



No. **S-235530**  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Between

CASSANDRA KNIGHT

PLAINTIFF

and

BOOHOO.COM UK LIMITED, BOOHOO.COM USA, INC.,  
PRETTYLITTLETHING.COM LIMITED, PRETTYLITTLETHING.COM USA INC.,  
NASTY GAL LIMITED, AND NASTYGAL.COM USA INC.

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

**NOTICE OF CIVIL CLAIM**

**This action has been started by the plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

**Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,

- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

## **THE PLAINTIFF'S CLAIM**

### **Part 1: STATEMENT OF FACTS**

#### ***Overview***

1. Online fashion retailers Boohoo, PrettyLittleThing, and Nasty Gal entice Canadians to purchase clothing, accessories, and other products by misrepresenting the undiscounted price and value of these products. The Defendants represent that their fashion products are usually offered for sale at a listed price and are being offered at a steep discount, often for a limited time. In reality, the Defendants rarely, if ever, offer to sell their fashion products at that undiscounted price. Instead, they almost always offer and sell their fashion products at a so-called discount. Consumers are deceived into believing that the product they purchased is ordinarily offered at a higher price and has more value than it actually does.

2. The Defendants' systemic deception of the Canadian marketplace breaches the *Competition Act*, RSC 1985, c C-34 (the "**Competition Act**"), the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 (the "**BPCPA**") and related enactments in other common law provinces, and unjustly enriches the Defendants. Through this lawsuit, Canadians who were subject to these unlawful pricing practices seek to hold the Defendants to account.

#### ***The Plaintiff and Class Members***

3. The Plaintiff, Cassandra Knight, is a resident of British Columbia and purchased Fashion Products from Boohoo's Canadian website for personal use. The Plaintiff's purchase of Fashion Products and Boohoo's accompanying pricing representations are summarized in the table below:

Defendant	Product	Regular Price	Discount Price	Discount Percentage	Discount Value
Boohoo	Baby Pink Velour Micro Mini Skirt	\$50.00	\$25.00	50%	\$25.00
	Baby Pink Velour Cropped Hoodie	\$75.00	\$37.50	50%	\$37.50

4. The Plaintiff brings this action on their own behalf and on behalf of a class of:

all individual and legal persons in Canada, excluding residents of Quebec, who purchased one or more products from Boohoo, PrettyLittleThing and/or Nasty Gal at a price lower than the represented Regular Price, including a subclass of individuals who purchased one or more such product for primarily personal, family or household use (the “**Consumer Subclass**” and “**Consumer Subclass Members**”) from the date that Boohoo, PrettyLittleThing and/or Nasty Girl began offering products for sale in Canada until the date that this action is certified as a class proceeding,

(the “**Class**”, the “**Class Members**” and the “**Class Period**”).

***The Defendants***

5. The Defendant Boohoo UK Limited is a British online fashion retailer. Boohoo UK Limited is incorporated in the United Kingdom with a registered office address 49-51 Dale Street, Manchester, United Kingdom, M1 2HF. Boohoo UK Limited carries on business in British Columbia and throughout Canada by offering clothing, accessories, and other products for sale through their Canadian website at <https://ca.boohoo.com> since at least 2016.

6. The Defendant Boohoo.com USA, Inc. is the wholly owned American subsidiary of Boohoo UK Limited. Boohoo.com USA, Inc. is incorporated in Delaware with a registered office address 1209 Orange Street, Wilmington, Delaware, 19801, United States.

7. Boohoo UK Limited and Boohoo.com USA, Inc. are collectively “**Boohoo**”. The date on which Boohoo began offering products to Canadians through <https://ca.boohoo.com> is unknown to the Plaintiff but well-known to Boohoo.

8. The Defendant PrettyLittleThing.com Limited is a British online fashion retailer. PrettyLittleThing.com Limited is incorporated in the United Kingdom with a registered office address 49-51 Dale Street, Manchester, United Kingdom, M1 2HF. PrettyLittleThing.com Limited carries on business in British Columbia and throughout Canada by offering clothing, accessories, and other products for sale through their Canadian website at <https://prettylittlething.ca> since at least 2017.

9. The Defendant PrettyLittleThing.com USA, Inc. is the wholly owned American subsidiary of PrettyLittleThing.com Limited. PrettyLittleThing.com USA, Inc. is incorporated in Delaware with a registered office address 1209 Orange Street, Wilmington, Delaware, 19801, United States.

10. PrettyLittleThing.com Limited and PrettyLittleThing.com USA Inc. are collectively “**PrettyLittleThing**”. The date on which PrettyLittleThing began offering products to Canadians through <https://prettylittlething.ca> is unknown to the Plaintiff but well-known to PrettyLittleThing.

11. The Defendant Nasty Gal Limited is a British online fashion retailer. Nasty Gal Limited is incorporated in the United Kingdom with a registered office address 49-51 Dale Street, Manchester, United Kingdom, M1 2HF. Nasty Gal carries on business in British Columbia and throughout Canada by offering clothing, accessories, and other products for sale through their Canadian website at <https://nastygal.com/ca> since at least 2018.

12. The Defendant NastyGal.com USA Inc. is the wholly owned American subsidiary of Nasty Gal Limited. NastyGal.com USA Inc. is incorporated in Delaware with a registered office address 1209 Orange Street, Wilmington, Delaware, 19801, United States.



13. Nasty Gal Limited and NastyGal.com USA Inc. are collectively “**Nasty Gal**”. The date on which Nasty Gal began offering products to Canadians through <https://nastygal.com/ca> is unknown to the Plaintiff but well-known to Nasty Gal.

14. Boohoo UK Limited, PrettyLittleThing.com Limited, and Nasty Gal Limited are all wholly owned subsidiaries of Boohoo Group plc, a publicly traded company on the London Stock Exchange.

***The Defendants’ Representations Regarding the Price of Fashion Products***

15. The Defendants offer a variety of clothing, accessories, and other products on their respective websites. Products offered for sale on <https://ca.boohoo.com>, <https://prettylittlething.ca> and <https://nastygal.com/ca> are the “**Fashion Products**”.

16. The Defendants represent a Discount Price, a Regular Price, a Discount Percentage and/or a Discount Value for the Fashion Products.

17. The “**Discount Price**” is the price at which the Defendants offer the Fashion Products for sale to customers.

18. The “**Regular Price**” is the alleged undiscounted market price at which the Defendants claim the Fashion Products are ordinarily offered for sale. The Regular Price always exceeds the Discount Price. To indicate that the Fashion Products are not being offered at the Regular Price, the Regular Price is usually struck through with a line in sales representations.

19. The Regular Price is equivalent to the “**Ordinary Selling Price**” (also known as the “**OSP**”), a term employed by Canada’s Competition Bureau to denote the price at which products are regularly sold and/or offered for sale.

20. The “**Discount Percentage**” is the percentage by which the Discount Price is lower than the Regular Price.

21. The “**Discount Value**” is the amount by which the Regular Price exceeds the Discount Price.

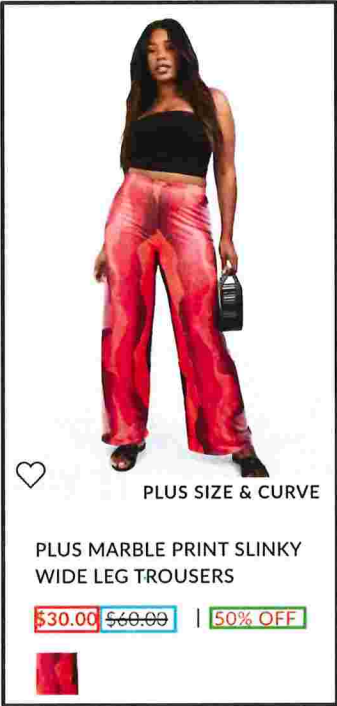
22. The Discount Value is the amount that the Defendants represent customers will save by purchasing one of the Fashion Products at the Discount Price compared to purchasing one of the Fashion Products at the Regular Price.

***The Defendants' Websites***

23. The Defendants each represent a Discount Price, a Regular Price and a Discount Percentage for each of the Fashion Products offered for sale on their respective websites. Boohoo additionally represents a Discount Value for the products that it offers for sale on its website. The Discount Value purportedly obtained by purchasing products sold by PrettyLittleThing and Nasty Gal at the Discount Price can be calculated by multiplying the Regular Price by the Discount Percentage.

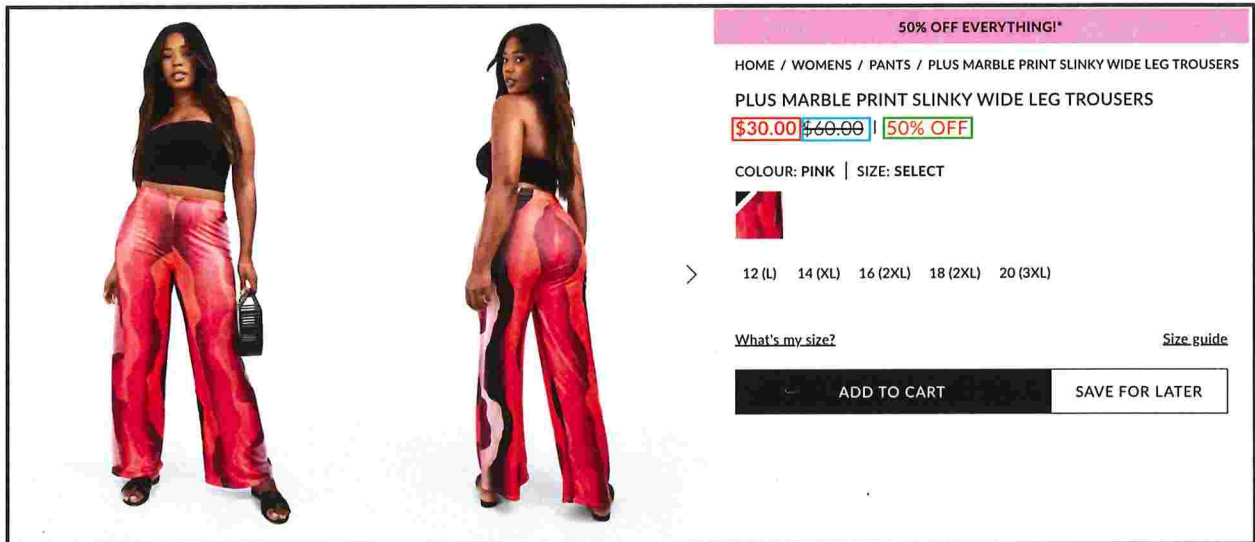
*Boohoo's Website*

24. Below is an image of a Fashion Product for sale on Boohoo's website. The Discount Price (\$30.00), the Regular Price (\$60.00) and the Discount Percentage (50% off) are each displayed. The red, blue, and green boxes were added to this Notice of Civil Claim to highlight Boohoo's pricing information.



The Discount Price ("30.00" in red box), the Regular Price ("60.00" in blue box) and the Discount Percentage ("50% off" in green box) are each displayed once.

25. When a customer clicks on the Fashion Product, they are brought to that specific product's webpage. The Discount Price, the Regular Price, and the Discount Percentage are each shown again on this webpage.



The Discount Price (“\$30.00” in red box), the Regular Price (“\$60.00” in blue box), and the Discount Percentage (“50% off” in green box) are each displayed once.

26. When a customer selects “Add To Cart” and then clicks on their cart in the top righthand corner of the webpage, a screen pops up and displays the Discount Price, the Regular Price, the Discount Percentage, and the Discount Value.



The Discount Price (“\$30.00” in red box), the Regular Price (“\$60.00” in blue box) the Discount Percentage (“50% off” in green box), and the Discount Value (“-\$30.00” in orange box) are each displayed once.

27. After clicking “Checkout”, a customer has the option to check out as a guest or to sign in and check out. On the checkout page, the Regular Price, the Discount Percentage, and the Discount Value are again displayed.

ORDER SUMMARY	
YOUR CART	\$60.00
CANADA STANDARD SHIPPING	\$16.99
DISCOUNT	-\$30.00
	Discounts included
50% OFF EVERYTHING!*	-\$30.00
<b>ORDER TOTAL (INCLUDING DELIVERY)</b>	<b>\$46.99</b>
Tax calculated in checkout	

The Regular Price (“\$60.00” in blue box) and the Discount Percentage (“50% OFF EVERYTHING!” in green box) are each displayed once, and the Discount Value (“-\$30.00” in orange box) is displayed twice.

28. In total, the Discount Price is displayed on Boohoo’s website three times, the Regular Price is displayed four times, the Discount Percentage is displayed four times, and the Discount Value is displayed three times before the purchase is made.

PrettyLittleThing’s Website

29. Below is an image of a Fashion Product for sale on PrettyLittleThing’s website. The Discount Price (\$20.00), the Regular Price (\$40.00), and the Discount Percentage (50% off) are each displayed. The red, blue, and green boxes were added to this Notice of Civil Claim to highlight PrettyLittleThing’s pricing information.



The Discount Price (“CA\$20.00” in red box), the Regular Price (“CA\$40.00” in blue box), and the Discount Percentage (“(50% OFF)” in green box) are each displayed once.



30. When a customer clicks on the Fashion Product, they are brought to that specific product's webpage. The Discount Price, the Regular Price, and the Discount Percentage are each shown again on this webpage.



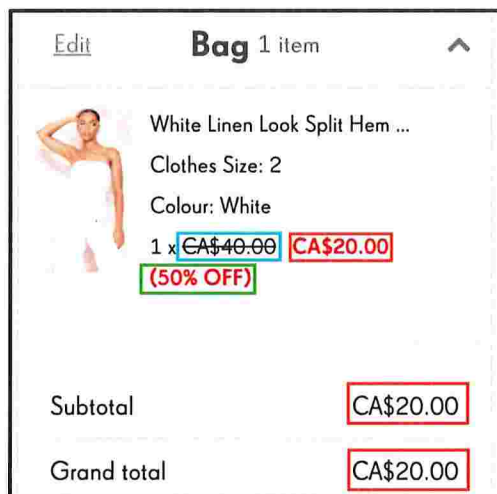
The Discount Price ("CA\$20.00" in red box), the Regular Price ("CA\$40.00" in blue box), and the Discount Percentage ("(50% OFF)" in green box) are each displayed once.

31. When a customer clicks on their cart, they are once again brought to a screen which displays the Discount Price, the Regular Price, and the Discount Percentage.



The Discount Price ("CA\$20.00" in red box) is displayed twice, and the Regular Price ("CA\$40.00" in blue box), and the Discount Percentage ("(50% OFF)" in green box) are each displayed once.

32. On the checkout page, the Discount Value, the Regular Price, and the Discount Percentage are again displayed.



The Discount Price ("CA\$20.00" in red box) is displayed three times, and the Regular Price ("CA\$40.00" in blue box) and the Discount Percentage ("(50% OFF)" in green box) are each displayed once.

33. In total, the Discount Price is displayed on PrettyLittleThing's website seven times, the Regular Price is displayed four times, and the Discount Percentage is displayed four before the purchase is made.

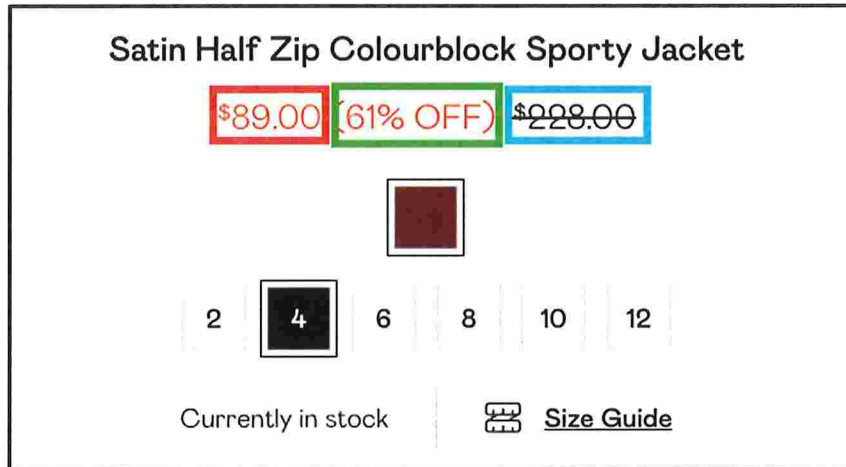
Nasty Gal's Website

34. Below is an image of a Fashion Product for sale on Nasty Gal's website. The Discount Price (\$89.00), the Regular Price (\$228.00) and the Discount Percentage (61% off) are each displayed. The red, blue, and green boxes were added to this Notice of Civil Claim to highlight Nasty Gal's pricing information.



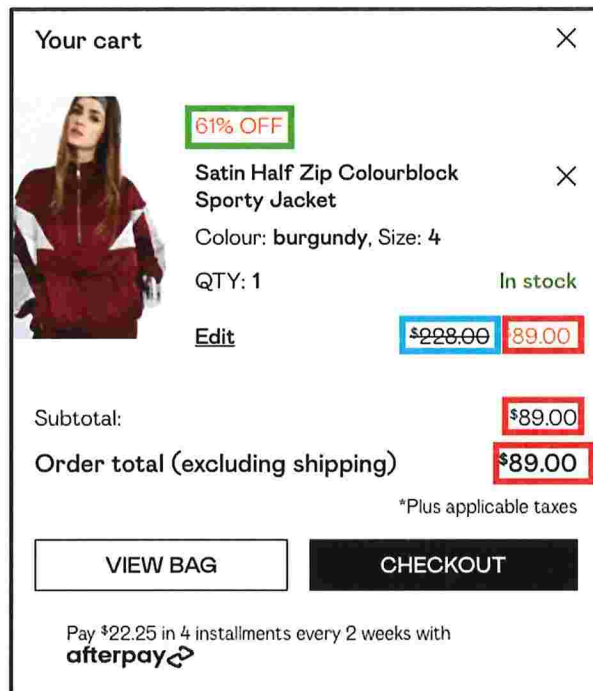
The Discount Price ("89.00" in red box), the Regular Price ("228.00" in blue box), and the Discount Percentage ("61% OFF" in green box) are each displayed once.

35. When a customer clicks on the Fashion Product, they are brought to that specific product's webpage. The Discount Price, the Regular Price, and the Discount Percentage are each shown again on this webpage.



The Discount Price (“\$89.00” in red box), the Regular Price (“\$228.00” in blue box), and the Discount Percentage (“61% OFF” in green box) are each displayed once.

36. When a customer clicks on “add to bag” their cart appears and they are once again brought to a screen which displays the Discount Price, the Regular Price, and the Discount Percentage.




The Discount Price (“\$89.00” in red box) is displayed three times, and the Regular Price (“\$228.00” in blue box) and the Discount Percentage (“61% OFF” in green box) are each displayed once.

37. After clicking “Checkout”, a customer has the option to check out as a guest or to sign in and check out. On the checkout page, the Discount Price, the Regular Price, and the Discount Percentage are again displayed.

**Order Summary**

Order subtotal	\$89.00
Canada Standard Shipping	\$14.99
<hr/>	
<b>Order total (including delivery)</b>	<b>\$103.99</b>
*Plus applicable taxes	

**Your cart** [Edit](#)



61% OFF

Satin Half Zip Colourblock Sporty Jacket

Colour: burgundy, Size: 4

Qty: 1

~~\$228.00~~ \$89.00

The Discount Price (“\$89.00” in red box) is displayed twice, and the Regular Price (“\$228.00” in blue box) and the Discount Percentage (“61% OFF” in green box) are each displayed once.

38. In total, the Discount Price is displayed on PrettyLittleThing’s website seven times, the Regular Price is displayed four times, and the Discount Percentage is displayed four before the purchase is made.

***The Defendants Misrepresent the Value of the Fashion Products***

39. The Regular Price is a false and misleading representation of the price at which the Fashion Products are regularly offered for sale. As a result, the Discount Value customers ostensibly receive when purchasing the Fashion Products at the Discount Price is illusory.

40. At material times, the Fashion Products were offered for sale at the Regular Price far less than 50% of the time. Because the Fashion Products are offered for sale at the Regular Price so infrequently, the significant majority of sales volume are at the Discount Price.

41. Accordingly, the Regular Price does not accurately reflect the price that the Defendants ordinarily charge for the Fashion Products.

***The Defendants’ Misconduct***

42. At all material times, the Defendants designed, manufactured, marketed, sold, distributed and/or placed the Fashion Products into the stream of commerce.



43. At all material times, the Defendants represented, expressly or by implication, that the Regular Price of the Fashion Products was the price at which the Defendants regularly offered to sell the Fashion Products.

44. At all material times, the Defendants rarely, if ever, offered the Fashion Products for sale at a price equal to the Regular Price.

45. At all material times, the Regular Price did not mean a market price of the same product at any other outlet or store other than on the Defendants' websites because the Fashion Products are only sold through the Defendants' own websites.

46. At all material times, the Defendants represented, expressly or by implication, that purchasers would obtain a benefit, in the form and quantity of the Discount Value, by purchasing the Fashion Products at the Discount Price.

47. At all material times, the benefit in the form and quantity of the Discount Value did not exist or was substantially less than the Discount Value. At all material times the Defendants knew or ought reasonably to have known this to be the case.

48. At all material times, the Defendants knew or ought reasonably to have known that they rarely, if ever, offered to sell the Fashion Products at a price equal to the Regular Price.

49. The Plaintiff and Class Members reasonably relied on the Discount Price, the Regular Price, the Discount Percentage, and/or the Discount Value of the Fashion Products in deciding to purchase the Fashion Products.

50. The Defendants knowingly or recklessly misled customers as to the Regular Price of the Fashion Products and the Discount Value that they would obtain by purchasing the Fashion Products.

51. At all material times, the Defendants exercised total control over the pricing of the Fashion Products (including the Discount Price, the Regular Price, the Discount Percentage and/or the Discount Value) and how they represented this information to the Plaintiff and Class Members.

52. At all material times, there existed a cognitive asymmetry between the Defendants and the Plaintiff and Class Members as to how the pricing of the Fashion Products (including the Discount Price, the Regular Price, the Discount Percentage and/or the Discount Value) was calculated.

53. At all material times, the reasonable expectations of the Plaintiff and Class Members regarding the Fashion Products included, *inter alia*, that:

- a. the Regular Price represented by the Defendants was an accurate reflection of:
  - i. the value of the Fashion Products; and/or
  - ii. the price at which the Fashion Products were regularly offered for sale;
- b. they would receive a product with a true market value at or near the Regular Price; and/or
- c. they would accrue savings equal to the Discount Value by purchasing the Fashion Products at the Discount Price as opposed to purchasing the same products for the price at which the Defendants ordinarily offered them for sale.

54. At all material times, and contrary to the reasonable expectations of the Plaintiff and Class Members, the material terms and conditions of the bargain for the Fashion Products included, *inter alia*:

- a. the Fashion Products were ordinarily offered for sale at the Discount Price; and/or
- b. purchasing the Fashion Products at the Discount Price did not provide a benefit in the form and quantity of the Discount Value.

55. At all material times, the terms and conditions of the bargain for the Fashion Products purchased at the Discount Price violated the reasonable expectations of the Plaintiff and Class Members.

56. The Plaintiff and Class Members would have paid a lower price for the Fashion Products had they been aware that the Regular Price was not an accurate valuation of the undiscounted selling price of the Fashion Products and/or that they would not obtain a benefit equal to the Discount Value.

57. The Defendants obtained a portion, or all, of the purchase price paid by the Plaintiff and Class Members for the Fashion Products as a result of the Defendants' breaches of the *BPCPA* and related provincial consumer protection legislation.

58. The Plaintiff and Class Members were the source of the money acquired by the Defendants, in the form and quantity of some, or all, of the purchase price paid by them for the Fashion Products.

59. The Plaintiff and Class Members each have an interest in some, or all, of the funds received from them by the Defendants, either directly or indirectly, for the Fashion Products.

60. The Plaintiff has sent a letter to each of the Defendants advising therein that all Consumer Subclass Members in Ontario seek restitution, or in the alternative damages, pursuant to the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sched. A (the "**Ontario CPA**") and that all Consumer Subclass Members in Prince Edward Island seek restitution, or in the alternative damages, pursuant to the *Business Practices Act*, RSPEI 1988, c B-7 ("**PEI BPA**") due to the Defendants' misconduct, as particularized in this Notice of Civil Claim. This notice was sent on behalf of all Consumer Subclass Members in Ontario and all Consumer Subclass Members in Prince Edward Island. In the alternative, the notice requirement is fulfilled by the filing of this Notice of Civil Claim. In the further alternative, the interests of justice warrant dispensing of the notice requirement for Consumer Subclass Members in Ontario pursuant to section 18(15) of the *Ontario CPA*.

61. The Defendants offered the Fashion Products for sale at the Discount Price, and the Plaintiff and Class Members accepted the Defendants' offers by paying the Discount Price for the Fashion Products.

62. The Defendants have collectively been enriched by the receipt of the purchase price paid by the Plaintiff and Class Members for the Fashion Products. The Plaintiff and Class Members have been correspondingly deprived of the purchase price paid to the Defendants for the Fashion Products.

***Harm to the Plaintiff and Class Members***

63. As a result of the Defendants' breaches of the *Competition Act* and/or the *BPCPA* and related enactments, the Plaintiff and Class Members have suffered loss and/or damage. The Defendants' misrepresentations have caused the Plaintiff and Class Members to acquire less value than they expected to acquire when purchasing the Fashion Products and/or pay a greater price for the Fashion Products than they would have paid had the Defendants not misrepresented the Discount Price, the Regular Price, the Discount Percentage, and/or the Discount Value of the Fashion Products.

64. The damages suffered by the Plaintiff and Class Members arising from the Defendants' breaches of the *Competition Act* and/or the *BPCPA* and related provincial consumer protection legislation are capable of being quantified on an aggregate basis in the quantity of the payments made by the Class Members to the Defendants for the Fashion Products. All amounts payable to the Class on account of damages and disgorgements should be calculated on an aggregate basis pursuant to section 29 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 (the "***Class Proceedings Act***"), or otherwise.

65. Further, the Defendants have been unjustly enriched by the receipt of the purchase price paid by the Plaintiff and Class Members for the Fashion Products, and the Plaintiff and Class Members have suffered a corresponding deprivation. Since payments were made as a result of the Defendants' wrongful acts described herein, there is no juristic reason for the Defendants retaining the payments. The Plaintiff and Class Members are entitled to claim and recover, based on equitable and restitutionary principles, the amount received directly or indirectly by each of the Defendants equal to the corresponding deprivation of the Plaintiff and Class Members.



## Part 2: RELIEF SOUGHT

66. The Plaintiff claims, on their own behalf and on behalf of the Class Members:
- a. an order certifying this action as a class proceeding under the *Class Proceedings Act*;
  - b. a declaration that the Defendants have engaged in conduct contrary to Part VI of the *Competition Act*;
  - c. damages pursuant to section 36 of the *Competition Act*;
  - d. costs of investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*;
  - e. a declaration under section 172(1)(a) of the *BPCPA* that the Defendants have breached sections 4-5 and/or 8-9 of the *BPCPA*;
  - f. an injunction under section 172(1)(b) of the *BPCPA* to restrain further breaches of the *BPCPA* in the Defendants' pricing practices by requiring that the Defendants represent an accurate undiscounted value and discount value for the Fashion Products;
  - g. a restoration order under section 172(3)(a) of the *BPCPA* in an amount equal to some, or all, of the price paid by the Plaintiff and Consumer Subclass Members in British Columbia to the Defendants for the Fashion Products;
  - h. in the alternative to a restoration order under section 172, damages pursuant to section 171;
  - i. relief for contraventions of extra-provincial consumer protection legislation, as follows:
    - i. restitution of some, or all, of the price paid by the Consumer Subclass Members in Alberta to the Defendants for the Fashion Products, or in the alternative damages, as well as punitive damages pursuant to subsections 7(1), 7(3), 7.2(1), 13(2) and/or 142.1(2) of the *Alberta Consumer Protection Act*, RSA 2000, c. C-26.3;

- ii. restitution of some, or all, of price paid by the Consumer Subclass Members in Saskatchewan to the Defendants for the Fashion Products, or in the alternative damages, as well as punitive damages pursuant to subsection 93(1) of the Saskatchewan *Consumer Protection and Business Practices Act*, SS 2014, c. C-30.2;
- iii. repayment of some, or all, of the price paid by the Consumer Subclass Members in Manitoba to the Defendants for the Fashion Products, or in the alternative damages, as well as punitive damages pursuant to subsections 23(2) and/or 23(4) of the Manitoba *Business Practices Act*, CCSM, c. B120;
- iv. restitution of some, or all, of price paid by the Consumer Subclass Members in Ontario to the Defendants for the Fashion Products, or in the alternative damages, as well as punitive damages pursuant to subsections 18(1), 18(2), and/or 18(11) of the *Ontario CPA*;
- v. restitution of some, or all, of price paid by the Consumer Subclass Members in Prince Edward Island to the Defendants for the Fashion Products, or in the alternative damages, as well as punitive damages pursuant to subsections 4(1) and/or 4(2) of the *PEI BPA*; and
- i. repayment of some, or all, of price paid by the Consumer Subclass Members in Newfoundland and Labrador to the Defendants for the Fashion Products, or in the alternative damages, as well as punitive damages pursuant to subsection 10(2) of the Newfoundland and Labrador *Consumer Protection and Business Practices Act*, SNL 2009, c. C-31.1;
- j. punitive damages;
- k. a declaration that the Defendants have each been unjustly enriched by the receipt of payment for the Fashion Products and an order that the Defendants account for and make restitution to the Class Members in an

amount equal to the price paid by the Plaintiff and Class Members to the Defendants for the Fashion Products, or alternatively disgorgement;

- l. pre-judgement and post-judgement interest under the *Court Order Interest Act*, RSBC 1996, c 79; and
- m. such further and other relief as this Honourable Court may deem just.

### **Part 3: LEGAL BASIS**

67. The Plaintiff and Class Members plead and rely on the *Competition Act*, the *Business Practices and Consumer Protection Act* and related enactments in other provinces, the *Class Proceedings Act*, the *Limitation Act*, SBC 2012, c 13, the *Court Order Interest Act*, RSBC 1996, c 79, the Supreme Court Civil Rules, and related enactments.

#### ***Breaches of the Competition Act***

68. The *Competition Act* applies to business transacted in Canada.

69. The Defendants have breached section 52 of the *Competition Act*, as amended from time to time.

70. The Fashion Products are each a “product” within the meaning of sections 2 and 52 of the *Competition Act*.

71. The Defendants’ representations as to the Discount Price, the Regular Price, the Discount Percentage, and/or the Discount Value of the Fashion Products when the Defendants knew or were reckless or willfully blind to the fact that the Fashion Products were rarely, if ever, offered at a price equaling the Regular Price is in breach of section 52(1) of the *Competition Act*. In particular, the Defendants breached section 52(1) of the *Competition Act* by representing that:

- a. the Fashion Products were worth an amount equal or approximate to the Regular Price when the Fashion Products were worth an amount much lower than the Regular Price;

- b. the Fashion Products were ordinarily offered for sale at a price equal or approximate to the Regular Price when these products were rarely, if ever, offered for sale at a price equal to the Regular Price; and/or
- c. the Plaintiff and Class Members would acquire a benefit (equal to the Discount Value) by purchasing the Fashion Products at the Discount Price when the benefit obtained by purchasing these products at the Discount Price was less than the Discount Value.

72. This conduct was done for the purpose of promoting, directly or indirectly, the supply or use of the Fashion Products and/or for the purpose of promoting, directly or indirectly, the Defendants' business interests in attracting customers to purchase the Fashion Products from them.

73. The Defendants' representations regarding the Fashion Products consisted of representations accompanying the products and/or representations made available to the public under section 52(2) of the *Competition Act*, whether from Canada or from outside Canada under section 52(2.1). Such representations were false or misleading in a material respect, including, *inter alia*, with respect to the magnitude of the exaggerated savings suggested by the representations.

74. As a result of the Defendants' breaches of section 52 of the *Competition Act*, the Plaintiff and Class Members acquired a product, namely the Fashion Products, which had less value than the Plaintiff and Class Members expected. Further or in the alternative, as a result of the Defendants' breaches of section 52 of the *Competition Act*, the Plaintiff and Class Members paid a greater price for the Fashion Products than they would have paid had the Defendants not misrepresented the Discount Price, the Regular Price, the Discount Percentage, and/or the Discount Value of the Fashion Products.

***Breaches of the Business Practices and Consumer Protection Act***

75. The Defendants have breached the *BPCPA*.

76. The Plaintiff and Consumer Subclass Members in British Columbia are "consumers" within the meaning of section 1 of the *BPCPA*.



77. The Fashion Products are “goods” within the meaning of section 1 of the *BPCPA*.

78. The Defendants are “suppliers” within the meaning of section 1 of the *BPCPA*.

79. The sale and supply of the Fashion Products in British Columbia is a “consumer transaction” within the meaning of section 1 of the *BPCPA*.

#### Breaches of Sections 4-5

80. By the conduct set out herein, the Defendants have breached sections 4-5 of the *BPCPA*. The Defendants’ actions constitute deceptive acts or practices. The Defendants knew or ought to have known that their conduct was deceptive.

81. Section 5 of the *BPCPA* prohibits suppliers from engaging in deceptive acts or practices in respect of consumer transactions. Once it is alleged that a supplier committed or engaged in a deceptive act or practice, the burden of proof that the deceptive act or practice was not committed or engaged in is on the supplier.

82. In the marketing and supply of the Fashion Products, the Defendants engaged in conduct contrary to, *inter alia*, subsections 4(3)(a)(ii), 4(3)(b)(vi), and/or 4(3)(c)(i) of the *BPCPA* by representing that:

- a. the Fashion Products were worth an amount equal or approximate to the Regular Price when the Fashion Products were worth an amount lower than the Regular Price;
- b. the Fashion Products were ordinarily offered for sale at a price equal or approximate to the Regular Price when these products were rarely, if ever, offered for sale at a price equal to the Regular Price; and/or
- c. the Plaintiff and Class Members would acquire a price benefit (equal to the Discount Value) by purchasing the Fashion Products at the Discount Price when such a benefit did not exist or was substantially less than the Discount Value.

83. The Defendants' conduct breached sections 4-5 of the *BPCPA* irrespective of whether it was contrary to any of the factors enumerated under subsection 4(3) as it had the capability, tendency or effect of deceiving or misleading the Plaintiff and Consumer Subclass Members in British Columbia.

#### Breaches of Sections 8-9

84. By the conduct set out herein, the Defendants have breached sections 8-9 of the *BPCPA*. The Defendants' actions constitute unconscionable acts or practices. The Defendants knew or ought to have known that their conduct was unconscionable.

85. Section 9 of the *BPCPA* prohibits suppliers from engaging in unconscionable acts or practices in respect of consumer transactions. Once it is alleged that a supplier committed or engaged in an unconscionable act or practice, the burden of proof that the unconscionable act or practice was not committed or engaged in is on the supplier.

86. That the above-described conduct constitutes an unconscionable act or practice is informed by the circumstances enumerated under section 8(3) of the *BPCPA*, and in particular subsections 8(3)(b) and/or (e). However, the Defendants' conduct breached sections 8-9 of the *BPCPA* irrespective of whether it was contrary to any of the factors enumerated under subsection 8(3).

87. Through their total control over the pricing of the Fashion Products (including the Discount Price, the Regular Price, the Discount Percentage, and/or the Discount Value) and how this information was represented to the Plaintiff and Consumer Subclass Members in British Columbia, the Defendants misled consumers as to the actual value of and benefit they would obtain by purchasing the Fashion Products. The Defendants' total control over the pricing of the Fashion Products and how they represented this information created a cognitive asymmetry whereby the Plaintiff and Consumer Subclass Members in British Columbia could not understand or appreciate some of the important terms and conditions of the bargain for the Fashion Products, namely that:

- a. the Fashion Products were ordinarily offered for sale at the Discount Price;  
and/or

- b. purchasing the Fashion Products at the Discount Price did not provide a benefit in the form and quantity of the Discount Value.

88. These terms and conditions of the bargains between the Defendants and Consumer Subclass Members were inequitable and/or excessive because they violated the reasonable expectations of the Consumer Subclass Members in British Columbia, including, *inter alia*, that:

- a. the Regular Price represented by the Defendants was an accurate reflection of:
  - i. the value of the Fashion Products; and/or
  - ii. the price at which the Fashion Products were regularly offered for sale;
- b. they would receive a product with a true market value at or near the Regular Price; and/or
- c. they would accrue savings equal to the Discount Value by purchasing the Fashion Products at the Discount Price as opposed to purchasing the same products for the price at which the Defendants ordinarily offered them for sale.

89. The Plaintiff and Consumer Subclass Members in British Columbia have been unduly disadvantaged by these inequitable and/or excessive terms and conditions of the bargain for the Fashion Products as a result of acquiring less value than they expected to receive when they purchased the Fashion Products and/or paying a greater price for the Fashion Products than they would have had they understood and appreciated these terms and conditions. The Defendants were unduly advantaged through the receipt of more monies than they would have obtained from the Plaintiff and Consumer Subclass Members in British Columbia had they not engaged in the conduct described herein.

90. The cognitive asymmetry resulting from the Defendants' total control of the pricing of the Fashion Products and how they represented this information amounted to an inequality of bargaining power which created the potential for the Defendants to confer

an undue advantage, and for the Plaintiff and Consumer Subclass Members in British Columbia to confer an undue disadvantage. This potential was realized when the Defendants leveraged the cognitive asymmetry between the parties and misrepresented the estimated value of the Fashion Products and the benefit that the Plaintiff and Consumer Subclass Members would obtain from purchasing these products. These misrepresentations, the falsehood of which the Plaintiff and Consumer Subclass Members in British Columbia were ignorant to as a result of the cognitive asymmetry, resulted in the bargain for the Fashion Products being improvident. The Defendants have therefore committed an unconscionable act or practice.

#### Remedies for Breaches of the *BPCPA*

91. As a result of the Defendants' breaches of section 4-5 and/or 8-9 of the *BPCPA*, the Plaintiff and Consumer Subclass Members in British Columbia acquired less value than they expected to acquire when purchasing the Fashion Products and/or paid a greater price for the Fashion Products than they would have paid had the Defendants not misrepresented the Discount Price, the Regular Price, the Discount Percentage, and/or the Discount Value of the Fashion Products.

92. The Plaintiff and Consumer Subclass Members in British Columbia have an interest in, and were the source of, the funds received from them by the Defendants for the Fashion Products obtained due to a breach or breaches of sections 4-5 and/or 8-9 of the *BPCPA*.

93. The Plaintiff and Consumer Subclass Members in British Columbia are entitled to a declaration under section 172(1)(a) of the *BPCPA* that the Defendants have breached sections 4-5 and/or 8-9 of the *BPCPA*.

94. The Plaintiff and Consumer Subclass Members in British Columbia are entitled to an injunction under section 172(1)(b) of the *BPCPA* to restrain further breaches of the *BPCPA* by requiring that the Defendants represent an accurate undiscounted value and discount value for the Fashion Products.

95. As a result of the Defendants' breaches of sections 4-5 and/or 8-9 of the *BPCPA*, the Plaintiff and Consumer Subclass Members in British Columbia have suffered loss and/or damage and are entitled to a restoration of some, or all, of the price paid by them and received by the Defendants for the Fashion Products pursuant to section 172(3)(a) of the *BPCPA*.

96. In the alternative to restoration under section 172, the Plaintiff and Consumer Subclass Members in British Columbia are entitled to damages under section 171 of the *BPCPA*.

97. Consumer Subclass Members resident outside of British Columbia plead and rely on the equivalent provisions of the consumer protection legislation in their respective provinces and territories, namely: *Consumer Protection Act*, RSA 2000, c C-26.3; *Consumer Protection and Business Practices Act*, SS 2013, c C-30.2; *Business Practices Act*, CCSM, c. B120; *Ontario CPA*; *PEI BPA*; and *Consumer Protection and Business Practices Act*, SNL 2009, c. C-31.1, each as amended from time to time and with regulations in force at material times, as set out in Schedule A to this Notice of Civil Claim.

### ***Unjust Enrichment***

98. As set out above, the Defendants have been enriched by the amounts received from the Plaintiff and Class Members through the sale of the Fashion Products. The Plaintiff and Class Members suffered a corresponding deprivation of this same amount.

99. There is no juristic reason for the Defendants to retain these benefits as the contracts between the Defendants and the Plaintiff and Class Members for the Fashion Products are illegal, void, and/or voidable due to the Defendants' breach of the *Competition Act*.

100. As a result of their actions, the Defendants have been unjustly enriched. The Plaintiff and Class Members are entitled to restitution of the benefits received by the Defendants on account of the sale of the Fashion Products in Canada.

101. In the alternative, justice and good conscience require that the Defendants disgorge to the Plaintiff and Class Members an amount attributable to the benefits received by them on account of the sale of the Fashion Products in Canada.

### ***Punitive Damages***

102. The Defendants' conduct in repeatedly, over a period of years, misrepresenting the value of the Fashion Products and/or the benefit that purchasers would obtain by purchasing these products at a discount when such discount did not exist or was substantially less than represented, in an overwhelming majority of all sales, was high-handed, outrageous, reckless, and predatory. Given the reprehensible misconduct by the Defendants they are liable to pay punitive damages to the Plaintiff and Class Members as a result of this conduct.

### ***Joint and Several Liability***

103. The Defendants are jointly and severally liable for the actions and damages allocable to them.

### ***Limitation Periods***

104. The Plaintiff and Class Members could not reasonably have known that loss or damage had occurred, that it was caused or contributed to by the acts of the Defendants, or that a court proceeding would be an appropriate means to seek to remedy the injury until the date that this notice of civil claim was filed. The harm is ongoing.

105. The Plaintiff and Class Members rely on the doctrines of postponement, discoverability, and fraudulent concealment per *Pioneer Corp v. Godfrey*, 2019 SCC 42 to postpone the running of the limitation period until the date this Notice of Civil Claim is filed.

106. The Plaintiff and Class Members plead and rely on and the *Limitation Act*, SBC 2012, c 13, and in particular sections 8 and 21(3). In the alternative, or in addition, the Plaintiff and Class Members rely on section 30 of the *Limitation Act*, SBC 2012, c 13, and the *Limitation Act*, RSBC 1996, c 266.



**Service on the Defendants**

107. The Plaintiff and Class Members have the right to serve this Notice of Civil Claim on the Defendants pursuant to section 10 the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28 (the "**CJPTA**"), because there is a real and substantial connection between British Columbia and the facts alleged in this proceeding pursuant to sections 10(e), (h) and/or (i) of the *CJPTA* as this action:

- a. concerns contractual obligations that, to a substantial extent, were to be performed in British Columbia;
- b. concerns a business carried on in British Columbia; and/or
- c. is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Plaintiff's address for service:

Slater Vecchio LLP  
1800 - 777 Dunsmuir Street  
Vancouver, BC V7Y 1K4

Fax number for service: 604.682.5197

Email address for service: [service@slatervecchio.com](mailto:service@slatervecchio.com)

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street  
Vancouver, BC  
V6Z 2E1

Date: August 4, 2023



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Signature of lawyer for plaintiff

Saro J. Turner

Sam Jaworski

Justin Giovannetti

Slater Vecchio LLP

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION  
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The plaintiff claims the right to serve this pleading on the defendants Boohoo UK Limited, Boohoo.com USA, Inc., PrettyLittleThing.com Limited, PrettyLittleThing.com USA Inc., Nasty Gal Limited and NastyGal.com USA Inc. outside British Columbia on the ground that the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s 10 (CJPTA) applies because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based. The Plaintiff and Class Members rely on the following grounds, in that this action:

- concerns contractual obligations that, to a substantial extent, were to be performed in British Columbia;
- concerns a business carried on in British Columbia; and
- is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

## Appendix

*[The following information is provided for data collection purposes only and is of no legal effect.]*

### **Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

This is a proposed class proceeding alleging that Boohoo, PrettyLittleThing and Nasty Gal misrepresent the value and offer not existent discounts on clothing, accessories, and other products.

### **Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

*[Check one box below for the case type that best describes this case.]*

A personal injury arising out of:

a motor vehicle accident

medical malpractice

another cause

A dispute concerning:

contaminated sites

construction defects

real property (real estate)

personal property

the provision of goods or services or other general commercial matters

investment losses

the lending of money

an employment relationship

a will or other issues concerning the probate of an estate

a matter not listed here

**Part 3: THIS CLAIM INVOLVES:**

*[Check all boxes below that apply to this case]*

a class action

maritime law

aboriginal law

constitutional law

conflict of laws

none of the above

do not know

**Part 4:**

*Limitation Act, SBC 2012, c 13, Court Order Interest Act, RSBC 1996, c 79*

## SCHEDULE A

### Extra-Provincial Consumer Protection Legislation

#### Alberta

1. The Defendants have breached the *Consumer Protection Act*, RSA 2000, c C-26.3 (the "**Alberta CPA**"). The Consumer Subclass Members in Alberta are "consumers" within the meaning of section 1. The Fashion Products are "goods" within the meaning of section 1. The Defendants are each a "supplier" within the meaning of section 1. The supply of the Fashion Products is a "consumer transaction" within the meaning of section 1.
2. By reason of the Defendants' conduct, the Defendants have breached sections 5-6 of the *Alberta CPA*. The Defendants' actions are in violation of subsections 6(2)(b)-(c), 6(3)(c), 6(4)(a), 6(4)(e), and/or 6(4)(o) and constitute "unfair practices".
3. As a result of the Defendants' breaches of the *Alberta CPA*, the Consumer Subclass Members in Alberta are entitled to restitution of some, or all, of the price paid by them to the Defendants for the Fashion Products pursuant to subsections 7(3), 13(2)(d)(ii), and/or 142.1(2)(c)(ii), or in the alternative damages pursuant to subsections 7(1), 7(3), 13(2)(b), and/or 142.1(2)(a). Further, the Defendants are liable to pay punitive damages to the Consumer Subclass Members in Alberta pursuant to subsections 7.2(1), 13(2)(c), and/or 142.1(2)(b) of the *Alberta CPA*.
4. The Defendants cannot rely on any arbitration clause, if any such clause exists, due to section 16 of the *Alberta CPA* which invalidates any such clause between a "supplier" and a "consumer" in respect of a "consumer transaction", rendering such a clause void and unenforceable.

#### Saskatchewan

5. The Defendants have breached the *Consumer Protection and Business Practices Act*, SS 2013, c C-30.2 (the "**Saskatchewan CPBPA**"). The Consumer Subclass Members in Saskatchewan are each a "consumer" within the meaning of section 2. The Fashion Products are "goods" within the meaning of section 2. The Defendants are each



a “supplier” within the meaning of section 2. The supply of the Fashion Products are “transactions involving goods and services” within the meaning of sections 2 and 5.

6. By reason of the Defendants’ conduct, the Defendants have breached sections 6-9 of the *Saskatchewan CPBPA*. The Defendants’ actions are in violation of sections 6(a)-(c), 7(c), 7(i), 7(o), and/or 7(q) and constitute “unfair practices”.

7. As a result of the Defendants’ breaches of the *Saskatchewan CPBPA*, the Consumer Subclass Members in Saskatchewan are entitled to restitution of some, or all, of the price paid by them to the Defendants for the Fashion Products pursuant subsection 93(1)(a), or in the alternative damages pursuant to subsection 93(1)(b). Further, the Defendants are liable to pay punitive damages to the Consumer Subclass Members in Saskatchewan pursuant to subsection 93(1)(b) of the *Saskatchewan CPBPA*.

8. The Defendants cannot rely on any arbitration clause or class action waiver, if any such clause or waiver exists, due to section 101 of the *Saskatchewan CPBPA* which invalidates any such clause or waiver, rendering it void.

## **Manitoba**

9. The Defendants have breached the *Business Practices Act*, CCSM, c. B120 (the “**Manitoba BPA**”). The Consumer Subclass Members in Manitoba are each a “consumer” within the meaning of section 1. The Fashion Products are “goods” within the meaning of section 1. The Defendants are each a “supplier” within the meaning of section 1. The supply of the Fashion Products is a “consumer transaction” within the meaning of section 1.

10. By reason of the Defendants’ conduct, the Defendants have breached section 2-3 of the *Manitoba BPA*. The Defendants’ actions are in violation of subsections 2(1)(a)-(b), 2(3)(c), 2(3)(l), 2(3)(p), 3(1)(a), 3(2)(a), and/or 3(2)(b) and constitute “unfair business practices” in breach of section 5.

11. As a result of the Defendants’ breaches of the *Manitoba BPA*, the Consumer Subclass Members in Manitoba are entitled to repayment of some, or all, of the price paid

by them to the Defendants for the Fashion Products pursuant to subsection 23(2)(d), or in the alternative damages pursuant to subsection 23(2)(a) of the *Manitoba BPA*. Further, the Defendants are liable to pay punitive damages to the Consumer Subclass Members in Manitoba pursuant to subsection 23(4) of the *Manitoba BPA*.

## **Ontario**

12. The Defendants have breached the *Consumer Protection Act, 2002*, SO 2002, c 30, Sched A (the "**Ontario CPA**"). The Consumer Subclass Members in Ontario are each a "consumer" within the meaning of section 1. The Fashion Products are "goods" within the meaning of section 1. The Defendants are each a "supplier" within the meaning of section 1. The supply of the Fashion Products constitutes a "consumer transaction" within the meaning of section 1. The Defendants made "representation[s]" within the meaning of section 1.

13. By reason of the Defendants' conduct, the Defendants have made false, misleading or deceptive representation in breach of section 14 and/or unconscionable representations in breach of section 15. The Defendants' actions are in violation of subsections 14(2)(3), 14(2)(11), 14(2)(14), 15(2)(a), 15(2)(c), 15(2)(f), and/or 15(2)(g) and constitute "unfair practices" in breach of section 17 of the *Ontario CPA*.

14. As a result of the Defendants' breaches of the *Ontario CPA*, the Consumer Subclass Members in Ontario are entitled to restitution in an amount equal to some, or all, of the price paid by them to the Defendants for the Fashion Products, or in the alternative damages, pursuant to subsections 18(1) or 18(2). Further, the Defendants are liable to pay punitive damages to the Class Members in Ontario pursuant to subsection 18(11) of the *Ontario CPA*.

15. The Defendants cannot rely on any arbitration clause or class action waiver, if any such clause or waiver exists, due to sections 7 and 8 of the *Ontario CPA*, which provide the right to begin or be a member of a class proceeding in respect to a consumer agreement and invalidates any clause or waiver that seeks to limit this right.

16. The Plaintiff further pleads that the notice requirement pursuant to subsection 18(3) of the *Ontario CPA* is fulfilled by the delivery of written notice to the Defendants as set out in the Notice of Civil Claim, or in the alternative by the filing of this Notice of Civil Claim. In the further alternative, the Plaintiff pleads that the Court should disregard the requirement for notice pursuant to subsection 18(15) of the *Ontario CPA*.

### **Prince Edward Island**

17. The Defendants have breached the *Business Practices Act*, RSPEI 1988, c B-7 (the "**PEI BPA**"). The Consumer Subclass Members in Prince Edward Island are each a "consumer" within the meaning of section 1. The Fashion Products are "goods" within the meaning of section 1. The Defendants made "consumer representation[s]" within the meaning of section 1.

18. By reason of the Defendants' conduct, the Defendants have made false, misleading and/or deceptive consumer representations pursuant to subsections 2(a)(iii), 2(a)(x), and/or 2(a)(xiii) and/or unconscionable consumer representations pursuant to subsections 2(b)(i), 2(b)(iii), 2(b)(vi), and/or 2(b)(vii). The Defendants' actions therefore constitute "unfair practices" in breach of section 3.

19. As a result of the Defendants' breaches of the *PEI BPA*, Consumer Subclass Members in Prince Edward Island are entitled to restitution in an amount equal to some, or all, of the price paid by them to the Defendants for the Fashion Products, or in the alternative damages, pursuant to subsection 4(1). Further, the Defendants are liable to pay punitive damages to the Consumer Subclass Members in Prince Edward Island pursuant to subsection 4(2) of the *PEI BPA*.

20. The Defendants cannot rely on any arbitration clause or waiver, if any such clause or waiver exists, due to subsection 4(8) of the *PEI BPA*, which invalidates any such clause or waiver rendering it void.

21. The Plaintiff further pleads that the notice requirement pursuant to subsection 4(5) of the *PEI BPA* is fulfilled by the delivery of written notice to the Defendants as set out in the Notice of Civil Claim, or in the alternative by the filing of this Notice of Civil Claim.

## **Newfoundland and Labrador**

22. The Defendants have breached the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1 (the "**Newfoundland CPBPA**"). The Consumer Subclass Members in Newfoundland are each a "consumer" within the meaning of section 2. The Fashion Products are "goods" within the meaning of section 2. The Defendants are each a "supplier" within the meaning of section 2. The supply of the Fashion Products constitutes a "consumer transaction" within the meaning of section 2.

23. By reason of the Defendants' conduct, the Defendants have committed unfair business practices pursuant to subsections 7(1)(c), 7(1)(l), and/or 7(1)(w) and/or unconscionable acts and/or practices pursuant to subsections 8(1)(b), 8(1)(d)-(e), and/or 8(1)(f). The Defendants' have therefore breached subsection 9(1) of the *Newfoundland CPBPA*.

24. As a result of the Defendants' breaches of the *Newfoundland CPBPA*, Consumer Subclass Members in Newfoundland and Labrador are entitled to repayment of some, or all, of the price paid by them to the Defendants for the Fashion Products pursuant to subsection 10(2)(e), or in the alternative damages under subsection 10(2)(b). Further, the Defendants are liable to pay punitive damages to the Consumer Subclass Members in Newfoundland and Labrador pursuant to subsection 10(2)(b) of the *Newfoundland CPBPA*.

25. The Defendants cannot rely on any arbitration clause or class action waiver, if any such clause or waiver exists, due to section 3 of the *Newfoundland CPBPA*, which invalidates any such clause or waiver rendering it void.