20 Legal Remedies Act, Cal. Civ. Code §1770 to the extent that Defendant violated the following  
21 provisions of the CLRA:

- 22 a. Passing off goods or services as those of another; Cal. Civ. Code § 1770(1);  
23 b. Representing that goods or services are of a particular standard, quality, or  
24 grade, or that goods are of a particular style or model, if they are of another;  
25 Cal. Civ. Code § 1770(7);  
26 c. Advertising goods or services with intent not to sell them as advertised; Cal.  
27 Civ. Code §1770(9);  
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- d. Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law; Cal. Civ. Code §1770(14); and
- e. Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not; Cal. Civ. Code §1770(16).

101. On or about September 20, 2018, through his Counsel of record, using certified mail with a return receipt requested, Plaintiff served Defendant with notice of their violations of the CLRA (attached hereto as EXHIBIT A), and asked that Defendant correct, repair, replace or otherwise rectify the goods and services alleged to be in violation of the CLRA; this correspondence advised Defendant that it must take such action within thirty (30) calendar days, and pointed Defendant to the provisions of the CLRA that Plaintiff believes to have been violated by Defendant. Defendant has not replied to this correspondence in a satisfactory manner, and have thereby refused to timely correct, repair, replace or otherwise rectify the issues raised therein.

#### MISCELLANEOUS

102. Plaintiff and Class Members allege that they have fully complied with all contractual and other legal obligations and fully complied with all conditions precedent to bringing this action or that all such obligations or conditions are excused.

#### PRAYER FOR RELIEF

103. Plaintiff, on behalf of herself and the Class, requests the following relief:

- (a) An order certifying the Class and appointing Plaintiff as Representative of the Class;
- (b) An order certifying the undersigned counsel as Class Counsel;
- (c) An order requiring ZALE DELAWARE, INC., at its own cost, to notify all Class Members of the unlawful and deceptive conduct herein;
- (d) An order requiring ZALE DELAWARE, INC. to engage in corrective advertising regarding the conduct discussed above;
- (e) Actual damages suffered by Plaintiff and Class Members as applicable or

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full restitution of all funds acquired from Plaintiff and Class Members from the sale of misbranded Class Products during the relevant class period;

(f) Punitive damages, as allowable, in an amount determined by the Court or jury;

(g) All reasonable and necessary attorneys' fees and costs provided by statute, common law or the Court's inherent power;

(h) Pre- and post-judgment interest; and

(i) All other relief, general or special, legal and equitable, to which Plaintiff and Class Members may be justly entitled as deemed by the Court.

**REQUEST FOR JURY TRIAL**

104. Plaintiff requests a trial by jury as to all claims so triable.

Dated: October 31, 2018

Respectfully submitted,

LAW OFFICES OF TODD M. FRIEDMAN, PC

By: \_\_\_\_\_

TODD M. FRIEDMAN, ESQ.

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