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

13 TESHA GAMINO, individually
14 and on behalf of all others similarly
15 situated,

16 *Plaintiff,*

17 v.

18 THINX, INC.,

19 *Defendant.*

Case No. 5:23-cv-2067-JGB-SHK

**FIRST AMENDED CLASS
ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

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1 **I. Introduction.**

2 1. Thinx designs, markets, and sells period underwear. Period underwear is
3 underwear that is intended to be worn during menstruation.¹ The underwear contains a
4 special fabric layer that traps blood and liquid, and prevents them from leaking onto
5 clothing.

6 2. According to Thinx, its period underwear is “period proof.” It “prevents
7 leaks,” can “last all day,” and can “replace the need for disposable products such as pads,
8 tampons, liners, and cups.”²

9 3. Thinx also makes specific claims about how much fluid each of its
10 products absorb. For example, Thinx represents that its Super Absorbency Cotton Brief
11 “holds 5 regular tampons’ worth,” or “45 mL,” of menstrual fluid. These
12 representations are made for each of Thinx’s products, both on the website and on the
13 product packaging itself.

14 4. But the Thinx products do not work as advertised. They don’t last all day,
15 prevent leaks, or replace the need for disposable products. They do not absorb the
16 specific amounts of fluid claimed. Instead, the products leak, fail to hold the claimed
17 amounts of fluid, and do not replace the need for disposable products like tampons or
18 pads.

19 5. Plaintiff Tesha Gamino purchased Thinx’s period underwear products.
20 Like Thinx’s other customers, when Ms. Gamino bought the products, she read and
21 relied on Thinx’s representations that the products prevent leaks and hold specific
22 amounts of fluid. She further relied on warranties that the products were fit for their
23 intended use, as period underwear. These reasonable beliefs are what caused her to buy
24 from Thinx. If she had known the truth, she would not have bought them.

25 6. Had Thinx been truthful, Plaintiff and other consumers would not have
26 purchased the products, or would have paid less for them.

27 ¹ <https://www.webmd.com/women/period-underwear>

28 ² <https://www.thinx.com/thinx/faq>

1 7. Plaintiff brings this case for herself and the other customers who purchased
2 Thinx Products.

3 **II. Parties.**

4 8. Plaintiff Tesha Gamino is a citizen of California, domiciled in Riverside
5 County.

6 9. The proposed class includes citizens of every state.

7 10. Defendant Thinx, Inc. is a Delaware corporation with its principal place of
8 business at 1836 Westchester Ave, 3240, Bronx, New York 10472.

9 11. Defendant makes, markets, and sells period underwear (the “Products”).

10 **III. Jurisdiction and Venue.**

11 12. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2).
12 The amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and the
13 matter is a class action in which one or more members of the proposed class are citizens
14 of a state different from Defendant.

15 13. This Court has personal jurisdiction over Defendant. Defendant does
16 business in California. It advertises and sells its Products in California, and serves a
17 market for its Products in California. Due to Defendant’s actions, its Products have
18 been marketed and sold to consumers in California, and harmed consumers in
19 California. Plaintiff’s claims arise out of Defendant’s contacts with this forum. Due to
20 Defendant’s actions, Plaintiff purchased Defendant’s Products in California, and was
21 harmed in California.

22 14. Venue is proper under 28 U.S.C. § 1391(b)(1) and 28 U.S.C. § 1391(d)
23 because Defendant would be subject to personal jurisdiction in this District if this
24 District were a separate state. Defendant advertises and sells its Products to customers
25 in this District, serves a market for Products in this District, and Plaintiff’s claims arise
26 out of Defendant’s contacts in this forum.

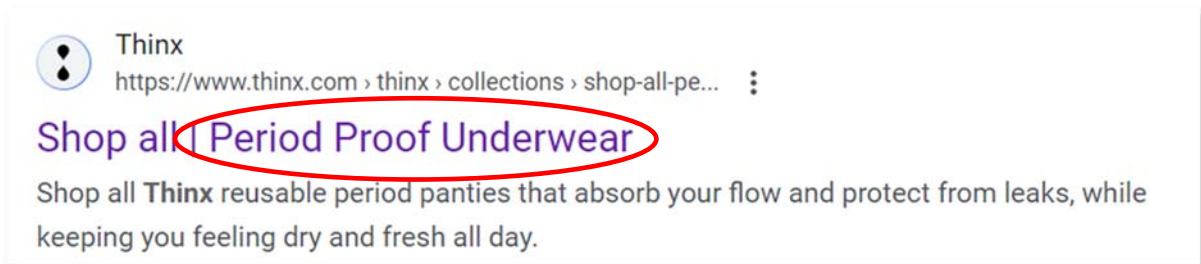
27 15. Venue is also proper under 28 U.S.C. § 1391(b)(2) because a substantial
28 part of the events giving rise to the claim occurred here.

1 **IV. Facts.**

2 **A. Defendant’s period underwear.**

3 16. Thinx makes, markets, and sells its Products³ nationwide, including directly
4 to consumers online and through third-party retailers.

5 17. According to Thinx, its Products are “Period Proof”:



11 18. Thinx also claims that its Products will “prevent[] leaks,” can “last all day,”
12 and can “replace the need for disposable products such as pads, tampons, liners, and
13 cups.”⁴ Thinx says its “Period Proof” Products will “keep[] you feeling dry and fresh all
14 day.”

15 19. Thinx also makes specific claims about the specific amounts of fluid that
16 each of its Products can absorb. Thinx labels each of its Products by absorbency level,
17 ranging from “lightest” to “super.” For each of these absorbency levels, Thinx makes
18 specific claims about the amount of fluid the Product holds. For example, according to
19 Thinx, a Product rated “super” holds 5 regular tampons’ worth, or 45 mL, of fluid. In
20 contrast, a Product rated “lightest” holds one tampon’s worth, or 9.0 mL, of fluid.

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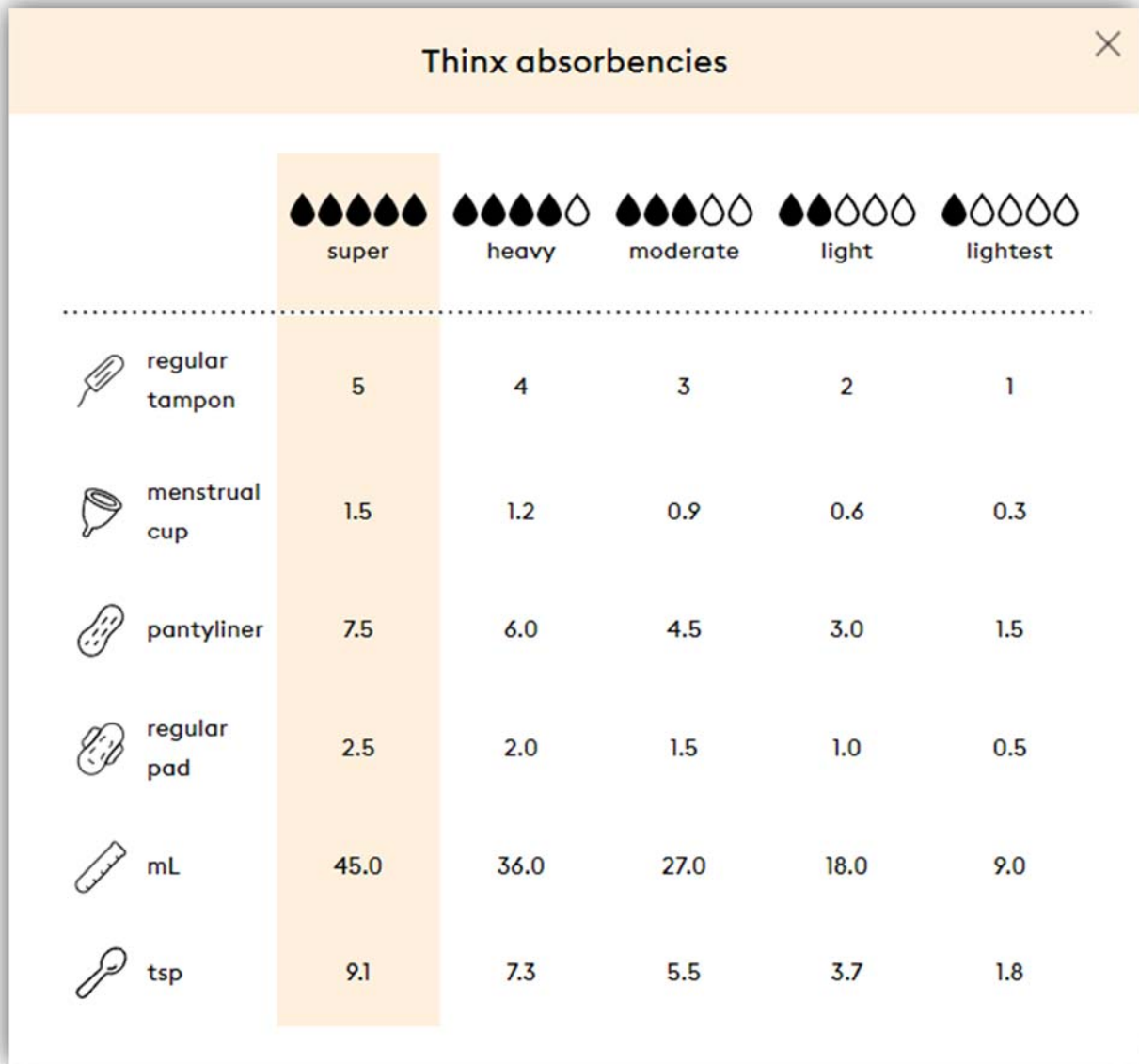
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26 ³ The Products include the Hiphugger, Hi-Waist, Boyshort, Modal Cotton Brief,
27 Modal Cotton Bikini, Sleep Shorts, Cotton Bikini, Cotton Brief, Cotton Hi-Waist, and
28 Cotton Boyshort.

⁴ <https://www.thinx.com/thinx/faq>

20. Thinx’s website describes it as below:



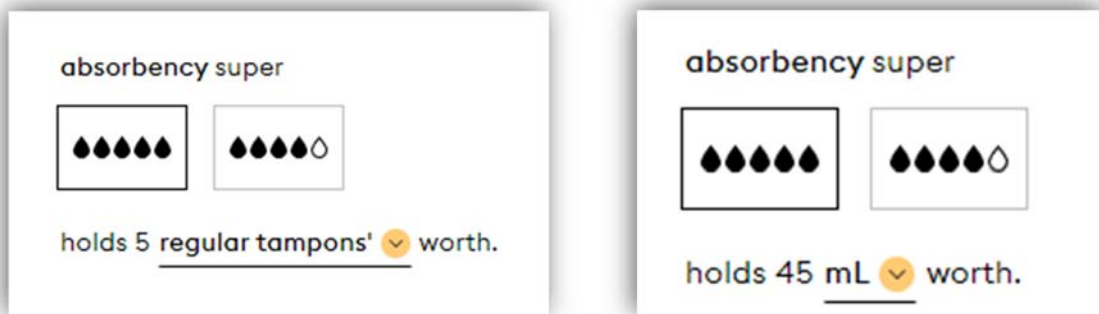
21. The representations about absorbency levels are made repeatedly throughout Thinx’s Product pages, website, packaging, and on the Products themselves.

22. For example, packaging for the Super Absorbency Hi-Waist Product states that it absorbs “up to 5 regular tampons’ worth,” or “45 mL,” of fluid. And the Product page on Defendant’s website states that it “holds 5 regular tampons’ worth” or “holds 45 mL” of fluid:

1 Product packaging:



19 Website product page:⁵



27 ⁵ <https://www.thinx.com/thinx/products/super-hi-waist?variant=31655479541832>

23. Representations about absorbency are also made on the Product itself:

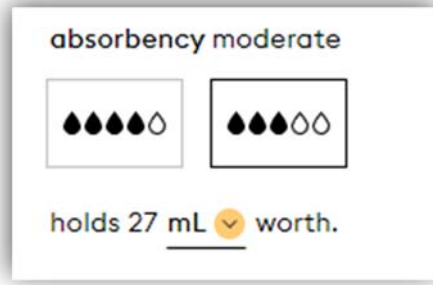
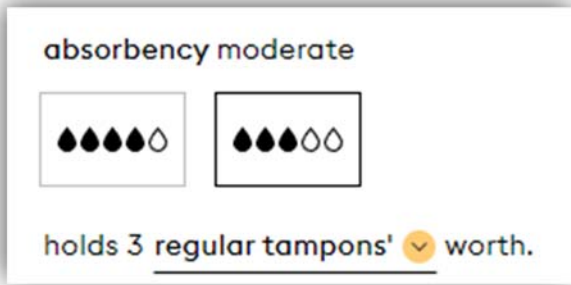


24. Similarly, the Product packaging for the Moderate Absorbency Boyshort states that it absorbs up to 3 regular tampons' worth or 27 mL of fluid. And the Product page on Defendant's website says that it "holds 3 regular tampons' worth" or "holds 27 mL" of fluid:

Product packaging:



1 Website product page:⁶



7 Product label:



16 25. For purposes of the claims asserted in this action, each of Defendant's

17 Products are substantially similar to the other, in that: (1) each Product is intended for

18 use as period underwear, and is distributed, marketed, and sold by Defendant, (2) the

19 Product packaging, label, and product pages for each Product make specific absorbency

20 claims, and (3) the Products' actual absorbency does not match Defendant's claims.

21 26. Based on the marketing materials and packaging, a reasonable consumer

22 would believe that Defendant's period underwear Products could hold the advertised

23 amounts of fluid and prevent leaks. In other words, a reasonable consumer would

24 expect that, with reasonable use, the Products can and will absorb the amounts of fluid

25 advertised. This is in contrast to a product that, with reasonable use, cannot hold the

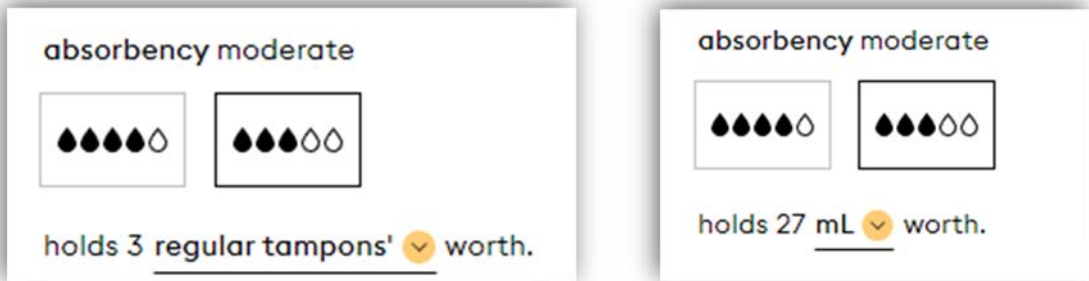
26 claimed maximum amount of fluid. For such a product, the "up to" claim is false and

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28 ⁶ <https://www.thinx.com/thinx/products/boyshort?variant=32896012935>

1 misleading, because the product does not hold “up to” the claimed amount, under
2 normal conditions.

3 27. Defendant’s advertising reiterates that to a reasonable consumer “up to”
4 means that a product can hold the amount of fluid advertised, under normal conditions.
5 As shown above, while Defendant’s Product packaging makes “up to” statements, its
6 website product pages simply say that its products “hold” a certain amount of fluid.
7 These representations show that by “up to,” Defendant means, and knows consumers
8 will understand, that the products can hold the advertised amount of fluid with
9 reasonable use. For example, for the Moderate Absorbency Boyshort, Defendant’s
10 website says that the product “holds 3 regular tampons” or “holds 27 mL” of menstrual
11 fluid:⁷



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18 28. And for Defendant’s Super Absorbency Hi-Waist Product, the website
19 states that it “holds 5 regular tampons” or “holds 45 mL” of menstrual fluid:⁸



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27 ⁷ <https://www.thinx.com/thinx/products/boyshort?variant=32896012935>

28 ⁸ <https://www.thinx.com/thinx/products/super-hi-waist?variant=31655479541832>

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29. But the truth is, with normal use, the Products cannot absorb the advertised amounts of fluid, and thus leak.

30. In a recent study published in *British Medical Journal Sexual & Reproductive Health*, researchers tested the absorbency capacity of a variety of menstrual products using human blood.⁹ The majority of the products they tested were less absorbent than advertised. The researchers theorized that this was due to period product manufacturers testing products with water or saline rather than blood. Because menstrual blood is a different consistency from water and saline, testing with these substances can lead to significant overestimates of capacity. The study found that period underwear in particular held substantially less menstrual fluid than advertised. The products tested in the study held between 1 and 3 mL of fluid. In fact, of all product categories tested (tampons, pads, menstrual cups and discs, and period underwear), period underwear held the least amount of blood.

31. Like other manufacturers, Defendant does not use human blood when testing its period underwear products. As a result, it overestimates its products' capacities.

32. Plus, Defendant's absorbency representations are misleading even when non-blood substances are used to test the products. Testing was performed on two representative Products by using cough syrup to mimic the viscosity of menstrual flow, just as some manufacturers do to test pads and tampons, and applying 5 mL of cough syrup to the Products nine times every 30 minutes. At the end of testing, none of the Products were able to absorb the specific amounts of fluid advertised. Instead, all of the Products (i.e., 100% of the tested Products) leaked.

⁹ <https://srh.bmj.com/content/50/1/21>;
<https://pubmed.ncbi.nlm.nih.gov/37550075>

1 33. The entire purpose of purchasing period underwear is so that the
2 underwear absorbs fluid. Thus, the fact that the Products do not hold the claimed
3 amounts of fluid, and instead leak, is material to a reasonable consumer.

4 34. By falsely claiming that the Products absorb the specified amounts of fluid,
5 Defendant misleads consumers into purchasing the Products, and paying more for them
6 than they otherwise would.

7 **B. Defendant’s representations mislead reasonable consumers.**

8 35. Based on Defendant’s marketing and packaging, reasonable consumers
9 would expect that the listed absorbency levels accurately represent the amount of fluid
10 the Products can absorb. Similarly, a reasonable consumer would expect that these
11 Products work as period underwear and prevent leaks.

12 36. Consumers reasonably rely on Defendant’s representations on the
13 packaging, marketing, and advertisements for the Products. The representations on the
14 packaging, marketing and advertisements are made directly to buyers. The absorbency
15 levels are prominently displayed on the webpages describing the Products, and on the
16 Products themselves. These representations lead reasonable consumers to believe that
17 the Products are fit for their ordinary use as period underwear, and hold specific
18 amounts of fluid and prevent leaks.

19 37. Thus, Defendant’s advertisements harm consumers by inducing them to
20 make purchases based on false information.

21 **C. Defendant is aware of its misrepresentations.**

22 38. As a maker and merchant of period underwear products, Defendant is
23 aware that its marketing and packaging contains misleading information about the
24 Products’ absorbency levels and leak protection.

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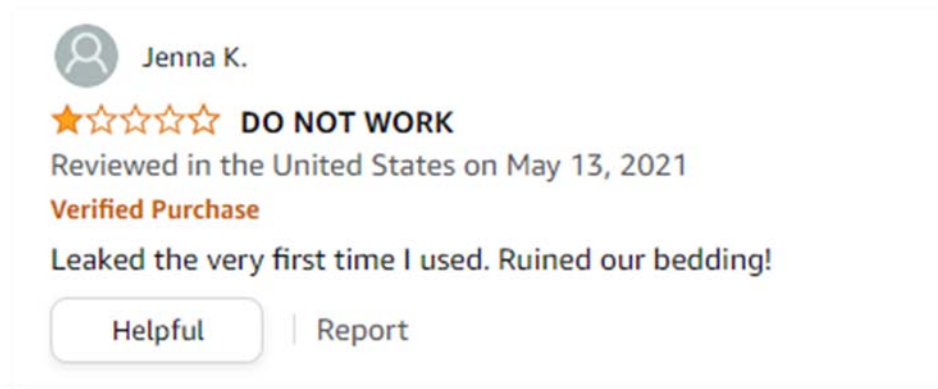
1 39. On its website, Defendant claims that it uses a laboratory to test the
2 “absorbency capacity” of its Products:¹⁰

3 We also test our finished products through an accredited, globally recognized
4 third-party laboratory to help ensure they are compliant with U.S. and
5 international regulations. These tests also include absorbency capacity, usability,
6 and wearability.

7
8 40. Thus, based on its own tests, Defendant knows that the Products do not
9 and cannot absorb the advertised amounts of fluid. In other words, Defendant knows
10 that its absorbency claims are false and misleading


11 41. Defendant also knows the truth because consumers have repeatedly posted
12 reviews stating that the Products leak and fail to absorb the claimed amounts of fluid.
13 As a consumer product company, Defendant monitors and keeps track of consumer
14 reviews and complaints, including on third-party retail sites like Amazon.com and
15 Target. This is diligence that large companies like Defendant routinely do when selling a
16 consumer product. Defendant even uses consumer reviews in its marketing and the
17 front page of its website. And Defendant has responded to negative customer reviews
18 on third-party retail sites.

19 42. On the following pages are examples of the complaints:



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28 ¹⁰ <https://www.thinx.com/thinx/product-safety-standards>

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 [Shop all Thinx](#)
Thinx for All Women's Moderate Absorbency Boy Shorts Period Underwear - Black XS
 ★★★★★☆ 92 ✓

Does Not Work!
 ★☆☆☆☆ | ⓧ Would not recommend
 Buyer - 1 year ago, Verified purchaser
 Leaked on first use in less than 15 minutes...held almost nothing before failing. Complete waste is money.

☆☆☆☆☆

Very comfortable

They are super comfortable, but unfortunately my heavy days are to much for them. I end up going through 6 pairs in one day and still have yet to see a leak free day.

 [Shop all Thinx](#)
Thinx for All Women's Moderate Absorbency Boy Shorts Period Underwear - Black XS
 ★★★★★☆ 92 ✓


Not entirely leakproof
 ★☆☆☆☆ | ⓧ Would not recommend
 Ginanvb - 9 months ago
 Not leak proof for just a few hours into then first day of my cycle

☆☆☆☆☆

Boy Short

I don't like the cut...I bought several styles just to test...when I have my period its extremely heavy and these thinx don't cut it...i over flow and I work long hours and I don't have time to deal with messes. So I keep my thinx with pads...because I don't trust that it will hold what I produce in a few hours... I can change 6 pads in 8 hours. This is on my first couple days. or more...so I like but...they are not replacing my use of pads as extra protection.

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 **Cristine zak**

★☆☆☆☆ **Flop**


Reviewed in the United States on January 25, 2023

Verified Purchase

Didn't work leaked right through. So expensive for nothing.

Helpful | Report


Leaked

★☆☆☆☆ |  Would not recommend

KW - 3 months ago, Verified purchaser


These are horrible. Leaked out of both sides of the crotch within and hour (on a normal flow day) and won't wash fully clean no matter what I do. What a waste of money.

Leaked Almost Instantly

★☆☆☆☆ |  Would not recommend

Alicia - 2 years ago, Verified purchaser

This Item Was Not As Described. Underwear Leaked With Even The Smallest Amount Of Bloo And Straigh Through My Pants. Would Not Recommend To Anyone.

 **1 reply from Thinx, Inc. team - 4 months ago**

Oh no, we're sorry that was your experience! If you haven't already, reach out to hello@thinx.com for assistance!

D. Plaintiff was misled by Defendant’s misrepresentations.

43. On November 26, 2022, Plaintiff Tesha Gamino purchased the “Thinx for All Women’s Moderate Absorbency Boy Shorts Period Underwear” from Target while living in Riverside, California. Ms. Gamino followed all instructions that came with the Product. The Product leaked the first time she wore it, but she believed it was due to the fact that the Product was a size too small.

44. On February 4, 2023, Plaintiff tried again, and purchased Products in a larger size. This time, she purchased the “Thinx for All Moderate Absorbency Boy

1 Short Period Underwear” and “Thinx for All Super Absorbency High Waist Brief Period
2 Underwear” from Target while living in Riverside, California. Again, the Products
3 leaked the first time she wore them and during subsequent uses. Ms. Gamino followed
4 all instructions that came with the Products, including regarding washing the Products.
5 She kept using them after they leaked because she thought the leakage problem might
6 resolve, if she kept testing the products. But the products kept leaking. She stopped
7 using the product after some months.

8 45. When Ms. Gamino purchased each of the Products, she read and relied on
9 representations on the Target and Thinx websites, on the product packaging, and on the
10 labels on the Products themselves that the products prevent leaks and hold specific
11 amounts of fluid. In particular, before purchasing the Products, she visited the Thinx
12 website to research Thinx Products, and she read and relied on representations about the
13 Products’ absorbency capacities. In purchasing the Products, she also read and relied on
14 each Products’ description on the Target website. The product descriptions on the
15 Target website stated that the Thinx for All Women’s Moderate Absorbency Boy Short
16 Period Underwear holds “up to 3 regular tampons” or 27 mL of fluid, and that Thinx
17 for All Super Absorbency High Waist Brief Period Underwear holds “up to 5 regular
18 tampons” or 45 mL of fluid:

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20 Moderate Absorbency Boy Short:

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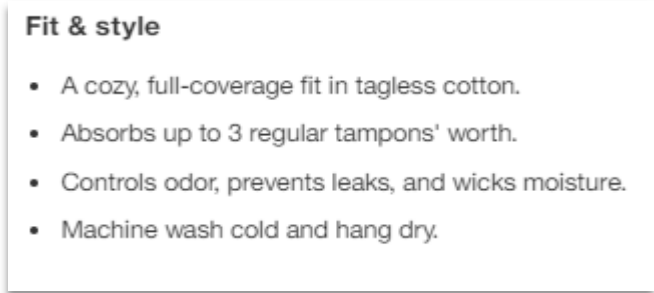
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Fit & style

- A cozy, full-coverage fit in tagless cotton.
- Absorbs up to 3 regular tampons' worth.
- Controls odor, prevents leaks, and wicks moisture.
- Machine wash cold and hang dry.

1 Super Absorbency High Waist Brief:

2
3 **Fit & style**

- 4 • A comfy, full-coverage fit in tagless cotton.
- 5 • Absorbs up to 5 regular tampons' worth.
- 6 • Controls odor, prevents leaks, and wicks moisture.
- 7 • Machine wash cold and hang dry.

8
9 46. After she received the Products, she also read and relied on the statements
10 in the Product packaging, which again stated that the Moderate Absorbency Boy Short
11 Product holds “up to 3 regular tampons,” or 27 mL of fluid and the Super Absorbency
12 High Waist Brief Product holds “up to 5 regular tampons,” or 45 mL of fluid. Ms.
13 Gamino read and relied on each of these representations concerning absorbency.¹¹

14 47. She relied on the warranties that the Products were fit for their intended
15 use, as period underwear. She would not have purchased the Products if she had known
16 that the Products did not hold the advertised amounts of fluid, leaked, and were not fit
17 for use as period underwear.

18 48. Ms. Gamino suffered injury in fact when she spent money to purchase
19 Products she would not otherwise have purchased absent Defendant’s
20 misrepresentations.

21 49. Ms. Gamino faces an imminent threat of future harm. She likes the
22 concept of the Thinx Products, and would purchase them again if she could feel sure
23 that Defendant would not illegally deceive her. But without an injunction, she cannot
24 trust that Defendant will sell its Products as advertised. Accordingly, Ms. Gamino is
25 unable to rely on Defendant’s advertising in the future, and so cannot purchase the
26 Products.

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¹¹ See ¶¶21-24.

1 **E. No adequate remedy at law.**

2 50. Plaintiff seeks damages and, in the alternative, equitable restitution.

3 Plaintiff seeks restitution in the alternative because she has no adequate remedy at law

4 51. A legal remedy is not adequate if it is not as certain as an equitable remedy.

5 To obtain a full refund as damages, Plaintiff must show that the Products she received

6 have essentially no market value. In contrast, Plaintiff can seek restitution without

7 making this showing. This is because Plaintiff purchased Products that she would not

8 otherwise have purchased, but for Defendant’s misrepresentations and omissions.

9 Obtaining a full refund at law is less certain than obtaining a refund in equity. Restitution

10 can also be measured by “willingness-to-pay rather than market value,” *Mier v. CVS*

11 *Health*, 2023 U.S. App. LEXIS 19472, at *5 (9th Cir. July 28, 2023), which provides for a

12 more certain recovery.

13 52. In addition, the elements of Plaintiff’s equitable claims are different and do

14 not require the same showings as Plaintiff’s legal claims. For example, to obtain

15 damages under the CLRA, a plaintiff must show that they complied with the CLRA’s

16 notice requirement for damages. No such requirements exist to obtain restitution.

17 Obtaining damages under the CLRA also requires Plaintiff to show that Defendant

18 made negligent or fraudulent misrepresentations. No such requirement exists for

19 Plaintiff to obtain equitable relief, for example, under the “unfair” or “unlawful” prong

20 of the UCL. Because a plaintiff must make this additional showing to obtain damages,

21 rather than restitution, the legal remedies are more uncertain.

22 53. In addition, as described above, Plaintiff faces an actual and imminent

23 threat of future harm that cannot be cured with monetary damages. For this harm,

24 Plaintiff lacks an adequate remedy at law and requires injunctive relief.

25 54. Finally, the remedies at law available to Plaintiff are not equally prompt or

26 efficient as the equitable ones. For example, the need to schedule a jury trial may result

27 in delay. And a jury trial will take longer, and be more expensive, than a bench trial.

28

1 **V. Class Action Allegations.**

2 55. Plaintiff brings the asserted claims on behalf of the proposed class of:

- 3 • Nationwide Class: all persons who, within the applicable statute of limitations
4 period, purchased one or more Thinx Products for personal use (the
5 “Nationwide Class”).
6 • California Subclass: all persons who, while in the state of California and within
7 the applicable statute of limitations period, purchased one or more Thinx
8 Products for personal use (the “California Subclass”).

9 56. The following people are excluded from the proposed class: (1) any Judge
10 or Magistrate Judge presiding over this action and the members of their family; (2)
11 Defendant, Defendant’s subsidiaries, parents, successors, predecessors, and any entity in
12 which the Defendant or its parents have a controlling interest and their current
13 employees, officers and directors; (3) persons who properly execute and file a timely
14 request for exclusion from the class; (4) persons whose claims in this matter have been
15 finally adjudicated on the merits or otherwise released; (5) Plaintiff’s counsel and
16 Defendant’s counsel, and their experts and consultants; and (6) the legal representatives,
17 successors, and assigns of any such excluded persons.

18 ***Numerosity & Ascertainability***

19 57. The proposed class contains members so numerous that separate joinder of
20 each member of the class is impractical. There are tens or hundreds of thousands of
21 class members.

22 58. Class members can be identified through Defendant’s sales records and
23 public notice.

24 ***Predominance of Common Questions***

25 59. There are questions of law and fact common to the proposed class.
26 Common questions of law and fact include, without limitation:

- 27 (1) whether Defendant made false or misleading statements of fact in its
28 advertisements;

- 1 (2) whether Defendant violated California’s consumer protection statutes;
2 (3) whether Defendant committed a breach of an express or implied warranty;
3 (4) whether Defendant was unjustly enriched by the sale of misrepresented period
4 underwear;
5 (5) damages needed to reasonably compensate Plaintiff and the proposed class.

6 ***Typicality & Adequacy***

7 60. Plaintiff’s claims are typical of the proposed class. Like the proposed class,
8 Plaintiff purchased the Thinx Products. There are no conflicts of interest between
9 Plaintiff and the class.

10 ***Superiority***

11 61. A class action is superior to all other available methods for the fair and
12 efficient adjudication of this litigation because individual litigation of each claim is
13 impractical. It would be unduly burdensome to have individual litigation of millions of
14 individual claims in separate lawsuits, every one of which would present the issues
15 presented in this lawsuit.

16 **VI. Claims.**

17 **First Cause of Action:**

18 **Violation of California’s False Advertising Law,**

19 **Bus. & Prof. Code §§ 17500 et. seq.**

20 **(By Plaintiff and the California Subclass)**

21 62. Plaintiff incorporates each and every factual allegation set forth above.

22 63. Plaintiff brings this cause of action on behalf of herself and members of
23 the California Subclass.

24 64. Defendant has violated section 17500 of the Business and Professions
25 Code.

26 65. As alleged more fully above, Defendant made and disseminated untrue and
27 misleading statements of facts in its advertisements, marketing materials, packaging, and
28 the Product labels to subclass members.

1 74. Plaintiff and the subclass are “consumers,” as the term is defined by
2 California Civil Code § 1761(d).

3 75. Plaintiff and the subclass have engaged in “transactions” with Defendant as
4 that term is defined by California Civil Code § 1761(e).

5 76. The conduct alleged in this Complaint constitutes unfair methods of
6 competition and unfair and deceptive acts and practices for the purpose of the CLRA,
7 and the conduct was undertaken by Defendant in transactions intended to result in, and
8 which did result in, the sale of goods to consumers.

9 77. As alleged more fully above, Defendant made and disseminated untrue and
10 misleading statements of facts in its advertisements to subclass members. Defendant did
11 this by representing that its Products hold specific amounts of fluid, when in fact they do
12 not. These representations were made in the advertisements, marketing materials,
13 packaging, and the Product labels to subclass members.

14 78. Defendant violated, and continues to violate, section 1770 of the California
15 Civil Code.

16 79. Defendant violated, and continues to violate, section 1770(a)(5) of the
17 California Civil Code by representing that its Products have characteristics or benefits
18 that they do not have. Defendant represents that its Products hold specific amounts of
19 fluid, when in fact they do not.

20 80. Defendant violated, and continues to violate, section 1770(a)(7) of the
21 California Civil Code by representing that its Products are of a particular standard,
22 quality, or grade, when they are not. Defendant represents that its Products hold
23 specific amounts of fluid, when in fact they do not.

24 81. Defendant violated, and continues to violate, section 1770(a)(9) of the
25 California Civil Code. Defendant violates this by representing that its Products hold
26 specific amounts of fluid, when in fact they do not.

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1 82. Defendant’s representations were likely to deceive, and did deceive,
2 Plaintiff and reasonable consumers. Defendant knew, or should have known through
3 the exercise of reasonable care, that these statements were inaccurate and misleading.

4 83. Defendant’s misrepresentations were intended to induce reliance, and
5 Plaintiff saw, read, and reasonably relied on them when purchasing the Products.
6 Defendant’s misrepresentations were a substantial factor in Plaintiff’s purchase decision.

7 84. In addition, subclass-wide reliance can be inferred because Defendant’s
8 misrepresentations were material, i.e., a reasonable consumer would consider them
9 important in deciding whether to buy the Products.

10 85. Defendant’s misrepresentations were a substantial factor and proximate
11 cause in causing damages and losses to Plaintiff and the subclass.

12 86. Plaintiff and the subclass were injured as a direct and proximate result of
13 Defendant’s conduct because (a) they would not have purchased Thinx Products if they
14 had known the Products cannot hold specific levels of fluid and instead leak, (b) they
15 overpaid for the Products because the Products are sold at a price premium due to the
16 misrepresentations, and/or (c) they received a Product that does not work for its
17 intended purpose and is thus worthless to Plaintiff and the subclass.

18 87. Accordingly, pursuant to California Civil Code § 1780(a)(2), Ms. Gamino,
19 on behalf of herself and all other members of the subclass, seeks injunctive relief.

20 88. CLRA § 1782 NOTICE. On October 3, 2023, a CLRA demand letter was
21 sent to Defendant’s New York headquarters via FedEx and USPS certified mail (return
22 receipt requested), that provided notice of Defendant’s violations of the CLRA and
23 demanded that Defendant correct the unlawful, unfair, false and/or deceptive practices
24 alleged here. Defendant does not have a California headquarters. It has been more than
25 30 days since Defendant received notice of its CLRA violations. In that time, Defendant
26 has not fully corrected the problem for Plaintiff and members of the California Subclass.
27 Thus, Plaintiff seeks all monetary relief allowed under the CLRA.

28 89. A CLRA venue declaration is attached.

Third Cause of Action:

Violation of California’s Unfair Competition Law

(By Plaintiff and the California Subclass)

90. Plaintiff incorporates each and every factual allegation set forth above.

91. Plaintiff brings this cause of action on behalf of herself and members of the California Subclass.

92. Defendant has violated California’s Unfair Competition Law (UCL) by engaging in unlawful, fraudulent, and unfair conduct (i.e., violating each of the three prongs of the UCL).

The Unlawful Prong

93. Defendant engaged in unlawful conduct by violating the CLRA and FAL, as alleged above and incorporated here.

The Fraudulent Prong

94. As alleged in detail above, Defendant’s representations that its Products can hold specific levels of fluid were false and misleading.

95. Defendant’s representations were misleading to Plaintiff and other reasonable consumers.

96. Plaintiff relied upon Defendant’s misleading representations and omissions, as detailed above.

The Unfair Prong

97. As alleged in detail above, Defendant committed “unfair” acts by falsely representing that its Products were fit for ordinary use as period underwear, and that the Products can hold specific levels of fluid.

98. Defendant violated established public policy by violating the CLRA and FAL, as alleged above and incorporated here. The unfairness of this practice is tethered to a legislatively declared policy (that of the CLRA and FAL).

99. The harm to Plaintiff and the subclass greatly outweighs the public utility of Defendant’s conduct. There is no public utility to misrepresenting the characteristics

1 of a consumer product. This injury was not outweighed by any countervailing benefits
2 to consumers or competition. Misleading consumer products only injure healthy
3 competition and harm consumers.

4 100. Plaintiff and the subclass could not have reasonably avoided this injury. As
5 alleged above, Defendant's representations were deceptive to reasonable consumers like
6 Plaintiff.

7 101. Defendant's conduct, as alleged above, was immoral, unethical, oppressive,
8 unscrupulous, and substantially injurious to consumers.

9 * * *

10 102. For all prongs, Defendant's representations were intended to induce
11 reliance, and Plaintiff saw, read, and reasonably relied on them when purchasing Thinx
12 Products. Defendant's representations were a substantial factor in Plaintiff's purchase
13 decision.

14 103. In addition, subclass-wide reliance can be inferred because Defendant's
15 representations were material, i.e., a reasonable consumer would consider them
16 important in deciding whether to buy Thinx Products.

17 104. Defendant's representations were a substantial factor and proximate cause
18 in causing damages and losses to Plaintiff and the subclass members.

19 105. Plaintiff and the subclass were injured as a direct and proximate result of
20 Defendant's conduct because (a) they would not have purchased Thinx Products if they
21 had known the Products cannot hold specific levels of fluid and instead leak, (b) they
22 overpaid for the Products because the Products are sold at a price premium due to the
23 misrepresentations, and/or (c) they received a Product that does not work for its
24 intended purpose and is thus worthless to Plaintiff and the subclass.

25 **Fourth Cause of Action:**

26 **Breach of Express Warranty**

27 **(By Plaintiff and the Nationwide Class)**

28 106. Plaintiff incorporates each and every factual allegation set forth above.

1 107. Plaintiff brings this cause of action on behalf of herself and the Nationwide
2 Class. In the alternative, Plaintiff brings this cause of action on behalf of herself and the
3 California Subclass.

4 108. As detailed above, Defendant makes, markets, and sells the Thinx Period
5 Underwear Products.

6 109. As detailed more fully above, Defendant expressly warrants, through
7 statements in the marketing materials and the packages themselves, that the Products
8 prevent leaks, and that they hold specific amounts of fluid.

9 110. For example, Defendant expressly represents that the Super Absorbency
10 products hold “up to 5 regular tampons” or “45 mL” worth of fluid. Defendant
11 expressly represents that its Moderate Absorbency products holds “up to 3 regular
12 tampons” or “27 mL” worth of fluid. This is an affirmation of fact about the Products
13 (i.e., a representation that the Products will hold specific amounts of fluid) and a promise
14 relating to the goods.

15 111. This warranty was part of the basis of the bargain and Plaintiff and
16 members of the class relied on this warranty.

17 112. In fact, the Products do not conform to these representations because they
18 do not absorb the advertised amount of fluid and fail to prevent leaks.

19 113. Plaintiff provided Defendant with notice of this breach of warranty, by
20 mailing a notice letter to Defendant’s headquarters, on October 3, 2023.

21 114. Plaintiff and the class were injured as a direct and proximate result of
22 Defendant’s breach, and this breach was a substantial factor in causing harm, because (a)
23 they would not have purchased Thinx Products if they had known that the warranty was
24 false, (b) they overpaid for the Products because the Products are sold at a price
25 premium due to the warranty, and/or (c) they received a Product that does not work for
26 its intended purpose and is thus worthless to Plaintiff and the class.

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Fifth Cause of Action:

Breach of Implied Warranty

(By Plaintiff and the Nationwide Class)

115. Plaintiff incorporates each and every factual allegation set forth above.

116. Plaintiff brings this cause of action on behalf of herself and the Nationwide Class. In the alternative, Plaintiff brings this cause of action on behalf of herself and the California Subclass.

117. As the designer of the period underwear, Defendant impliedly warranted that the Thinx Products were of merchantable quality and were fit for their ordinary use as period underwear. In fact, the Products, when sold and at all times thereafter, were not in merchantable condition and were not fit for the ordinary purpose for which period underwear is used. Specifically, the Products do not absorb the advertised amount of fluid and instead leak. Thus, they are not of merchantable condition or fit for their ordinary use.

118. Thus, Defendant breached the implied warranty of merchantability in connection with the sale and distribution of the Products.

119. This warranty was part of the basis of the bargain and Plaintiff and members of the subclass relied on this warranty.

120. Plaintiff provided Defendant with notice of this breach of warranty, by mailing a notice letter to Defendant's headquarters, on October 3, 2023.

121. Plaintiff and the class were injured as a direct and proximate result of Defendant's breach, and this breach was a substantial factor in causing harm, because (a) they would not have purchased Thinx Products if they had known the Products cannot hold specific levels of fluid and instead leak, (b) they overpaid for the Products because the Products are sold at a price premium due to the misrepresentations, or (c) they received a Product that does not work for its intended purpose and is thus worthless to Plaintiff and the class.

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Sixth Cause of Action:

Quasi-Contract/Unjust Enrichment

(By Plaintiff and the Nationwide Class)

122. Plaintiff incorporates each and every factual allegation set forth above.

123. Plaintiff brings this cause of action on behalf of herself and the Nationwide Class. In the alternative, Plaintiff brings this claim on behalf of herself and the California Subclass.

124. Plaintiff and class members purchased Thinx Products. They reasonably believed that the Products would function as advertised, and would be fit for their expected ordinary purpose. Plaintiff and class members did not, and could not, have known that Products do not work as advertised.

125. As alleged in detail above, Defendant’s false and misleading representations caused Plaintiff and the class to purchase Thinx Products and to pay a price premium for these Products.

126. In this way, Defendant received a direct and unjust benefit, at Plaintiff’s expense.

127. Plaintiff and the class seek restitution.

Seventh Cause of Action:

Negligent Misrepresentation

(By Plaintiff and the Nationwide Class)

128. Plaintiff incorporates each and every factual allegation set forth above.

129. Plaintiff brings this cause of action on behalf of herself and the Nationwide Class. In the alternative, Plaintiff brings this claim on behalf of herself and the California Subclass.

130. As alleged more fully above, Defendant made false representations to Plaintiff and California Subclass members concerning the specific absorbency levels and leak protection of the Products. These representations were made on the marketing materials, the Product packaging, and on the Products themselves.

1 131. These representations were false.

2 132. When Defendant made these misrepresentations, it knew or should have
3 known that they were false. Defendant had no reasonable grounds for believing that
4 these representations were true when made.

5 133. Defendant intended that Plaintiff and class members rely on these
6 representations and Plaintiff and class members read and reasonably relied on them.

7 134. In addition, class-wide reliance can be inferred because Defendant's
8 misrepresentations were material, i.e., a reasonable consumer would consider them
9 important in deciding whether to buy the Thinx Products.

10 135. Defendant's misrepresentations were a substantial factor and proximate
11 cause in causing damages and losses to Plaintiff and class members.

12 136. Plaintiff and class members were injured as a direct and proximate result of
13 Defendant's conduct because (a) they would not have purchased Thinx Products if they
14 had known the Products cannot hold specific levels of fluid and instead leak, (b) they
15 overpaid for the Products because the Products are sold at a price premium due to the
16 misrepresentations, and/or (c) they received a Product that does not work for its
17 intended purpose and is thus worthless to Plaintiff and the class.

18 **Eighth Cause of Action:**

19 **Intentional Misrepresentation**

20 **(By Plaintiff and the Nationwide Class)**

21 137. Plaintiff incorporates each and every factual allegation set forth above.

22 138. Plaintiff brings this cause of action on behalf of herself and the Nationwide
23 Class. In the alternative, Plaintiff brings this cause of action on behalf of herself and the
24 California Subclass.

25 139. As alleged more fully above, Defendant made false representations and
26 material omissions of fact to Plaintiff and class members concerning the specific
27 absorbency levels and leak protection of the Products. These representations were made
28 on the Product pages, packaging materials, and the Products themselves.

1 140. These representations were false.

2 141. When Defendant made these misrepresentations, it knew that they were
3 false at the time that they made them and/or acted recklessly in making the
4 misrepresentations.

5 142. Defendant intended that Plaintiff and class members rely on these
6 representations, and Plaintiff and class members read and reasonably relied on them.

7 143. In addition, class-wide reliance can be inferred because Defendant's
8 misrepresentations were material, i.e., a reasonable consumer would consider them
9 important in deciding whether to buy the Thinx Products.

10 144. Defendant's misrepresentations were a substantial factor and proximate
11 cause in causing damages and losses to Plaintiff and class members.

12 145. Plaintiff and class members were injured as a direct and proximate result of
13 Defendant's conduct because (a) they would not have purchased Thinx Products if they
14 had known the Products cannot hold specific levels of fluid and instead leak, (b) they
15 overpaid for the Products because the Products are sold at a price premium due to the
16 misrepresentations, and/or (c) they received a Product that does not work for its
17 intended purpose and is thus worthless to Plaintiff and the class.

18 **VII. Relief.**

19 146. Plaintiff seeks the following relief for herself and the class and subclass:

- 20 • An order certifying the asserted claims, or issues raised, as a class action;
- 21 • A judgment in favor of Plaintiff and the proposed class and subclass;
- 22 • Damages, treble damages, and punitive damages where applicable;
- 23 • Restitution;
- 24 • Disgorgement, and other just equitable relief;
- 25 • Pre- and post-judgment interest;
- 26 • An injunction prohibiting Defendant's deceptive conduct, as allowed by
27 law;
- 28 • Reasonable attorneys' fees and costs, as allowed by law;

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- Any additional relief that the Court deems reasonable and just.

Demand for Jury Trial

147. Plaintiff demands the right to a jury trial on all claims so triable.

Dated: January 22, 2024

Respectfully submitted,

By: /s/ Grace Bennett

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