

EXHIBIT A

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 18 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
 19 COUNTY OF LOS ANGELES

20 LARYSSA GALVEZ, JUDITH LINDLEY,
 21 NATALIE ANDERSON, Natural Persons, on
 22 behalf of themselves and all others similarly
 23 situated and for the benefit of the general
 24 public,

25 Plaintiffs,

26 v.

27 DRAPER JAMES, LLC., a Limited Liability
 28 Company, REESE WITHERSPOON, a
 Natural Person, and DOES 1 through 10,
 inclusive,

Defendants.

Case No.

20STCV15386

COMPLAINT

CLASS ACTION

**DEMAND FOR JURY TRIAL ON ALL
 CAUSES OF ACTIONS SO TRIABLE**

Plaintiffs, on behalf of themselves and all others similarly situated, upon personal knowledge as to their own acts and status as specifically identified herein, and otherwise upon information and belief based upon investigation as to the remaining allegations, hereby file this Complaint ("Complaint" or "FAC") and allege as follows against Defendants DRAPER JAMES, LLC, a limited liability company, REESE WITHERSPOON, a natural person, and DOES 1 through 10, inclusive:

SUMMARY OF CLAIMS

1. For several years, Draper James LLC (“Draper James”), a company owned, operated and actively promoted by actress Reese Witherspoon as her brand or label (“Witherspoon”), has manufactured, distributed, promoted, advertised and/or sold a dress line product under the brand name Draper James to consumers nationwide.

2. As detailed below, Defendants engaged in a promotional and advertising campaign and offer, taking advantage of the COVID-19 pandemic, offering to provide a new dress for teachers who signed up with Draper James and provided their personal contact information – including highly sensitive information such as their teacher ID information, their teacher work email addresses, and even copies of their employee work badges – all highly sensitive information that could be exploited by cyber-criminals, or used or sold by Defendants (which, it turns out, they did). Thus, in clear and positive terms, Defendants made an offer that promised to render performance (providing new dresses) in exchange for something requested by Defendants (personal sensitive information from Plaintiffs and class members). Based on the significant public reaction and outcry from the victims of this scam, there is clear and positive evidence that Plaintiffs and class members reasonably would have concluded that by acting in accordance with Defendants’ requests, a contract would be formed between the parties.

3. This was not an invitation to consider an offer but rather invited performance of a specific act (i.e., filling out a form that provided Defendants detailed private personal employment information and for many, even copies of personal employee IDs) without further communication upon completing the form and leaving nothing for negotiation. Thus, all that was necessary was for Plaintiffs and class members to accept the offer by filling out the form thereby accepting Defendants’ offer and concluding the parties’ bargain. Such a promotion thus formed a contract that was breached by Defendants.

4. There was no initial disclosure when Plaintiffs and class members did as Defendants requested that this offer was simply to participate in some form of lottery in exchange for providing private information, in light of all the circumstances detailed below. In fact, while there was a parenthetical (“offer valid while supplies last – winners will be notified on Tuesday

1 April 7th”), such language would not place a reasonable consumer on notice that this was a lottery.
2 Specifically, no specific limitation on quantity was stated in this offer, that “while supplies last”
3 was limited to 250 dresses, and any actual limitation was only stated after, in response to this offer
4 and the active promotion of the offer by Ms. Witherspoon, the company received close to a million
5 acceptances of their offer.

6 5. In fact, Defendants failed to disclose the material fact they only intended to provide
7 goods for 250 people – which with the average retail cost of their least expensive goods, was an
8 estimated paltry \$12,500 in actual cost to Defendants, at a time when other individuals of Ms. Ms.
9 Witherspoon’s renown were offering millions of dollars to COVID-19 victims. It is highly
10 unlikely that national shows such as *The Today Show* and *Good Morning America* would have
11 stated “Reese Witherspoon’s clothing brand is giving away free dresses to teachers” or “Reese
12 Witherspoon’s label Draper James is giving free dresses to teachers” or “the Oscar-winning actress
13 wants to show her gratitude during the coronavirus pandemic” if they were aware Defendants were
14 in fact only offering educators nationwide a pittance.

15 6. Upon receipt of close to a million acceptances of their offer, Defendants suddenly
16 renounced their offer and instead claimed it was a lottery drawing, provided consumers a product
17 coupon to encourage sales of their products, which considering the estimated product markup, in
18 all likelihood meant Defendants would still make money on sales, and sent class members
19 numerous product advertisements even after the promotion was over – all the while having
20 exponentially increased the size and value of their customer marketing database in ways that saved
21 them hundreds of thousands, if not millions, of dollars in marketing costs over the amount they
22 would have had to expend to obtain such information absent this offer, and the ability to exploit
23 or sell this new data base for access to others. To placate consumers, Defendants have since tried
24 to claim they were now making a “donation” of an unstated amount to charity instead of actually
25 following through with their represented promises. This has only made their ploy subject to further
26 outcry and derision.

27 7. Under the applicable law, it is unlawful to advertise goods or services with the
28 intent not to supply reasonably expectable demand, unless the advertisement discloses a clear

1 limitation of quantity, represent that goods or services have, benefits or quantities that they do not
 2 have, to represent that goods or services had benefits or quantities that they do not have, to
 3 represent that a transaction confers or involves rights, remedies, or obligations which it does not
 4 have or involve, or which are prohibited by law, or to represent that the subject of a transaction
 5 has been supplied in accordance with a previous representation when it has not. Defendants' claims
 6 were false and deceptive when made, as they had no intent to satisfy any reasonable expectation
 7 of demand, particularly considering Ms. Witherspoon's popularity and the active promotion of this
 8 offer and the resulting exploitation of this response by bombarding consumers who responded with
 9 email offers to buy their goods and services.

10 8. In response to such representations and omitted material facts, consumers provided
 11 property in terms of their sensitive personal employment information and copies of their employee
 12 IDs to Draper James and suffered damage by not receiving the benefit of the bargain offered by
 13 Defendants and accepted by Plaintiffs and class members. Plaintiffs reasonably acted in positive
 14 response to these claims and was deceived. Plaintiffs did not know, and had no reason to know,
 15 that Defendants' promotional plan did not intend to offer anything close to what they publicly
 16 offered. Plaintiffs and others would not have signed up for this offer and provided the personal
 17 information Draper James demanded if the true facts had been timely disclosed.

18 PARTIES

19 9. As used in this Complaint, "Plaintiffs" shall mean Laryssa Galvez, Judith Lindley
 20 and Natalie Anderson, each natural persons.

21 10. As used in this Complaint, "Defendants" when used without reference to a specific
 22 named Defendant shall collectively mean: (a) Draper James, LLC, a limited liability company
 23 based in Knoxville, TN and New York, NY, and that has been previously registered with the
 24 California Secretary of State; (b) Reese Witherspoon, a natural person; and (c) DOES 1 to 10.
 25 Draper James is suspended in California according to the records of the California Secretary of
 26 State. Ms. Witherspoon is an individual residing in the State of California and in this County. She
 27 is the founder, owner, manager and primary promoter of Draper James and Draper James products
 28

1 that is associated with her as her label or clothing brand, and as set forth below is featured in
2 directly making numerous of the material claims at issue herein as part of the offer at issue.

3 11. Plaintiffs are currently ignorant of the true names and capacities of the Defendants
4 sued under the fictitious names DOES 1 to 10. When Plaintiffs become aware of the true names
5 and capacities of the Defendants sued as DOES 1 to 10, Plaintiffs will identify them and/or amend
6 this Complaint to state their true names and capacities. Defendants DOES 1 to 10 are persons who
7 are in a position of responsibility in terms of impacting or controlling the actions of Draper James,
8 which allows them to influence business policies or the activities of Draper James and/or the other
9 Defendants in this action. There is a nexus between their involvement in the conduct in question
10 and the violations of law alleged herein such that they could have influenced the actions that
11 constituted the violations of law that form the basis for this action. Their actions or inactions
12 facilitated the violations alleged herein

13 12. At all times mentioned herein, each Defendant, whether actually or fictitiously
14 named as DOES 1-10 in this Complaint, was the principal, agent or employee of each other
15 defendant, and in acting as such principal, or within the course and scope of such employment or
16 agency, took some part in the acts and omissions hereinafter set forth, by reason of which each
17 defendant is liable to Plaintiffs and members of the proposed class and/or for the benefit of the
18 general public for the relief prayed for herein. At all times relevant herein, each defendant ratified
19 the unlawful conduct of the other defendants, their agents and employees, by actively promoting
20 the offer at issue, failing to repudiate the misconduct and by accepting the benefits of the
21 transactions in question with knowledge of the wrongdoing and thereby aided, abetted, and/or
22 ratified the violations of law alleged throughout this Complaint.

23 JURISDICTION AND VENUE

24 13. This Court has jurisdiction over this action under Article VI, section 10 of the
25 California Constitution and Code of Civil Procedure section 410.10. Jurisdiction is also proper
26 under Business & Professions Code section 17203 of the Unfair Competition Law ("UCL"), as
27 such claims can be brought in any court of competent jurisdiction. Jurisdiction over Defendants
28 is proper because they are either corporations or associations organized and operating in the State

1 of California, are residents of this State and/or have purposely availed themselves of the privilege
2 of conducting business activities in California because they reside here, work here, currently
3 maintain systematic and continuous personal, professional and business contacts with this State,
4 are licensed to do business in this State and/or have liability based on the allegations of
5 conspiratorial conduct and aiding and abetting as set forth in this Complaint.

6 14. Venue is proper in this District because Defendants conduct business in the State
7 of California and in this County and/or reside here. Venue is also proper in this Court because
8 many Class members did business with Defendants and engaged in transactions in this County,
9 and Defendants have received substantial information from customers who engaged in transactions
10 originating in or promoted from this County.

11 15. Plaintiffs' Declaration of Venue, as required under California Civil Code § 1780(d),
12 is attached hereto and filed herewith.

13 CLASS ACTION ALLEGATIONS

14 16. Plaintiffs bring this action on behalf of themselves and on behalf of a class of
15 similarly situated consumers to challenge and remedy Defendants' unlawful and wrongful business
16 practices.

17 17. Plaintiffs seek relief for the following class of persons (the "Class"): All persons
18 who signed up for the Draper James offer detailed herein that was offered on or about April 2,
19 2020 and provided personal information to Defendants, and who are citizens either of California
20 or such other states as the Court deems appropriate.

21 18. The Class does not include the Court assigned to this matter and its staff, and all
22 employees of Defendants and their affiliates.

23 19. The proposed Class is so numerous that the individual joinder of all its members in
24 one action is impracticable. While the exact number and the identities of Class members is not
25 known at this time, the number of Class members is reported to be close to a million persons
26 located nationwide. Members of the Class are also identifiable, as Defendants maintain records of
27 such persons as these individuals were required by Defendants to complete a form online and
28 provide it to Draper James as a condition of accepting this offer.

1 20. Questions of law and fact of common and general interest to the Class exist and
2 predominate over any questions affecting only individual members of the Class. These common
3 questions include, among others, the following:

4 a. whether the offer at issue is subject to the requirements of the UCL, the Consumers
5 Legal Remedies Act, and the other laws referenced herein;

6 b. when Defendants knew or should have known of the misleading nature of the
7 claims at issue;

8 c. whether Defendants had a reasonable basis for making such claims;

9 d. whether Defendants' misrepresentations or omissions of fact were of a fact they
10 were obligated to disclose and/or were material to consumers;

11 e. whether Defendants' actions were unlawful, unfair, or fraudulent under the UCL
12 and in violation of the state laws referenced herein;

13 f. the amount of revenues and profits Defendants received or saved and/or the amount
14 and value of property, monies or other obligations imposed on or lost by Class members as a result
15 of such wrongdoing;

16 g. whether Plaintiffs and Class members are entitled to injunctive and other equitable
17 relief, and, if so, what is the nature of such relief; and

18 h. whether Plaintiffs and the Class members are entitled to statutory, actual or
19 exemplary damages and/or equitable monetary relief from Defendants based on the causes of
20 action asserted by them and, if so, what is the nature and appropriate measure of such relief.

21 21. Plaintiffs' claims are typical of the claims of the Class because Plaintiffs and all
22 Class members provided sensitive personal non-public information to Defendants, and were
23 injured by the same wrongful conduct and scheme of the Defendants alleged herein by not
24 receiving the benefit of their bargains.

25 22. Plaintiffs will fairly and adequately represent the interests of the Class. Plaintiffs'
26 interests are not antagonistic to or irreconcilably conflict with the interests of the members of the
27 Class. Plaintiffs are represented by attorneys who are competent and experienced in consumer
28 class action litigation.

25. As Defendants have the contact information for all the Class members, notice of the pendency of and any resolution of this action can be provided to the Class members by individual electronic notice or the best notice practicable under the circumstances.

26. On or about Thursday, April 2, 2020, in response to the COVID-19 pandemic, Ms. Witherspoon's fashion label Draper James announced the following offer on its Instagram page: "Dear Teachers: We want to say thank you. During quarantine, we see you working harder than ever to educate our children. To show our gratitude, Draper James would like to give teachers a free dress." (emphasis added). The offer was only available to be accepted for a specific defined time, as participants had to provide the required information in three days, by no later than Sunday April 5, 2020, and "winners" (i.e., those who accepted the offer) being notified by Tuesday, April 7, 2020. Thus, this was an offer of specific consideration that was open for a limited period of time.

27. In order to accept this offer, teachers were required to fill out a Google Docs form providing not only their contact information but also sensitive education employee identification

1 information, including pictures of their school IDs, the grade level and subjects they teach as well
2 as their school name and state – information that would be valuable for marketing purposes but
3 would not be relevant for purposes of a sales transaction or lottery. Such information thus
4 identifies, relates to, describes, is capable of being associated with, or could reasonably be linked,
5 directly or indirectly, with a particular consumer or household and thus is defined by law as
6 “personal information”. This document did not disclose that according to Defendants this was a
7 lottery or any of the material representations later disclosed by Defendants as to the unreasonable
8 limitations in quantity, that Defendants intended to use these data for subsequent commercial uses,
9 or any of the protections Defendants would employ to secure this sensitive personal information.

10 28. The personal information of Plaintiffs and class members is of independent value,
11 with initial estimates as low as 50 cents to \$5 per name in a commercial database, depending on
12 the amount and quality of information available, and the demographics of the clients on a customer
13 database and whether such customers have used or re-used the companies’ products or services.
14 Here, while subject to further discovery and analysis, this is a database of significant size, with
15 very recent information, and of a very specific demographic (female educators). Such information
16 would be relevant to both Defendants, marketers and thus at a minimum on the higher end of that
17 scale. Defendants have already specifically used such data for commercial use and exploitation,
18 showing its independent value to Defendants. Thus, the specific information provided by Plaintiffs
19 and Class members to Defendants is property with a specific definable value to Defendants in
20 which Plaintiffs and Class members have a vested interest in its value, control and dissemination.

21 29. Such information is also of value to hackers and cyber criminals. And other than
22 vague statements in Draper James privacy policy, there is no indication that such information has
23 been segregated, taken off company servers, is adequately protected from cyber-attack or cyber
24 criminals from being accessed (now that it is known how much data they have collected). Plaintiffs
25 have requested, pursuant to the applicable provisions of state and federal privacy laws, that
26 Defendants agree to immediately stop using or selling, segregate, take off servers and encrypt all
27 personally identifying information that was gathered in response to this program so as to ensure
28

1 that it is not subject to cyber-attack or breach, particularly since Defendants have now publicly
2 stated that they have and are shown they are using this massive data base.

3 30. Ms. Witherspoon specifically endorsed and promoted this offer. In a press
4 statement on or about April 2, 2020 that was repeated on both *The Today Show and Good Morning*
5 *America*, Ms. Witherspoon stated: "These past few weeks have shown me so much about
6 humanity. I'm an eternal optimist, so I always look for the bright side of things. And I have been
7 so encouraged by the ways people are really showing up for each other. Particularly the teachers."
8 "During quarantine, teachers are broadcasting lessons from their own homes and figuring out new
9 remote-learning technology and platforms on the fly, all while continuing to educate and connect
10 with our kids," she said. "Advocating for the children of the world is no easy task, *so I wanted to*
11 *show teachers a little extra love right now.*" Nowhere in her statement did she state this offer was
12 a lottery, that there was any limitation on the quantity of this offer, or that it was only limited to
13 250 dresses at an estimated cost to Defendants of \$12,500, while Draper James developed a
14 customer list that could be valued in the millions of dollars. While this might be viewed and has
15 been publicly derided as a deceptive marketing ploy, when it is directed at teachers to create further
16 profit during a pandemic, it becomes outrageous conduct.

17 31. This program was an offer of specific performance, and there was no limitation on
18 quantity on this offer other than the vague illusory comment "(Offer valid while supplies last –
19 winners will be notified on Tuesday April 7th)." There was no indication this was some form of
20 lottery, or that Defendants would only be making an unreasonably limited number of products
21 available under this offer or place an unreasonable limitation on quantity, or that there were any
22 other material limitations on this offer. Nothing in any initial FAQ disseminated by Defendants
23 disclosed a limitation this offer was limited to only 250 people, and was only amended to include
24 that information after the fact. Thus, the use of the phrase "while supplies last" did not provide any
25 meaningful or material disclosure of the type later claimed by Defendants. In fact, as set forth
26 below, if Defendants' initial estimates of customer response were any indication, any anticipated
27 limitation would have been nowhere close to the 250 quantity later claimed by Defendants.

32. On or about Friday April 3, 2020, both *The Today Show* and *Good Morning America* promoted this offer, exclaiming “Reese Witherspoon’s clothing brand is giving away free dresses to teachers” or “Reese Witherspoon’s label Draper James is giving free dresses to teachers” or “the Oscar-winning actress wants to show her gratitude during the coronavirus pandemic” “Reese Witherspoon’s label Draper James is giving free dresses to teachers”. And Defendants actively promoted and encouraged the wide circulation of this offer to teachers nationwide (which would make its growing marketing database even more valuable), stating “Know a teacher who deserves a pick-me-up? Forward this post or tag your favorite educator in comments: #DJLovesTeachers.”

33. Ms. Witherspoon was publicly feted for making this offer. The Today Show’s website stated “Witherspoon’s sweet gesture is just the latest from fashion and beauty companies that are stepping up to show their appreciation to essential workers during the pandemic. Medical workers are being offered everything from free shoes to wedding dresses.” Good Morning America’s website stated: “Reese Witherspoon’s clothing brand Draper James is giving back to teachers to show that their efforts to help students during the coronavirus pandemic are not unnoticed.” Her efforts were promoted next to those of Oprah Winfrey, who had donated \$10 million for COVID-19 relief, and other celebrities of Ms. Witherspoon’s stature who made donations in the millions of dollars each. This is to be compared to what Ms. Witherspoon was supposedly offering. Even at an estimated average cost of \$48 per dress to Defendants, that meant that while Defendants were publicly passing off this offer as a generous proposal to teachers in need nationwide that might cost Defendants a fraction of their combined net worth, in reality all Defendants were publicly offering was a promotion that would cost them approximately \$12,500 (250 dresses at a cost of approximately \$48 per dress, plus shipping).

34. This public promotion and support shows how this undisclosed limitation would be material to both Plaintiffs, class members and the public, as reasonable consumers under the circumstances and Ms. Witherspoon’s comments would not have thought this was a lottery and taken Ms. Witherspoon’s statement she “wanted to offer teachers a little extra love” to literally be focused on the word “little”.

1 35. Not surprisingly, the offer went viral and was immediately accepted by teachers
2 nationwide. The original post of this offer on Instagram was reviewed over 400,000 times within
3 days of its dissemination. Tens of thousands of consumers posted comments about the importance
4 of this program to them in a time of personal crisis, and how Ms. Witherspoon's personal
5 involvement in this offer was important to them.

6 36. Defendants' representatives later claimed they "had way more volume than the
7 company had ever seen" and had expected less than 10,000 applications accepting their offer. In
8 light of Ms. Witherspoon's fame and reputation, the active promotion undertaken by Defendants,
9 and specifically Ms. Witherspoon, to promote this offer nationwide and through at least two major
10 media outlets, and its immediate response, this was an unreasonable expectation. In fact, if this
11 were true it would have made Defendants' efforts even more cynical. If they are to be believed
12 they expected that even if they widely promoted this offer and received less than 10,000
13 acceptances, their downside liability would be at most \$250,000 in cost to Defendants if they
14 accepted every single offer. Meanwhile they would have created a customer database that they
15 could use and exploit and extremely favorable press coverage for Ms. Witherspoon alongside those
16 who were offering millions of dollars to CIVID-19 victims, which would have a value that would
17 likely exceed this amount. This also further demonstrates the materiality of the undisclosed and
18 later trumped up limitation of 250 dresses for this entire program.

19 37. In the end, close to a million Class members timely accepted this offer and filled
20 out the Google Docs application, providing their sensitive, personal employment information to
21 Defendants. According to Draper James, they had sold approximately 150,000 dresses during
22 2019. Defendants were thus able to expand their customer database by at least seven-fold as a
23 result of this offer.

24 38. The types of misrepresentations made above by Defendants offering Plaintiffs and
25 class members free dresses if they provided their sensitive person information thus was
26 demonstrably material to a reasonable consumer targeted by this practice. As consumers' response
27 to this campaign was incredibly positive, materiality of the claims in the offer and reliance thereon
28 can be presumed. And as shown by the significantly negative response when Defendants' claimed

1 limitation was announced, the undisclosed fact that this was a lottery with only a handful of
2 winners was similarly material.

3 39. Defendants did not advertise, promote or offer their goods or services with the
4 intent to supply reasonably expectable demand and without stating there was a clear limitation of
5 quantity, and uniformly represented that such goods or services had benefits or quantities that they
6 do not have without disclosing material limitations on the quantity of their offer.

7 40. Once they began to see the widespread success of their offer, Defendants began to
8 backtrack. By on or about Monday, April 6, 2020, after hundreds of thousands of people responded
9 to and accepted Defendants' offer and the deadline to do so either had or was about to close,
10 Defendants claimed they would not honor the accepted offer, but claimed that instead this offer
11 was some form of lottery and that there were only 250 dresses that would be made available. ,
12 Meanwhile, Defendants had already obtained the contact information for close to a million
13 teachers – a key demographic of their products – that could be valued in the hundreds of thousands
14 if not millions of dollars.

15 41. What is worse, to demonstrate that this property received from Class members was
16 valuable to Defendants and Defendants' apparent underlying motivation, within days of
17 announcing this offer and receiving this information, Defendants began bombarding Plaintiffs and
18 class members with promotions and discount offers – even after the expiration deadline to apply
19 for this offer had passed. Many class members likely purchased products from Defendants in
20 response to this offer. And when consumers began expressing outrage at being deceived, all
21 Defendants did was offer consumers a 30% discount of Draper James products – a rebate that
22 would result in Defendants making more money off of its now rejected offer – and that they were
23 making a charitable contribution of some unknown amount that would not directly benefit teachers
24 (but would further benefit Defendants as a corporate tax write off). Even if only a small percentage
25 of these consumers used Defendants' discount or responded to their subsequent promotions,
26 Defendants would still make more from these new clients than they would in the estimated cost of
27 their offer, thereby turning what was promoted by Defendants to be a charitable gesture into a
28 money making ploy to improve their image while at the same time developing a customer list to

1 exploit and make money at the time of this national crises -- all at the expense of educators who
2 are on the front line of this crisis.

3 42. According to a follow up email to consumers sent by Defendants a week after this
4 offer had been made, on or about Thursday April 10, 2020, Defendants also claimed they were
5 "actively working on expanding our offerings, both internally and with outside retail partners who
6 were also inspired by your stories and want to join in honoring your community...", whatever that
7 is intended to mean. This is double-speak at its lowest ebb. In light of the other facts summarized
8 above, it appears what this is saying is that Defendants were taking advantage of their newly
9 developed mailing list by sharing it with outside third party retailers, who would use it to further
10 exploit teachers, all in an effort of "expanding our offerings" and "honoring your community."

11 43. And while Defendants subsequently provided consumers the ability to unsubscribe
12 from getting further promotional materials, Defendants still had access to this personal information
13 in a newly created database that had independent economic value, including if the company was
14 sold, and that was likely not being maintained in a way that would secure it from protection and
15 unauthorized access based on the vague and rote statements contained on the Draper James Privacy
16 Policy ("While we implement these and other security measures on our Web Site, please note that
17 100% security is not always possible. You play a role in protecting your information as well.").

18 44. Plaintiffs and Class members were contractually required by Defendants to enter
19 into a transaction and provide the above personal information about their employment, including
20 employee photo IDs, that otherwise would have been unnecessary to complete the transaction and
21 that Defendants did not need in order to complete the transaction. This information is of
22 independent economic value to companies such as Defendants, as set forth above, and thus is also
23 of value and interest to Plaintiffs and Class members for which they have a cognizable claim and
24 for which they have not ben compensated. Such interest and value was compromised, diminished
25 and deprived in whole or in part by providing this information to Defendants, who thereafter used
26 it for their own profit, exploitation and use. In addition, Plaintiffs and Class members thereafter
27 have had to invest and spend time attributable to the unsolicited ads from Draper James they have
28 had to review, sort through and delete. Plaintiffs and Class members would not have provided

1 such sensitive personal property to Defendants had they known this was not an offer for a free
2 dress, but rather an offer to participate in a lottery with an unreasonably low chance of obtaining
3 a free dress, and thereby received no compensation for doing so. By supplying this information
4 they provided consideration to Defendants and have not received what Defendants promised to
5 provide them. Plaintiffs and Class members thereby surrendered more and/or acquired less in a
6 transaction than they otherwise would have if Defendants had fully informed them of the true facts
7 or if they had actually fulfilled their contractual obligations. In addition, due to the vague and
8 undefined privacy practices of Defendants for protecting this specific information, combined with
9 the knowledge there is now close to a million individuals' personal employment information,
10 including employee photo IDs, on Draper James' computer servers, the risk that Plaintiffs' and
11 Class members' personal data will be accessed and misused by hackers and cybercriminals is
12 immediate and very real. Plaintiffs and Class members now face a credible threat of real and
13 immediate harm stemming from Defendants requiring them to provide this unnecessary
14 information as a prerequisite to entering into this transaction and thus allowing uncontrolled access
15 to such data as a result of this conduct. Thus resulted in an increased risk of identity theft or fraud,
16 as such information can be used not only to solicit transactions as Defendants already have done,
17 but giving third parties the ability to target them in fraudulent schemes and identity theft attacks
18 by using this specific employment information

19 45. Defendants' promotion and offers as alleged herein were false and misleading. As
20 set forth above, Defendants' misrepresentations were and are part of their systematic marketing
21 and promotion campaign. Defendants' advertising and marketing as alleged herein was intended
22 and designed in whole or in part to increase sales of the products at issue and create a valuable
23 customer database.

24 46. A reasonable person would attach importance to Defendants' misrepresentations
25 and material omissions of fact in determining whether to accept the offer at issue and provide
26 valuable consideration and property (i.e., sensitive customer data) in response. Plaintiffs and
27 others would not have provided this information and consideration had they known they were not
28 actually getting a Draper James dress, but instead being entered into a lottery with a less than

1 0.00025% chance of “winning” and would thereafter be bombarded with promotional offers that,
 2 even if accepted, would make Defendants even more money.

3 47. Ms. Witherspoon and Draper James are sophisticated e-commerce participants who
 4 likely know what facts are material to consumers and either did or reasonably should have gauged
 5 the likely response from making such an offer to enter into such agreements. Based on this online
 6 marketing strategy, Defendants reasonably intended or should have known they could not satisfy
 7 their offer without a significant capital infusion. And while Defendants could afford to do so as
 8 Ms. Witherspoon’s net worth is estimated at approximately \$240 million as of 2019 according to
 9 Forbes, they consciously decided not to do so.

10 48. Plaintiffs have made a request in that Defendants provide an appropriate correction,
 11 replacement or other remedy to all persons who provided their information to Defendants and
 12 accepted Defendants’ offer, and segregate and not use or exploit the data provided by Plaintiffs
 13 and class members to Defendants. To date however, Defendants have failed to timely take any
 14 action on behalf of Plaintiffs and all Class members, necessitating these claims be brought on
 15 behalf of both Plaintiffs and the Class and/or for the benefit of the general public.

16 CAUSES OF ACTION

17 FIRST CAUSE OF ACTION

18 BREACH OF CONTRACT

19 49. Plaintiffs incorporate by reference the allegations contained in the preceding
 20 paragraphs above.

21 50. Defendants, as the designer, manufacturer, marketer, distributor, promoter, owner
 22 and/or seller of the Draper James line of products, in making a specific offer as set forth above
 23 manifested a willingness to enter into a bargain that was accepted by Plaintiffs and Class members,
 24 forming either a unilateral or bilateral contract.

25 51. Defendants, in the clear and positive terms set forth above, promised to render
 26 performance (i.e., provide consumers who provided information to Defendants with a free dress)
 27 in exchange for the performance of a specific act by a specific time without further communication
 28 and leaving nothing left open for negotiation (i.e., Class members providing their personal,

1 sensitive contact information and employment identification information to Defendants). Plaintiffs
2 and Class members reasonably concluded that by providing such information an agreement would
3 be formed between the parties. By these circumstances the parties intended to enter into a
4 contractual obligation for Defendants to provide a dress to Plaintiffs and Class members in
5 exchange for the valuable consideration and property detailed above.

6 52. Consideration in the form of their highly personal employment information was
7 provided to Draper James by Plaintiffs and Class members. Plaintiffs and Class members thus
8 performed their part of the bargain by the performance of specific acts as set forth above. Thus
9 Plaintiffs and Class members reasonably might and would have concluded that by acting in
10 accordance with Defendants' requests a contract between them would be formed, making this
11 unilateral or bilateral contract irrevocable.

12 53. As a result of having entered into a unilateral or bilateral contract, Defendants were
13 required to satisfy all accepted offers. Instead, Defendants later admitted they only intended to
14 offer 250 dresses to close to a million individuals who accepted this offer, at a net cost of a few
15 thousand dollars to Defendants.

16 54. Based on the nature of the misleading information set forth above, Defendants
17 either were or should have been aware that they would not perform the offer as promised, and that
18 any claim they would only do so for a tiny set of individuals that was far less than any reasonably
19 expected demand was unreasonable as they failed to make reasonable quantities of merchandise
20 available in response to this offer. Defendants did not timely disclose this material limitation at the
21 time they both made this offer and it was accepted by Plaintiffs and Class members

22 55. Plaintiffs and Class members did not receive the benefit of their bargain.

23 56. All conditions precedent to seeking liability for breach of contract have been
24 performed by or on behalf of Plaintiffs and Class members in providing valuable property and
25 consideration to Defendants.

26 57. Defendants have been placed on notice of these breaches within a reasonable time
27 after such breaches were discovered, and have been given an opportunity to cure these breaches as
28 to Plaintiffs and all Class members and provide compensation to them prior to litigating this claim

1 in this action. Defendants have so far failed to voluntarily offer to take sufficient remedial
2 measures, or otherwise provide appropriate and complete relief at no cost to Plaintiffs and Class
3 members.

4 58. As a direct and proximate cause of Defendants' breaches of contract, Plaintiffs and
5 Class members have been injured and harmed in an amount to be determined at trial, but at a
6 minimum specific performance of the accepted offer made by or at the behest of Defendants.
7 Plaintiffs and Class members also seek declaratory relief as to the rights and responsibilities of the
8 parties to these agreements.

9 **SECOND CAUSE OF ACTION**

10 **PROMISSORY ESTOPPEL**

11 59. Plaintiffs incorporate by reference the allegations contained in the preceding
12 paragraphs above.

13 60. The offer at issue herein was a promise that was clear and unambiguous in its terms.

14 61. Plaintiffs and Class members acted in affirmative response to and in reliance on
15 such promises by providing their sensitive personal employment information to Defendants.
16 Based on the language used by Defendants as set forth above, such actions and reliance were
17 reasonable and foreseeable.

18 62. Plaintiffs and Class members were injured by demonstrating their reliance in terms
19 of providing sensitive personal information to Draper James, which then turned around and
20 bombarded these consumers with promotional offers and failed to satisfy their obligations under
21 the offer and may not be adequately protecting such information from unauthorized third party
22 access and providing adequate protections of such information.

23 63. In addition to prior demands made by consumers, Plaintiffs have made written
24 demand on behalf of themselves and all Class members for an appropriate correction, replacement
25 or other remedy for this breach. However, Defendants have so far failed to offer to provide specific
26 performance or other proper consideration to Plaintiffs and all other Class members in response
27 thereto.
28

64. Plaintiffs and Class members have been injured by Defendants' failure to comply with their obligations, in an amount according to proof at time of trial.

THIRD CAUSE OF ACTION

RESTITUTION, MONEY HAD AND RECEIVED, UNJUST ENRICHMENT, QUASI-CONTRACT AND ASSUMPSIT

65. Plaintiffs incorporate by reference the above paragraphs except as to those for claims relating to breach of contract, and pleads this claim as an alternative to any claims arising out of breach of contract. This claim is not derivative of the other Causes of Action asserted above, but rather is recognized as a separate and independent alternative Cause of Action that may be submitted to a jury.

66. Based on the allegations set forth above, Plaintiffs and Class members may properly assert an independent Cause of Action for restitution and restitutionary damages at law through an action derived from the common-law principles of assumpsit, by implying an obligation at law based on principles of restitution and unjust enrichment, based on common counts such as monies had and received and/or through principles of quasi-contract.

67. Plaintiffs and Class members plead just grounds for recovering money, property or benefits Defendants received or failed to provide them. Plaintiffs claim through this Cause of Action that Defendants must provide or restore to Plaintiffs and Class members property they offered to provide or the equivalent in money that should in equity and good conscience belong to Plaintiffs and Class members.

68. Class members conferred a benefit upon Defendants by providing valuable consideration and property to them, as set forth above. Defendants, having been unjustly conferred a benefit by Class members that they thereafter exploited and did not provide the promised consideration therefor, and having received such benefits using misleading and illegal acts, practices and policies and omitting material facts as set forth in detail above, are required to make restitution. The circumstances here are such that, as between the two, it is unjust for Defendants to retain such a benefit based on the conduct described above. Such property or the equivalent in money belongs in good conscience to Plaintiffs and Class members.

1 69. Under established principles of the law of unjust enrichment, one who acquires a
2 benefit may not justly retain such monies or property so as not to be unjustly enriched thereby.
3 Defendants have been unjustly enriched by Class members through the consideration provided by
4 them to Defendants, by Defendants retaining millions of dollars in products that they refused to
5 provide and they were able to retain and the resulting profits enjoyed by Defendants from the use
6 of the customer database and contacts they exploited. Defendants' unjust enrichment is related to
7 and flowed from the wrongful conduct challenged in this Complaint. Defendants have received a
8 benefit from Plaintiffs and Class members and are unjustly retaining that benefit at the expense of
9 Plaintiffs and Class members. Such monies were not intended to be used by Defendants for
10 Plaintiffs and Class members' benefit, but rather for their own personal profit.

11 70. Under established principles that are recognized as common counts, Defendants
12 entered into a series of implied-at-law obligations that resulted in a sum certain as stated above
13 being had, received and/or unjustly retained by Defendants, either directly or indirectly, at the
14 expense of Class members. Defendants had knowledge of such benefits. Defendants owe Class
15 members specific property or monies that can be calculated based on the records of Defendants.

16 71. Under established principles of quasi-contract and assumpsit, Defendants have an
17 obligation created by law to perform the offers that were accepted by Plaintiffs and Class members.
18 This obligation is imposed by law, regardless of the intent of the parties. Rather, equity and good
19 conscience dictates that under the circumstances Defendants as the benefitted party should make
20 an offer of specific performance or the monies retained by Defendants to Plaintiffs and Class
21 members.

22 72. Under established principles of restitution recognized under the law, an entity that
23 has been unjustly enriched at the expense of another by the retention of a benefit wrongfully
24 obtained or retained at another's expense is required to make restitution to the other. In addition,
25 under the circumstances alleged herein it would be inequitable or unjust as between the parties for
26 Defendants to retain such benefits.

27 73. The above legal principles require Defendants to pay restitution or restitutionary
28 damages and/or pay over such benefits when the retention of such benefits would unjustly enrich

1 Defendants. Other remedies and claims may not permit Class members to obtain such relief or
2 compel performance of the offers made by Defendants and accepted by Plaintiffs and Class
3 members, otherwise leaving them without an adequate remedy at law.

4 74. Pursuant to California Civil Code § 2224, one who gains or retains a thing
5 (including money) by fraud, accident, mistake, undue influence, the violation of a trust, or other
6 wrongful act, unless they have some other and better right thereto, is an involuntary trustee of the
7 thing gained for the benefit of the person who would otherwise have had it. Based on the facts and
8 circumstances alleged above, in order to prevent unjust enrichment and to prevent Defendants from
9 taking advantage of their own wrongdoing, Plaintiffs and Class members are entitled to the
10 establishment of a constructive trust, in a sum certain, of all property or monies that have been
11 improperly retained by Defendants, from which Plaintiffs and Class members may seek relief.

12 75. In addition, as Defendants misrepresented, concealed and/or suppressed material
13 facts, in whole or in part, at the expense of Plaintiffs and Class members with the apparent
14 knowledge that they did not intend to honor their offer and take advantage of consumers'
15 vulnerability at the time of a nationwide and international pandemic, Defendants' conduct warrants
16 an assessment of exemplary damages under this independent cause of action, in an amount
17 sufficient to deter such conduct in the future. This amount is to be determined according to proof.

18 76. Plaintiffs, both individually and on behalf of the Class, thus seek appropriate
19 restitutionary monetary relief and exemplary damages as appropriate for sums certain as is
20 permitted by law for such claims.

21 77. Plaintiffs also request an order for an accounting and prohibiting Defendants from
22 failing and refusing to immediately cease the wrongful conduct as set forth above, enjoining
23 Defendants from continuing to refuse to specifically perform the offers that were made by
24 Defendants and accepted by Plaintiffs and Class members, and enjoining Defendants from using
25 and converting the property entrusted to them by Plaintiffs and Class members for their own profit
26 and use.

27 78. Plaintiffs also request the Court order the payment of fees and costs under principles
28 of the common fund and private Attorney General doctrines, or as otherwise permitted by statute.

FOURTH CAUSE OF ACTION

**VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT, CAL.CIV.CODE
§§1750, et seq. ("CLRA")**

79. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs above, except as to any claims for damages. Plaintiffs expressly do not seek damages under this Cause of Action at this time.

80. Defendants' actions, representations, omissions, and other conduct are subject to the CLRA, because they extend to transactions that have resulted or were intended to result in the sale and provision of goods or services to consumers.

81. Plaintiffs and Class members are "consumers" within the meaning of Cal. Civ. Code §1761(d).

82. The offer at issue is related to a "good" or "service" within the meaning of Cal. Civ. Code §1761(a).

83. Defendants are "persons" under Cal. Civ. Code §1761(d).

84. By misrepresenting and failing to disclose the material facts set forth above, and that such limitations were lawful when in fact they could not be ignored, Defendants violated, inter alia, Cal. Civ. Code §§1770(a), (5), (10), (14), (16) and/or (17).

85. Defendants also actively concealed material facts about material and unreasonable limitations in quantity, supposedly only making available 250 products in response to close to a million acceptances of Defendants' offer. In addition, having spoken on the issue, Defendants undertook a duty and obligation to speak completely and truthfully on this issue and timely inform consumers of all material facts, and offer an appropriate correction, replacement or other remedy once the true facts were known.

86. Based on the response to Defendants' offer and the significant reaction of tens of thousands of Class members when the true facts were disclosed, a reasonable consumer would attach importance to Defendants' claims. Based on the importance of such claims, these misrepresented and omitted facts would be and are presumptively material to a reasonable consumer. Such misstatements and omissions were also material because if Plaintiffs and the Class

1 members had been timely and fully informed of the material facts later admitted by Defendants,
2 they would not have entered into the transactions at issue.

3 87. Plaintiffs and Class members reasonably acted in positive response to and relied on
4 such misrepresented and material facts by providing Defendants sensitive and personal
5 information, including their employment information and employment IDs. Plaintiffs and Class
6 members are likely to have been deceived by such conduct. The statements by Defendants detailed
7 above were untrue and misleading as they failed to disclose the material facts set forth above.

8 88. The material facts Defendants have misrepresented, concealed and/or suppressed
9 concerning the material facts at issue were known and/or accessible to Defendants, who had
10 superior knowledge of and access to the facts. Defendants either knew or reasonably should have
11 known such facts were not known to or reasonably discoverable by Class members or the public
12 at the time such statements were made by Defendants and acted upon by Class members, and as
13 set forth above the material limitations set forth herein were not timely disclosed.

14 89. As a result of the misrepresentation, concealment and/or suppression of these
15 material facts, Plaintiffs and Class members did not receive the benefit of their bargain as required
16 by California law. Plaintiffs and Class members also suffered damage in amounts according to
17 proof at time of trial.

18 90. Prior to filing this action, Plaintiffs have provided Defendants with notice of the
19 violations of the CLRA pursuant to Cal. Civ. Code §1782(a). The CLRA provides that a Complaint
20 for violation of the CLRA may assert claims for actual, consequential, statutory and/or punitive
21 and exemplary damages should the violations not be remedied within thirty (30) days of receipt of
22 this written notification. If more than 30 days have elapsed since this notice was mailed and
23 received by Defendants without a cure of Defendants' violations offered to Plaintiffs and all other
24 Class members and/or if Defendants have refused to provide such a cure or any offer to do so
25 within a reasonable period of time, Plaintiffs will assert a claim for damages on behalf of
26 themselves and all Class members. In addition, as Defendants misrepresented, concealed and/or
27 suppressed these material facts, in whole or in part, at the expense of Plaintiffs and Class members
28 with the apparent knowledge that they did not intend to honor their offer and take advantage of

1 consumers' vulnerability at the time of a nationwide and international pandemic, Plaintiffs and the
 2 Class will also seek exemplary damages pursuant to Cal. Civ. Code § 1780(a)(4). They do not do
 3 so under this Cause of Action at this time.

4 91. Defendants should be ordered to pay restitution as well as be enjoined from
 5 continuing to employ the unlawful methods, acts and practices alleged herein in order to prevent
 6 any future harm to the Class members and/or for the benefit of the general public pursuant to Cal.
 7 Civ. Code §1780(a)(2). Defendants should also be ordered to pay Plaintiffs' attorneys fees and
 8 costs according to proof.

9 **FIFTH CAUSE OF ACTION**

10 **VIOLATION OF CAL. BUSINESS & PROFESSIONS CODE §17200 et seq.**

11 92. Plaintiffs incorporate by reference the allegations contained in the preceding
 12 paragraphs above, except any allegations as to entitlement to damages.

13 93. Defendants have engaged and continue to engage in acts and practices of unfair
 14 competition, as that term is defined in Business & Professions Code §17200. As used in this Cause
 15 of Action, "unfair competition" means an unlawful, unfair or fraudulent business act or practice
 16 and false or misleading advertising as defined under Business & Professions Code §17500. This
 17 conduct is actionable pursuant to Business & Professions Code §§17200 and 17203.

18 94. Defendants' policies and practices as detailed herein cause substantial injury to
 19 consumers with no countervailing legitimate benefit and are immoral, unethical, oppressive,
 20 unscrupulous, and unconscionable, and thereby constitute "unfair" business acts or practices
 21 within the meaning of the UCL.

22 95. Defendants' policies and practices as detailed herein in terms of making material
 23 misstatements and/or material omissions of fact relating thereto as set forth above, all of which are
 24 likely to mislead Plaintiffs, Class members and the public, constitute "fraudulent" business acts or
 25 practices within the meaning of the UCL.

26 96. Defendants' policies and practices as detailed herein are also "unlawful" business
 27 practices in terms of violating, inter alia, the provisions of Cal.Civ.Code §1750, et seq. cited above,
 28 and systematic breaches of both contract and the principles of promissory estoppel. Defendants'

1 practices of not providing any indication that such information has been segregated, taken off
2 company servers, is adequately protected from cyber-attack or cyber criminals from being
3 accessed (now that it is known how much data they have collected) or responding to requests for
4 the status of such information is also violative of the law, including but not limited to relevant
5 provisions of the California Consumer Privacy Act, Cal. Civ. Code Section 1798.100 et seq.
6 Plaintiffs have requested that, pursuant to the applicable provisions of state and federal privacy
7 laws, Defendants agree to immediately stop using or selling, segregate, take off servers and encrypt
8 all personally identifying information that was gathered in response to this program so as to ensure
9 that it is not subject to cyber-attack or breach. Defendants have not publicly stated whether they
10 are willing to do so.

11 97. Based on the conduct alleged above, Defendants also violated Bus. & Prof. Code
12 Section 17500, which makes it unlawful for any person, firm, corporation or association, or any
13 employee thereof with intent directly or indirectly to dispose of personal property or anything of
14 any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make
15 or disseminate or cause to be made or disseminated before the public in this state, or to make or
16 disseminate or cause to be made or disseminated from this state before the public in any state, in
17 any advertising device, or by public outcry or proclamation, or in any other manner or means
18 whatever, including over the Internet, any statement concerning that personal property, or
19 concerning any circumstance or matter of fact connected with the proposed performance or
20 disposition thereof, which is untrue or misleading, and which is known, or which by the exercise
21 of reasonable care should be known, to be untrue or misleading, or for any person, firm, or
22 corporation to so make or disseminate or cause to be so made or disseminated any such statement
23 as part of a plan or scheme with the intent not to sell that personal property as so advertised.

24 98. As set forth in detail above, as a result of Defendants' unlawful, unfair or fraudulent
25 business practices and untrue and misleading advertising as alleged herein, Plaintiffs suffered
26 injury in fact and lost money or property in the form of, inter alia, the personal non-public
27 employment information they provided Defendants in which they have a vested interest and that
28 they would not have provided had the true facts been timely disclosed, which with other Class

1 members is a valuable asset that has been and can be used by Defendants for profit. Meanwhile,
 2 Defendants have illegally retained monies and property that should have been paid, provided or in
 3 the terms of additions to their customer database segregated and destroyed, unjustly enriching
 4 themselves thereby.

5 99. Pursuant to Business & Professions Code §§ 17203 and 17204, the Court may
 6 enjoin such conduct on behalf of the Class and for the benefit of the general public, order the
 7 provision of corrective notice, and order Defendants to restore the status quo by actually providing
 8 Plaintiffs and Class members what Defendants promised to provide and segregate and destroy at
 9 the appropriate time all information and property provided by Plaintiffs and Class members to
 10 Defendants. The Court may also order Defendants to disgorge any profits Defendants may have
 11 obtained either directly or indirectly from Plaintiffs and Class members as a result of this conduct,
 12 including from any resulting use of or sales generated from this newly created customer data base.
 13 Plaintiffs request such relief on behalf of themselves, the Class and for the benefit of the general
 14 public.

15 100. Plaintiffs also seek the payment of fees and costs pursuant to, *inter alia*, Cal. Code
 16 Civ. Proc. Section 1021.5.

17 PRAYER FOR RELIEF

18 WHEREFORE, Plaintiffs pray for judgment against Defendants, jointly and severally, as
 19 follows as appropriate and applicable to each particular Cause of Action:

20 1. For restitution and restitutionary disgorgement to Plaintiffs and Class members in
 21 an amount to be determined at trial;

22 2. For any direct, consequential, incidental, exemplary and/or statutory remedies as
 23 permitted for Defendants' violation of the laws and the causes of action identified above, in an
 24 amount to be determined at trial;

25 3. For costs of the suit and Plaintiffs' reasonable attorneys' fees, pursuant to, *inter*
 26 *alia*, Civil Code §1782 and C.C.P. § 1021.5;

27 4. For an injunction against such conduct on behalf of the Class and for the benefit
 28 of the general public, and an order for the provision of corrective notice and specific

1 performance and relating to the personal information and data provided by Plaintiffs and Class
2 members to Defendants;

3 5. For pre- and post-judgment interest at the legal rate; and.

4 6. For such other relief as the Court may deem proper.

5 **JURY DEMAND**

6 Plaintiffs demand a trial by jury on all causes of action so triable.

7
8 DATED: April 20, 2020



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DECLARATION OF VENUE

I, Alan M. Mansfield, declare as follows:

1. I am one of the counsel for Plaintiffs in this action and make this declaration to the best of my knowledge of the facts stated herein.

2. At all relevant times herein, Defendant Draper James, LLC and Defendant Reese Witherspoon were and are persons that either is a resident of this County, was at one time registered to do business in the State of California and this County, and/or is doing business in the State of California and in this County.

3. At least some of the transactions that form the basis of this action occurred and/or at least a portion of Defendants' obligations or liabilities as set forth in the Complaint arose in this County, including the activities of at least one of the named Plaintiffs.

4. The Complaint filed in this matter contains a cause of action for violation of the Cal. Civ. Code §§ 1750, *et seq.*, as against Defendants.

5. Per the foregoing assertions, the CLRA cause of action in this Complaint has been properly commenced in the proper county for trial under the venue provisions of the CLRA and Code of Civil Procedure § 395.5.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was signed this 20th day of April 2020 at San Diego, California.



Alan M. Mansfield