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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 WESTERN DIVISION

18 LARYSSA GALVEZ,¹ JUDITH
19 LINDLEY, NATALIE ANDERSON,
20 and ANN-MARIE MATTER, on behalf
of themselves and all others similarly
situated and for the benefit of the
general public,

21 Plaintiffs,

22 v.

23 DRAPER JAMES, LLC, REESE
24 WITHERSPOON, and DOES 1
THROUGH 10,

25 Defendants.

CASE NO. 2:20-cv-04976-FMO-SK
**PLAINTIFFS' FIRST AMENDED
COMPLAINT**

Complaint Filed In State Court:
April 21, 2020

Action Removed: June 4, 2020

27 ¹ Ms. Galvez has filed a Voluntary Request for Dismissal Without Prejudice of her
28 claims pursuant to Fed. R. Civ. Proc. Rule 41(a). Plaintiffs request the caption of
this action be amended to note her dismissal without prejudice.

1 Plaintiffs, JUDITH LINDLEY, NATALIE ANDERSON, and ANN-MARIE
 2 MATTER, on behalf of themselves and all others similarly situated and for the
 3 benefit of the general public, upon personal knowledge as to their own acts and status
 4 as specifically identified herein, and otherwise upon information and belief based
 5 upon investigation as to the remaining allegations, hereby file this First Amended
 6 Complaint (“Complaint” or “FAC”) and allege as follows against Defendants
 7 DRAPER JAMES, LLC, a limited liability company, REESE WITHERSPOON, a
 8 natural person, and DOES 1 through 10, inclusive:

9 **SUMMARY OF CLAIMS**

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

15 2. As detailed below, Defendants engaged in a promotional and
 16 advertising campaign and offer during the COVID-19 pandemic offering to provide
 17 a new dress for teachers who signed up with Draper James and provided their
 18 personal information – including highly sensitive information such as their teacher
 19 ID information, their teacher work email addresses, and even copies of their
 20 employee work badges. This is all highly sensitive information that could be
 21 exploited by cyber-criminals, or used or sold by Defendants for commercial
 22 purposes (which, it turns out, they did). In clear and positive terms, Defendants made
 23 an offer that promised to render performance (providing new dresses) in exchange
 24 for consideration requested by Defendants (personal sensitive information from
 25 Plaintiffs and Class members) with no further action other than to accept the offer.
 26 Based on the significant public reaction and outcry from the victims of this offer,
 27 combined with the timing of other announcements at the time, Plaintiffs and Class
 28 members reasonably would have concluded that by acting in accordance with

1 Defendants' requests, a contract would be formed between the parties.

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

10 4. There was no initial disclosure when Plaintiffs and Class members
11 acted as Defendants requested that this offer was simply to participate in some form
12 of sweepstakes or lottery in exchange for providing private information, in light of
13 all the circumstances detailed below. In fact, while there was a small parenthetical
14 ("offer valid while supplies last – winners will be notified on Tuesday April 7th"),
15 no specific quantity limitation was included in the initial press releases issued by
16 Ms. Witherspoon and her company or any communications prior to the deadline to
17 accept this offer, nor any disclosure that what "offer valid while supplies last" meant
18 to Defendants was limited to 250 dresses. Such a statement would also not place a
19 reasonable consumer on notice that this was a sweepstakes or lottery. No specific
20 limitation on quantity was stated in this offer, or that the "while supplies last"
21 language they included was unilaterally limited by Defendants to 250 dresses.
22 Under Defendants' interpretation, they could have limited the acceptance of their
23 offer to one person simply by using that vague phrase. Thus, there was no "small
24 print" – there was no print. Any actual limitation was only stated days after when,
25 in response to this offer and the active promotion of the offer by Ms. Witherspoon
26 and Draper James on its website and Instagram accounts, the company received over
27 900,000 acceptances of their offer.

28 5. In fact, Defendants failed to disclose the material fact they only

1 intended to provide goods for 250 people – which as detailed below, at most had a
2 cost to Defendants of less than \$11,000. And the timing of this offer was critical, as
3 it was being made at the same time other celebrities of Ms. Witherspoon’s renown
4 were offering millions of dollars to COVID-19 victims with no strings attached. It
5 is highly unlikely that national shows such as *The Today Show* and *Good Morning*
6 *America* would have promoted “Reese Witherspoon’s clothing brand is giving away
7 free dresses to teachers” or “Reese Witherspoon’s label Draper James is giving free
8 dresses to teachers” or “the Oscar-winning actress wants to show her gratitude
9 during the coronavirus pandemic” if they were aware Defendants were in fact only
10 offering educators nationwide a sweepstakes chance to receive a dress that cost
11 Defendants at most \$43.15, while the average retail price for these dresses ranges
12 from \$88 to \$295. Particularly considering Ms. Witherspoon’s popularity and the
13 active promotion of this offer and the resulting exploitation of this response by
14 bombarding consumers who responded with email offers to buy their goods and
15 services, it was unreasonable to suggest that consumers would reasonably believe
16 there were such strict limitations on this offer. Defendants apparently made a
17 conscious decision to affirmatively conceal the material fact that this open offer,
18 accepted by over 900,000 teachers nationwide, was, according to Defendants,
19 limited to 250 persons, despite having that information in their exclusive possession
20 or having supposedly spoken on the issue in various public statements and
21 advertisements. They could have easily stated during this promotional period
22 “sweepstakes limited to 250 people,” but did not.

23 6. Upon receipt of over 900,000 acceptances of their offer, Defendants
24 suddenly renounced their offer and instead belatedly claimed they were offering
25 educators the chance to participate in a lottery or sweepstakes, provided consumers
26 a 30% off product coupon to encourage further sales of Draper James products
27 (which considering the product markup, if accepted by even a handful of participants
28 would mean Defendants would actually make more money on sales than they were

1 offering to give away), and sent Class members numerous product advertisements
2 even after the promotion was over – all the while having exponentially increased the
3 size and value of their customer marketing database that either made or saved them
4 hundreds of thousands, if not millions, of dollars over the amount they would have
5 had to expend to obtain such information absent this offer. Defendants voluntarily
6 exploited this new data base.

7 7. To placate consumers, instead of actually following through with their
8 represented promises and accepted offers, Defendants have since claimed they were
9 making a donation of an unstated amount to DonorsChoose, but only to support
10 teachers in New Orleans, Atlanta and Nashville – not nationwide (although they
11 claimed it would benefit programs in “other cities”).

12 8. Under applicable law, it is unlawful to advertise goods or services with
13 the intent not to supply reasonably expectable demand, unless the advertisement
14 discloses a clear limitation of quantity; to represent that goods or services have
15 benefits or quantities that they do not have; to represent that a transaction confers or
16 involves rights, remedies, or obligations which it does not have or involve or that are
17 prohibited by law; or to represent that the subject of a transaction has been supplied
18 in accordance with a previous representation when it has not. Defendants’ claims
19 were false and deceptive when made, as they had no intent to satisfy any reasonable
20 expectation of demand.

21 9. In addition, if Defendants are to be believed that this was merely some
22 form of sweepstakes or lottery, they engaged in illegal conduct and did not comply
23 with the laws that apply to such sweepstakes or lotteries – laws that they are fully
24 aware of. Defendants engaged in unlawful business practices and specifically
25 violated both California law and New York law (where Draper James claims to be
26 based), and operated this scheme to enrich themselves, using the interstate mails and
27 wires to do so.

28 10. In response to such representations and omitted material facts,

1 consumers provided property in terms of their sensitive personal employment
 2 information and copies of their employee IDs to Draper James. They suffered
 3 damage and injury in fact by not receiving the benefit of the bargain promised and
 4 offered by Defendants and accepted by Plaintiffs and Class members. Plaintiffs
 5 reasonably acted in positive response to these claims and were deceived. Plaintiffs
 6 did not know, and had no reason to know, that Defendants' promotional plan did not
 7 intend to offer anything close to what they publicly offered or that it was intended
 8 to operate as an illegal sweepstakes or lottery. Plaintiffs and others would not have
 9 signed up for this offer and provided the personal information Draper James
 10 demanded if the true facts had been timely disclosed.

11 **PARTIES**

12 11. On personal knowledge, as used in this Complaint, "Plaintiffs" shall
 13 mean Judith Lindley, Natalie Anderson and Ann-Marie Matter, each natural
 14 persons.² Each of the named Plaintiffs are educators who saw Defendants'
 15 promotional program, registered for it on or about April 7, 2020, and provided their
 16 personal confidential employment information as consideration for participating in
 17 this offer. None of the Plaintiffs had previously purchased products from the Draper
 18 James website or had received advertisements or promotional materials from Draper
 19 James prior to accepting Defendants' offer by submitting their personal information.
 20 Yet soon after doing so, they all received numerous unsolicited promotional
 21 advertisements from Draper James, at one point on practically a daily basis, which
 22 they did not authorize or permit. None received the benefit of their bargain in terms
 23 of the promised goods. Had they been informed of the material facts that this was
 24 not an offer to be accepted but merely a sweepstakes or lottery and that they would
 25 have their personal information exploited and be bombarded by promotional and
 26 advertising solicitations in connection with the promotion of Defendants' consumer

27 ² Plaintiffs have provided or will provide information to Defendants at their request
 28 to verify that they registered for the program and have standing to assert such
 claims.

1 goods, they would not have participated in this program.

2 12. As used in this Complaint, “Defendants” when used without reference
3 to a specific named Defendant shall collectively mean: (a) Draper James, LLC, a
4 limited liability company based in Knoxville, TN and New York, NY that has its
5 principal place of business in New York and its members (including Front Porch
6 Trust and JHDJ Investors Inc.) located in California, Nevada, New York, Florida,
7 Tennessee, Texas, North Carolina, Connecticut, Arizona, Massachusetts and New
8 Jersey; (b) Reese Witherspoon, a natural person who publicly represents herself to
9 be a resident of Malibu, California; and (c) DOES 1 to 10. Draper James was
10 suspended from doing business in California according to the records of the
11 California Secretary of State until a month after this lawsuit was filed. Ms.
12 Witherspoon is an individual residing in the State of California and in this District.
13 She is the founder, owner, manager and primary promoter of Draper James, and
14 Draper James is associated with her as being “her” label or clothing brand, a
15 distinction she actively promotes. As set forth below she is featured in directly
16 making numerous of the material claims at issue herein as part of the offer at issue
17 and being the spokesperson for the offers at issue, and thus is jointly and several
18 responsible for the conduct at issue herein.

19 13. Plaintiffs are currently ignorant of the true names and capacities of the
20 Defendants sued under the fictitious names DOES 1 to 10. When Plaintiffs become
21 aware of the true names and capacities of the Defendants sued as DOES 1 to 10,
22 Plaintiffs will identify them and/or amend this Complaint to state their true names
23 and capacities. Defendants DOES 1 to 10 are persons who are in a position of
24 responsibility in terms of impacting or controlling the actions of Draper James in
25 addition to Ms. Witherspoon, which allows them to influence business policies or
26 the activities of Draper James and/or the other Defendants in this action. There is a
27 nexus between their involvement in the conduct in question and the violations of law
28 alleged herein such that they could have influenced the actions that constituted the

1 violations of law that form the basis for this action. Their actions or inactions
2 facilitated the violations alleged herein.

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

15 **JURISDICTION AND VENUE**

16 15. Defendants have removed this action to this Court under the provisions
17 of the Class Action Fairness Act, 28 U.S.C. Sections 1332, 1453, and 1711–1715,
18 thereby also asserting this Court has jurisdiction over this action under Article III,
19 of the U.S. Constitution.³ Jurisdiction is also proper under Business & Professions
20 Code section 17203 of the Unfair Competition Law (“UCL”), as such claims can be
21 brought in any court of competent jurisdiction. Jurisdiction over Defendants is
22 proper because they are either corporations or associations organized and operating
23 in the State of California, are residents of this State and/or have purposely availed
24 themselves of the privilege of conducting business activities in California because
25 they reside here, work here, currently maintain systematic and continuous personal,

26 ³ As of the filing of this Complaint, the Court has not discharged its Order to Show
27 Cause whether this action should be remanded for further proceedings in state court.
28 In filing this First Amended Complaint, Plaintiffs are in no way waiving any
argument or conceding that jurisdiction is proper in this Court or that Defendants’
removal of this action to this Court was proper.

1 professional and business contacts with this State, are licensed to do business in this
2 State, specifically directed their conduct to this State and/or have liability based on
3 the allegations of conspiratorial conduct and aiding and abetting as set forth in this
4 Complaint.

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

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

13 **CLASS ACTION ALLEGATIONS**

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

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

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

24 21. The proposed Class is so numerous that the individual joinder of all its
25 members in one action is impracticable. While the identities of Class members are
26 not known to Plaintiffs at this time, according to Defendants 904,342 individual
27 entries were received by Draper James, containing addresses of Class members
28 located nationwide. Members of the Class are also identifiable. Defendants have

1 stated they maintain name, e-mail and address records of such persons as these
2 individuals were required by Defendants to complete a form online and provide it to
3 Draper James as a condition of accepting this offer.

4 22. Questions of law and fact of common and general interest to the Class
5 exist and predominate over any questions affecting only individual members of the
6 Class. These common questions include, among others, the following:

7 a. whether the offer and/or sweepstakes at issue is subject to the
8 requirements of the UCL, the Consumers Legal Remedies Act, the New York
9 General Business Law and the other laws referenced herein;

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

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

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

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

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

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

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

26 23. Plaintiffs' claims are typical of the claims of the Class because
27 Plaintiffs and all Class members provided sensitive personal non-public information
28 to Defendants, and were injured by the same wrongful conduct and scheme of the

1 Defendants alleged herein by not receiving the benefit of their bargains. Each of the
2 Plaintiffs acted in positive response to the offer of Defendants by providing their
3 personal employment information as part of the information they needed to complete
4 to obtain a free dress. Each of the Plaintiffs did not authorize Defendants to exploit
5 their personal information in connection with the promotion, advertising or sale of
6 Defendants' products for marketing purposes or to be added to a customer database
7 for purposes of receiving ongoing advertising solicitations. Each of the Plaintiffs
8 received unsolicited marketing materials from Draper James in the aftermath of
9 doing so. And none of the Plaintiffs received the benefit of their bargain in terms of
10 the dress offered by Defendants.

11 24. Plaintiffs will fairly and adequately represent the interests of the Class.
12 Plaintiffs' interests are not antagonistic to or irreconcilably conflict with the interests
13 of the members of the Class. Plaintiffs are represented by attorneys who are
14 competent and experienced in consumer class action litigation.

15 25. A class action is both manageable and superior to other available group-
16 wide methods for the fair and efficient group-wide adjudication of this controversy
17 because the individual damage and harm suffered by each individual Class member
18 is small compared to the expense and burden of prosecuting such claims through an
19 individual case. If individual Class members were required to bring separate actions,
20 courts would be confronted with a multiplicity of lawsuits burdening the court
21 system while also creating the risk of inconsistent rulings and contradictory
22 judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent
23 results will magnify the delay and expense to all parties and the court system, this
24 action presents far fewer management difficulties while providing unitary
25 adjudication, economies of scale and comprehensive supervision by a single court.

26 26. Defendants have acted on grounds generally applicable to the entire
27 Class, thereby making final injunctive relief and/or declaratory relief appropriate
28 with respect to the Class as a whole.

27. 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.

SUPPORTING FACTS

28. 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 and/or website: "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). At or about this same time, Ms. Witherspoon issued a press release that made the same offer, which was repeated throughout the United States. 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., reasonably interpreted as those who accepted the offer, not an undisclosed number of a few people) being notified by Tuesday, April 7, 2020. Thus, this was an offer of specific consideration that was open for a limited period of time. Defendants actively promoted and encouraged the wide-spread circulation of this offer to teachers nationwide, stating "Know a teacher who deserves a pick-me-up? Forward this post or tag your favorite educator in comments: #DJLovesTeachers."

29. In order to accept this offer, teachers were required to fill out a Google Docs form available for use either directly or indirectly through a Draper James website or server providing not only their contact information but also upload sensitive education employee identification information, including pictures of their school IDs, the grade level and subjects they teach as well as their school name and state – information that would be valuable for promotional or advertising purposes but would not be relevant for purposes of a sales transaction, sweepstakes or lottery.

1 This document did not disclose that according to Defendants this was a lottery or
2 sweepstakes; contain any official lottery or sweepstakes rules; contain any of the
3 material representations later disclosed by Defendants as to unreasonable limitations
4 in quantity; disclose that Defendants intended to use these data as part of an
5 advertising scheme or plan in connection with the promotion, advertising or sale of
6 Draper James products; or of any of the protections Defendants would employ to
7 secure this sensitive personal information.

8 30. The information requested by Defendants identifies, relates to,
9 describes, is reasonably capable of being associated with, or could reasonably be
10 linked, directly or indirectly, with a particular consumer or household and thus is
11 defined by law as “personal information”. The personal information of Plaintiffs and
12 Class members has an independent monetary value, with initial estimates as low as
13 50 cents to \$5 per name in a commercial database, depending on the amount and
14 quality of information available, the demographics of the clients on a customer
15 database and whether such customers have used or re-used the companies’ products
16 or services. Such databases and commercial customer lists are considered property,
17 and the disclosure and unauthorized use of the underlying personal information is
18 protected by law. Specifically, the unauthorized disclosure or use of such personal
19 information by Defendants or persons with unauthorized access to such information
20 is illegal under California law (most notably the California Consumer Privacy Act,
21 Cal. Civ. Code Section 1798.81.5 *et seq.* (“CCPA”)). Here, while subject to further
22 discovery and analysis, this aggregated database is of significant size (over 900,000
23 individual entries nationwide), with very recent information, and of a very specific
24 demographic (female educators). Such information would be relevant to both
25 marketers and Defendants (as evidenced by their subsequent use identified
26 throughout this Complaint), and thus at a minimum is on the higher end of that scale
27 in terms of having a property value traceable to individual consumers such as
28 Plaintiffs and Class members. United States election law requires candidates disclose

1 the value of all in-kind campaign donations, including databases of potential
2 voters. Other federal and state statutes, such as the Gramm-Leach-Bliley Act and the
3 Sarbanes-Oxley Act, require corporations to account for the fair market value of assets,
4 which can include customer data. Its existence as a component of property can be
5 “owned” or “licensed”, and its value can be insured. The violation of this vested
6 interest retained by consumers can result in fines, penalties and damages. And while
7 the subject of further discovery in terms of its specific use and value here,
8 Defendants have already specifically used and profited from the use of such data for
9 commercial use and exploitation. Most of these data were not provided by existing
10 customers but potential customers, showing its independent value to Defendants.
11 And such personal information is not Defendants’ property to do with as they please;
12 by law (including the CCPA) individuals retain the right to control the use of that
13 personal information. Because personal information is both something with a
14 determinable value (which while the subject of further discovery and analysis is
15 likely at the higher end of the 50 cents to \$5.00 scale on a per Class member basis
16 as set forth above) and fungible data, the specific information provided by Plaintiffs
17 and Class members to Defendants is property that derives an independent economic
18 value. It is also property from which Defendants in connection with this particular
19 transaction attempted to derive and have derived economic value. It is thus property
20 with a specific definable value to Defendants in which Plaintiffs and Class members
21 by virtue of state and federal law have a vested interest in its use, control and
22 dissemination. Plaintiffs and Class members provided this personal information to
23 Defendants solely as consideration for accepting the offer of a free dress in response
24 to the representation that such information was needed to verify they were educators.
25 They did not do so for the purpose of receiving unsolicited advertisements and being
26 added to a customer database. Defendants obtained and used this personal
27 information for unauthorized purposes.

28 31. Such information is also of value to hackers and cyber criminals,

1 particularly now that it is known how much personal information property data they
2 have collected and on how many people. And other than vague statements in Draper
3 James privacy policy set forth herein, there is no indication that such information
4 has been segregated, taken off company servers, or is adequately protected from
5 cyber-attack or cyber criminals from being accessed. Plaintiffs have requested,
6 pursuant to the applicable provisions of state and federal privacy laws, that
7 Defendants agree to immediately stop using or selling, segregate, take off servers
8 and encrypt all personally identifying information that was gathered in response to
9 this program so as to ensure that it is not subject to cyber-attack or breach,
10 particularly since Defendants have shown they are using this massive data base for
11 commercial advertising purposes. Defendants to date have not indicated they have
12 done so. The risk that Plaintiffs' and Class members' personal data will be accessed
13 and misused by hackers and cybercriminals is thus immediate and remains very real.
14 Plaintiffs and Class members now face a credible threat of real and immediate harm
15 stemming from Defendants requiring them to provide this unnecessary information
16 as a prerequisite to entering into this transaction and allowing and accessing such
17 data as a result of this conduct.

18 32. Ms. Witherspoon specifically endorsed and promoted this offer. In a
19 personal press statement issued on or about April 2, 2020 that was repeated on both
20 *The Today Show* and *Good Morning America*, Ms. Witherspoon stated: "These past
21 few weeks have shown me so much about humanity. I'm an eternal optimist, so I
22 always look for the bright side of things. And I have been so encouraged by the ways
23 people are really showing up for each other. Particularly the teachers." "During
24 quarantine, teachers are broadcasting lessons from their own homes and figuring out
25 new remote-learning technology and platforms on the fly, all while continuing to
26 educate and connect with our kids," she said. "Advocating for the children of the
27 world is no easy task, *so I wanted to show teachers a little extra love right now.*"

28 33. Nowhere in her statement did she state this offer was a lottery or

1 sweepstakes, that there was any limitation on the quantity of this offer, or that it was
2 only limited to 250 dresses. Based on the stated costs by Defendants of between
3 \$26.15 and \$43.15 per dress that was the subject of this offer, the estimated cost to
4 Defendants of their offer was between \$6,537.50 and \$10,787.50. In exchange,
5 Draper James developed a customer list that could be valued in the millions of
6 dollars. Moreover, Defendants turned around and used this solicitation to promote,
7 advertise and sell consumer products. As alleged above, the average retail price for
8 these dresses on Draper James' website ranges from \$88 to \$295. Based on the cost
9 figures provided by Defendants, even utilizing a 30% promotional discount would
10 net Defendants over \$35 per dress sold, if not more. And being that they obtained
11 the contact information of over 900,000 individuals and immediately sent them
12 advertisements, if only one-half of one percent of the Class members responded, this
13 program and the resulting advertising campaign would likely net Defendants more
14 in profits than the amount they supposedly were offering consumers as Defendants
15 would only need to sell less than 400 dresses to cover the cost of this supposedly
16 generous program.

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

1 estimates of customer response were any indication, any anticipated limitation
2 would have been nowhere close to the 250 quantity later claimed by Defendants.

3 35. Defendants have asserted that Plaintiffs and Class members were
4 placed on notice that they were not offering a free dress to every registrant by use of
5 the phrase “where supplies last.” First, as set forth above, such a disclosure was not
6 clear and conspicuous in its context, and certainly nowhere disclosed Defendants
7 had unilaterally limited its offer to 250 individuals. Second, the use of such phrase
8 as a matter of marketing practice merely reinforces the conclusion this was an
9 advertising scheme or plan in connection with the promotion, advertising or sale of
10 consumer goods. Programs in which there are offers that contain phrases that
11 indicate there is a scarcity in supply, without stating what that scarcity actually is,
12 have been shown to actually stimulate interest and invitations to act rather than
13 provide the alleged disclosure claimed by Defendants.⁴ This is particularly the case
14 when, as here, there was an urgency created by making the offer available only for
15 a few days, starting on a Thursday and ending on a Sunday.

16 36. On or about Friday April 3, 2020, both *The Today Show* and *Good*
17 *Morning America* promoted and re-conveyed this offer, exclaiming “Reese
18 Witherspoon’s clothing brand is giving away free dresses to teachers”; “Reese
19 Witherspoon’s label Draper James is giving free dresses to teachers”; “the Oscar-
20 winning actress wants to show her gratitude during the coronavirus pandemic”; and
21 “Reese Witherspoon’s label Draper James is giving free dresses to teachers”.
22 Defendants did not immediately or promptly post a statement saying this was limited
23 to 250 dresses that would place consumers on notice of this unreasonable limitation.

24 37. Ms. Witherspoon was publicly feted for making this offer. *The Today*
25 *Show’s* website stated “Witherspoon’s sweet gesture is just the latest from fashion
26 and beauty companies that are stepping up to show their appreciation to essential

27 ⁴ See, e.g., “The Psychological Effects of Perceived Scarcity on Consumers’
28 Buying Behavior” (2013). Dissertations, Theses, and Student Research from the
College of Business. 41. <https://digitalcommons.unl.edu/businessdiss/41>.

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.”

38. It is important to place the timing of this offer in context. Beginning in late March 2020, public reports were circulating of the charitable giving offered by both fashion companies and media celebrities, both nationwide and worldwide. Many of these announcements were made just days prior to Defendants’ announcement of this offer. And in response, Defendants’ efforts were promoted alongside those of Oprah Winfrey, who had donated \$10 million for COVID-19 relief, and other celebrities of Ms. Witherspoon’s stature and fashion companies who made donations in the millions of dollars each. The following tables are a sample of those celebrities and fashion companies who donated hundreds of thousands, if not millions, of dollars in relief without any conditions:

FASHION COMPANIES

Donor ⁵	Amount
AG Jeans	\$1 million
Armani	2 million euros
Alexis	2,000 N-95 masks and 3,000 medical-grad gloves
Baby Phat	310,000 meals through Freedom Shield Foundation
Brooks Brothers	Devoting NY, NC and MA factories to producing 150,000 medical masks and gowns per day
Browns	Increased its support of BFC Fashion Fund by 50%
Bulgari	Manufacturing several hundred thousand bottles of hand sanitizer
Burberry	Manufacturing hospital gowns and more than 100,000 non-surgical masks

⁵ <https://www.thecut.com/2020/04/coronavirus-fashion-donations-masks-sanitizer-gowns.html> (last accessed July 16, 2020); <https://www.vogue.com/article/the-ralph-lauren-corporate-foundation-coronavirus-donation> (last accessed July 16, 2020).

Donor ^s	Amount
	for UK National Health Service, help fund Oxford research into single-dose vaccine and donating to FareShare and The Felix Project to provide meals for those in need
Canada Goose	Manufacturing scrubs and patient gowns to be distributed across Canada; donating 1 million Canadian dollars to Wuhan Charity Federation
The Council of Fashion Designers of America/ <i>Vogue's</i> Fashion Fund	Launched new initiative called A Common Thread to help distribute funds to people in the American fashion community
Chanel	1.2 million euros to emergency fund for public hospital system, promised employees 8 weeks of salary, and plans to make masks and gowns for distribution
Christian Siriano	Studio to make masks for distribution, 1,500 masks made as of April 1, 2020.
David Yurman	\$1 million to various COVID-19 related causes, and continued health benefits to furloughed employees
Dolce & Gabana	Undisclosed donation to Humanitas University in Milan for research and development of diagnostic and therapeutic interventions against coronavirus
Ermenegildo Zegna Group	Manufacturing 280,000 protective hospital suits for medical staff
Estée Lauder	\$2 million to Doctors Without Borders; reopened New York factory to make hand sanitizer
Geox	1 million euros to Veneto region of Italy
Graff	\$1 million to WHO COVID-19 Solidarity Response Fund
Gucci	1 million euros to National Civil Protection Department in Italy; 1 million euros to WHO COVID-19 Solidarity Response Fund; and, launched two crowd-fundraising campaigns to raise funds for COVID-19 assistance. CEO Bizzarri made a personal donation of 100,000 euros to eight hospitals
Hanna Andersson	Donation of pajama sets to healthcare workers and patients in need, as well as

Donor ^s	Amount
	pajamas to Baby2Baby's COVID-19 Emergency Response Program
Inditex	Produced and Shipped hundreds of thousands surgical masks to coronavirus patients and medical professionals in Spain
John Elliott	\$10,000 to UCLA Health Fund with an additional 10% of sales to the same fund with a target goal of \$100,000
Jimmy Choo	\$250,000 to National Health Service; \$250,000 WHO COVID-19 Solidarity Response Fund
Kate Spade	\$100,000 to Crisis Text Line; \$100,000 to ten existing programs (\$10,000 each)
Kering	\$1 million to CDC Foundation to provide PPE; Contributions to CFDA/Vogue Fashion Fund and 'Your Friends In New York Want to Help; Undisclosed donations in France, Italy and China; production of over 1 million surgical masks and gowns for healthcare personnel
Loewe	For every product of the Paula's Ibiza collection sold between May and August 2020 in Loewe stores and on the brand's website, the Spanish house will be donating 40 euros to educational projects, starting with an initial donation of 500,000 euros. Loewe is also donating 100,000 surgical masks to the Spanish Red Cross.
Louis Vuitton	Will produce of hundreds of thousands of non-surgical protective masks, re-purposing its workshops across France, where 300 artisans are mobilized
LVMH	Facilities that normally produce fragrances and cosmetics for Christian Dior, Guerlain, and Givenchy to make hand sanitizer, which will be given to French health authorities and hospitals free of charge; promised to donate a total of 40 million face masks and has already paid 5 million to a Chinese supplier to deliver 10 million.
Mango	Distribute 2 million face masks among various Spanish hospitals
Mayhoola	1 million euros to La Fondation

Donor^s	Amount
	Hôpitaux de Paris - Hôpitaux de France (FHP-HF)
Michael Kors	\$1 million to support local relief efforts. Kors himself and the CEO of Capri Holdings, John Idol, will make personal contributions of an additional \$1 million toward these efforts. The combined \$2 million donation will be distributed to New York hospitals, God's Love We Deliver, and A Common Thread.
Moscot	Providing durable, handcrafted eyewear frames with clear, scratch-proof lenses (prescription or non-prescription) to healthcare professionals to help reduce exposure to airborne particles or fluid-borne pathogens from patients
Nike	Total commitment of more than \$17.5 million to COVID-19 response efforts; 250,000 three-ply disposable face masks; As of April 20, 130,000 units of combined full-face shields and PAPR lenses
Nordstrom	100,000 face masks for Providence Health & Services; Executives Erik and Pete Nordstrom are declining their salaries from April until September
Prada	6 ICUs to Milanese Hospitals; 80,000 medical overalls and 110,000 masks
Pyer Moss	Created initiative called 'Your Friends in New York Want to Help' creating a donation center for masks and gloves in New York; Designer Kerby Jean-Raymond also donated \$5,000 for supplies himself, plus an additional \$50,000 to aid minority and women owned businesses in distress
Ralph Lauren	\$10 million to a variety of charitable organizations; financial grants to employees facing special circumstances due to the coronavirus
Saks Fifth Avenue	\$250,000 to New York-Presbyterian COVID-19 Patient Care Fund; \$200,000 to Bring Change to Mind; \$150,000 to Girls, Inc.
Tanya Taylor	5,000 non-medical grade masks for New York City hospitals; crowd-sourcing to produce 5,000 more

Donor⁵	Amount
Tapestry	\$2 million to NYC Department of Small Business Services to provide relief to small business in New York City affected by COVID-19
Theory	10 million masks
Tiffany & Co.	\$750,000 to WHO COVID-19 Solidarity Response Fund; \$250,000 to The New York Community Trust's NYC COVID-19 Response and Impact Fund; match of employee donations to any qualified nonprofit supporting COVID-19 relief, dollar for dollar
Tod's	5 million euros to support the family members of health personnel who lost their lives in the fight against COVID-19
Ugg	Launching Better Together initiative to donate over \$1 million to various COVID-19 relief efforts
Versace	\$500,000 to support Milanese hospitals; 1 million yen to the Chinese Red Cross Foundation
Vince	30,000 masks to hospitals in New York and Los Angeles; Hosting charity auction with 100% of proceeds going to Meals on Wheels and God's Love We Deliver

MEDIA CELEBRITIES

Donor⁶	Amount
Kendall Jenner	Launched new merchandise collection whose proceeds will go to Feeding America.
Billie Eilish	Launched mask design the net proceeds of which will be donated to organizations working to support the music community.
Ariana Grande	Launched mask design the net proceeds of which will be donated to organizations working to support the

⁶ <https://www.vogue.com.au/celebrity/news/these-are-the-biggest-celebrity-donations-to-covid19-relief-efforts/news-story/1b6a2a848fed8afc2147098fb6f23824> (last accessed July 16, 2020); <https://www.vogue.com/article/celebrities-donating-fundraising-coronavirus-relief> (last accessed July 16, 2020); <https://www.vogue.com/article/taylor-swift-gives-fans-donations-coronavirus> (last accessed July 16, 2020).

	music community.
Justin Bieber	Launched mask design the net proceeds of which will be donated to organizations working to support the music community.
Beyoncé	\$6 million toward COVID-19 relief
Charlize Theron	\$1 million, \$500,000 of which goes to domestic violence shelters and community-based programs
Mila Kunis & Ashton Kutcher	Created Quarantine Wine with 100% of net proceeds going to COVID-19 relief efforts
Gwyneth Paltrow Victoria Beckham Charlotte Tilbury Bobbi Brown Drew Barrymore Rosie Huntington-Whiteley	All donating essential supplies and provide resources and fundraise for first responders; Paltrow donated \$100,000 separately to the Frontline Responders fund
Pink	\$500,000 to Temple University Hospital Emergency Fund; \$500,000 to City of Los Angeles Mayor's Emergency COVID-19 Crisis Fund
Elton John	\$1 million to COVID-19 Emergency Fund established by the Elton John AIDS Foundation
Ciara & Russell Wilson	1,000,000 meals through Food Lifeline to Seattle-based food banks
Ryan Reynolds & Blake Lively	\$1,000,000 to Feeding America and Food Banks Canada; \$100,000 each to Elmhurst, NYU Hospital, Mount Sinai and Northern Westchester (all NYC hospitals)
Justin Timberlake	Supporting Food Bank in hometown of Memphis, TN
Lady Gaga	Donating 20% of one week of Haus Labs' online profits to food banks in Los Angeles and New York City; working with the Global Citizen to raise more than \$35 million for PPE
Ariana Grande	Supporting Opportunity Fund, GiveDirectly, Feeding America, Croce Rossa Italiana and WHO
Rudy Gobert	\$500,000+ to COVID-19 related social services and the Employee Relief Fund at Vivint Smart Home Arena
Owners, players and coaches of The Golden State Warriors	\$1 million to Chase Center Employees Relief Fund
Roger Federer	1 million Swiss Francs to the most

	vulnerable families in Switzerland
Justin Bieber	200,000 RNB to the Beijing Chunmiao Charity Foundation
Kristen Bell (and children)	\$150,007.96 to No Kid Hungry (her children donated \$7.96 of their own savings)
Kanye West	Undisclosed donation to Los Angeles Dream Center
Kim Kardashian West	20% of Skims Cotton Collection profits to Baby2Baby; \$1 million to COVID-19 Relief
Rihanna	\$5 million
Kylie Jenner	\$1 million
Bruno Mars	\$1 million
Arnold Schwarzenegger	\$1 million
Angelina Jolie	\$1 million
Cardi B & DJ iMarkkeyz	All proceeds from coronavirus remix
Bong Joon-Ho	\$82,000 to Hope Bridge Korea Disaster Relief Association
Sheryl Sandberg	\$5.5 million to launch emergency fund that will focus on feeding families
Shawn Mendes	Undisclosed donation to SickKids Foundation
Oprah Winfrey	\$10 million to coronavirus relief, including \$1 million to America's Food Fund
Dolly Parton	\$1 million to vaccine research
Jay-Z & Meek Mill	100,000 masks for inmates across the country
Miranda Kerr & Evan Spiegel	\$10 million to various charities and nonprofits around Los Angeles, including Allies for Every Child, Homeboy Industries, Koreatown Youth Community Center, Proyecto Pastoral, and the Venice Family Clinic
Halsey	100,000 masks that she planned to distribute to Cedars-Sinai Medical Center, Providence Saint Joseph, LAC+USC Medical Center, and Martin Luther King Jr. Community Hospital
Taylor Swift	\$3,000 each to more than 10 different fans to help with financial burdens due to COVID-19

39. This timing is important for several reasons, and explains the nature of the offer and the reasonable reaction of consumers that indicated they reasonably believed there were no unreasonable restrictions on Defendants' offer. These announcements of charitable giving were being announced just days after California and other states were announcing statewide shutdown restrictions, in late March 2020. Defendants made this announcement in early April 2020, days after many of these other announcements. However, if Defendants had disclosed at that time what Ms. Witherspoon and her company were supposedly actually offering, which according to Defendants' own information was between \$6,537.50 and \$10,787.50, as compared to what her peers in both the entertainment and fashion industry were offering, it would have been publicly revealed that there was no comparison. What Defendants were publicly passing off as a generous offer to teachers in need nationwide would have been recognized as likely only costing them less than \$11,000, while more likely than not at the same time providing Defendants with personal information and marketing data valued in the hundreds of thousands or millions of dollars, which when combined with their promotional campaign could generate more in promotional sales than what they were offering to provide. There is no indication any of the other individuals and groups listed above took similar actions. What's worse, as noted above even if only one-tenth of one percent of Class members accepted these promotional offers, Defendants would net more in sales and profits from these new consumers than the total cost of their supposedly generous proposal -- all at the expense of educators who are on the front line of this COVID-19 crisis.

40. Defendants did not need use the information provided by Plaintiffs and Class members to solicit these educators with promotional materials or discounts or use this scheme or plan in connection with the promotion, advertising or sale of consumer products or services. They voluntarily chose to solicit such individuals at the time they were under significant stress of being furloughed or told they needed

1 to work from home. And when compared with the other offers of support being made
2 by people and companies of similar stature and recognition at the same time,
3 consumers targeted by this promotion reasonably could presume that the offer was
4 for similar amounts, if not more, and certainly were not subject to the unreasonable
5 limitations later claimed by Defendants.

6 41. This public promotion and support, and the resulting backlash when the
7 supposed material facts were later revealed, shows how this undisclosed limitation
8 would be material to both Plaintiffs, Class members and the public, as reasonable
9 consumers under the circumstances would not have thought this was a sweepstakes
10 or lottery subject to the unreasonable restrictions later imposed by Defendants.

11 42. Not surprisingly, the offer went viral and was immediately accepted by
12 teachers nationwide. In response, over 900,000 educators nationwide in a matter of
13 three days – almost a quarter of the estimated teacher population in the United States
14 – accepted this offer and provided their personal information to Defendants as
15 consideration. The original post of this offer on Instagram was reviewed over
16 400,000 times within days of its dissemination. Tens of thousands of consumers
17 posted comments about the importance of this program to them in a time of personal
18 crisis, and how Ms. Witherspoon’s personal involvement in this offer was of
19 particular importance to them.

20 43. Defendants’ representatives later claimed they “had way more volume
21 than the company had ever seen” and had expected to receive less than 10,000
22 applications accepting their offer. In light of Ms. Witherspoon’s fame and reputation,
23 the active promotion undertaken by Defendants, and specifically Ms. Witherspoon,
24 to promote this offer nationwide through at least two major media outlets, and its
25 immediate response, this was an unreasonable expectation. But even this claim
26 supports the unreasonableness of Defendants’ claimed limitation. If Defendants are
27 to be believed, they expected that even if they widely promoted this offer, they would
28 receive less than 10,000 acceptances. Based on the stated costs by Defendants of

1 between \$26.15 and \$43.15 per dress that was the subject of this offer, the total cost
2 to Defendants of acknowledging every acceptance of their offer would have been
3 between approximately \$260,000 \$430,000 – which while more expensive, would
4 have been in line with the other charitable offers listed above. However, this would
5 have been 40 times more in value than they actually provided. Meanwhile, according
6 to Draper James, they had sold approximately 150,000 dresses during 2019.
7 Defendants were thus able to expand their customer database by at least seven-fold
8 as a result of this accepted offer. They would still have a customer database of over
9 900,000 consumers that they voluntarily (albeit improperly) used and exploited and
10 extremely favorable press coverage for Ms. Witherspoon alongside those who at the
11 same time were offering millions of dollars to COVID-19 victims. When combined
12 with the profits Defendants likely derived from the millions of direct promotional
13 advertisements and discount coupons they sent to Plaintiffs and Class members, such
14 facts further demonstrate the materiality of the undisclosed limitation of 250 dresses
15 for this entire program, both to the Class members and Defendants.

16 44. In the end, according to Defendants 904,342 individual educators
17 timely accepted this offer by filling out and submitting the Google Docs application
18 and providing their sensitive, personal employment information to Defendants.
19 Defendants immediately began sending to these educators, many of whom likely had
20 not previously provided their personal information to Defendants, promotional
21 advertisements and materials.

22 45. As consumers' response to this campaign was incredibly high, both in
23 terms of the number of consumers who positively accepted this offer, the number of
24 consumers who posted positive comments in response to the offer, and the number
25 of consumers who posted negative comments when the material limitations were
26 disclosed after Defendants' claimed limitation was announced, the nature of the
27 misrepresentations made above by Defendants offering Plaintiffs and Class
28 members free dresses if they provided their sensitive personal information was

1 demonstrably material to a reasonable consumer targeted by this practice. The
2 materiality of the claims in the offer and reliance thereon can be presumed. The
3 undisclosed fact that this was a lottery or sweepstakes with only a handful of winners
4 can similarly be presumed to be material based on such facts and responses.

5 46. This was not some accidental, unanticipated result. Based on her
6 nationwide popularity as well as the actions of other celebrities during this time
7 frame, examples of which are summarized above, that were offering to make
8 million-dollar-plus donations to charities without any offset or conditions, Ms.
9 Witherspoon issued her own separate press release touting this offer on or about
10 April 2, 2020. As alleged above, the offer of a free dress without limitation to all
11 teachers who registered in a limited period of time was broadcast nationally on *The*
12 *Today Show* and *Good Morning America*, with a reach of millions of consumers, and
13 specifically focused on Draper James' connection to Ms. Witherspoon. And the
14 response of over 900,000 individuals acting in positive response to this offer, and
15 the resulting backlash of tens of thousands of negative posts when Defendants
16 belatedly claimed they were only offering 250 dresses in total to a population of over
17 3 million educators nationwide, shows that even if the term "supplies limited" had
18 any meaning, without disclosing this material limitation its use more likely had the
19 impact of increasing registration (and the size of the resulting customer database)
20 rather than acting as some form of limiting disclosure by increasing the perceived
21 value of the offer and the urgency of promptly acting.

22 47. Defendants apparently did not intend to supply reasonably expectable
23 demand for such products, claiming later to only intend to offer 250 dresses when
24 by their own claims they expected to receive significantly more requests.

25 48. Defendants began to backtrack once they began to see the widespread
26 success of their offer. By on or about Monday, April 6, 2020, after close to a million
27 educators had already responded to and accepted Defendants' offer and the deadline
28 to do so either had or was about to close, Defendants claimed they would not honor

1 the accepted offer. Instead, they claimed that this offer was some form of lottery or
2 sweepstakes and that there were only 250 dresses that would be made available to
3 selected “winners”. Meanwhile, Defendants had already obtained the contact
4 information for over 900,000 teachers – a key demographic of their products.

5 49. To demonstrate that this property received from Class members was
6 valuable to Defendants, promptly upon making this offer Defendants began to
7 exploit the submission of that data by bombarding individuals repeated
8 advertisements, promotional material and discount offers – even after the expiration
9 deadline to apply for this offer had passed. While Defendant will have the precise
10 data, Plaintiffs recall receiving up to 10 separate promotions, including multiple
11 offers in one day. Many Class members likely purchased products from Defendants
12 in response to these offers. And when consumers began expressing outrage at being
13 deceived, all Defendants did was offer consumers a 30% discount of Draper James
14 products – a rebate that would result in Defendants making more money off of its
15 now rejected offer based on the profit margin of the costs of the dresses as compared
16 to the retail value of the dresses as stated above. . Defendants also have not indicated
17 that the profits made from such sales as a result of this promotional campaign will
18 be donated to charity, unlike several of the celebrities listed in the Tables set forth
19 above.

20 50. In response to the fall-out over this failed program, according to a
21 follow up email to consumers sent by Defendants on or about Thursday April 10,
22 2020 -- a week after this offer had been made – Defendants claimed they were
23 “actively working on expanding our offerings, both internally and with outside retail
24 partners who were also inspired by your stories and want to join in honoring your
25 community...”, whatever that is intended to mean. In light of the other facts
26 summarized above, it appears what this is saying is that Defendants were taking
27 advantage of their newly developed mailing list by potentially sharing it with outside
28 third party retailers and potentially further profiting thereby in an effort of

1 “expanding our offerings” and “honoring your community,” both internally and
2 “with outside retail partners.” Defendants have yet to confirm they did not use and
3 are not using this newly created commercial database or are not sharing it with
4 “outside retail partners”.

5 51. While Defendants subsequently provided consumers the ability to
6 unsubscribe from getting further promotional materials, Defendants still had access
7 to this personal information in a newly created database that had independent
8 economic value, including if the company was sold, and that was likely not being
9 maintained in a way that would secure it from protection and unauthorized access
10 based on the vague and rote statements contained in the Draper James Privacy Policy
11 (e.g., “While we implement these and other security measures on our Web Site,
12 please note that 100% security is not always possible. You play a role in protecting
13 your information as well.”). And this personal information is not simply name and
14 address information – it is copies of employee badges for many Class members,
15 where they work and what grades they teach.

16 52. Plaintiffs and Class members were required by Defendants as a
17 condition of accepting their offer to enter into a transaction and provide the above
18 personal information about their employment, including employee photo IDs, even
19 though it was unnecessary to complete the transaction and Defendants did not need
20 it in order to complete the transaction. This information is of independent economic
21 value to companies such as Defendants, as set forth above, and thus is also of value
22 and interest to Plaintiffs and Class members for which they have a cognizable claim
23 and for which they have not been compensated. Such interest and value were
24 compromised, diminished and deprived in whole or in part by providing this
25 information to Defendants, who thereafter used it for their own profit, exploitation
26 and use in connection with the promotion, advertising or sale of consumer products.
27 In addition, Plaintiffs and Class members have had to invest and spend time
28 attributable to the unsolicited and unauthorized advertisements from Draper James

1 they have had to review, sort through and delete. Plaintiffs and Class members would
2 not have provided such sensitive personal property to Defendants had they be timely
3 told this was not an offer for a free dress, but rather an offer to participate in a lottery
4 or sweepstakes with an unreasonably low chance of obtaining a free dress, and
5 received no compensation for doing so. By supplying their personal information,
6 Plaintiffs and Class members provided consideration to Defendants and have not
7 received the benefit of the bargain in terms of what Defendants promised to provide
8 them. Plaintiffs and Class members thereby surrendered more and/or acquired less
9 in a transaction than they otherwise would have if Defendants had fully informed
10 them of the true facts or if Defendants had actually fulfilled their obligations.
11 Plaintiff and Class members were deprived of property in terms of the products
12 offered by Defendants over which Plaintiffs had a cognizable claim in light of the
13 statements made by Defendants and the material facts they did not disclose, as set
14 forth above.

15 53. In addition, due to the vague and undefined privacy practices of
16 Defendants for protecting this specific information, combined with the knowledge
17 there is now close to a million individuals' personal employment information,
18 including employee photo IDs, on Draper James' computer servers, the risk that
19 Plaintiffs' and Class members' personal data will be accessed and misused by
20 hackers and cybercriminals is immediate and very real. Plaintiffs and Class members
21 now face a credible threat of real and immediate harm stemming from Defendants
22 requiring them to provide this unnecessary information as a prerequisite to entering
23 into this transaction and thus allowing uncontrolled access to such data as a result of
24 this conduct. This has resulted in an increased risk of identity theft or fraud, as such
25 information can be used not only to solicit transactions as Defendants already have
26 done, but giving third parties the ability to target them in fraudulent schemes and
27 identity theft attacks by using this specific employment personal information.

28 54. Defendants' promotion and offers as alleged herein were false and

1 misleading. Defendants did not advertise, promote or offer their goods or services
2 with the intent to supply reasonably expectable demand and without stating there
3 was a limitation of quantity of 250 dresses, and uniformly represented that such
4 goods had benefits or quantities that they do not have without disclosing material
5 limitations on the quantity of their offer, as well as engaging in or proposing
6 transactions that were prohibited by law.

7 55. As set forth above, Defendants' misrepresentations were and are part
8 of a systematic marketing and promotion campaign. Defendants' program as alleged
9 herein was intended and designed in whole or in part to increase sales of the products
10 at issue and create a valuable customer database.

11 56. A reasonable person would attach importance to Defendants'
12 misrepresentations and material omissions of fact in determining whether to accept
13 the offer at issue and provide valuable consideration and property (i.e., sensitive
14 personal information) in response. Plaintiffs and others would not have provided this
15 information and consideration had they known they were not actually getting a
16 Draper James dress, but instead being entered into a lottery or sweepstakes with an
17 approximately 0.025% chance of "winning", and would thereafter be bombarded
18 with promotional offers that, if accepted, would make Defendants even more money
19 than the cost of the offer. The materiality of these misrepresentations is established
20 in part by the thousands of initial positive comments, and the negative comments
21 posted by individuals nationwide after these limitations were announced. A handful
22 of counter responses does not repudiate this presumption in light of the unsolicited
23 and pervasive nature of the comments posted both before, during and immediately
24 after this offer and the limitations on this offer and the refusal to honor what
25 Defendants proposed was revealed.

26 57. Ms. Witherspoon and Draper James are sophisticated e-commerce
27 participants who likely know what facts are material to consumers and either did or
28 reasonably should have gauged the likely response from making such an offer to

1 enter into such agreements. While Defendants could afford to honor such requests
 2 as Ms. Witherspoon's net worth is estimated at approximately \$240 million as of
 3 2019 according to *Forbes*, they decided not to do so. What was worse, they decided
 4 to set their liability at a level that, while other celebrities and fashion companies were
 5 contributing millions of dollars to help CIVID-19 victims, would cost them less than
 6 \$11,000 – and in the end as a result of their voluntary promotional campaign using
 7 the data provided by Class members as part of a promotional campaign, actually
 8 make money.

9 58. Defendants have asserted that the use of the terms “while supplies last”
 10 and “winners” placed Plaintiffs and Class members on notice that not every person
 11 who submitted an entry would win a dress, and that they would be randomly selected
 12 from the registrants. In making this claim, Defendants have asserted they were
 13 offering persons the ability to participate in a “sweepstakes” or lottery for a free
 14 dress. A “sweepstakes” is defined in Cal. Bus. & Prof. Code Section 17539.1 as “an
 15 activity or event for the distribution, donation, or sale of anything of value by lot,
 16 chance, or random selection.”

17 59. Under Cal. Business and Professions Code Section 17539.1 (made
 18 enforceable by consumers pursuant to Bus. & Prof. Code Section 17200) “(a) The
 19 following unfair acts or practices undertaken by, or omissions of, any person in the
 20 operation of any contest or sweepstakes are prohibited:

21 (3) Misrepresenting in any manner the odds of winning any prize;

22 (6) Failing to clearly and conspicuously disclose the exact nature and
 approximate value of the prizes when offered;

23 (8) Representing directly or by implication that the number of
 24 participants has been significantly limited, or that any particular person
 has been selected to win a prize unless such is the fact.

25
 26 Defendants did not create any form of Official Rules, prominently post them, or
 27 include them in any of the materials disseminated by Defendants.

28 60. In addition, under Bus. & Prof. Code Section 17539.15 (b):

Solicitation materials containing sweepstakes entry materials or solicitation materials selling information regarding sweepstakes shall include a clear and conspicuous statement of the no-purchase-or-payment-necessary message, in readily understandable terms, in the official rules included in those solicitation materials and, if the official rules do not appear thereon, on the entry-order device included in those solicitation materials. The no-purchase-or-payment-necessary message included in the official rules shall be set out in a separate paragraph in the official rules and be printed in capital letters in contrasting typeface not smaller than the largest typeface used in the text of the official rules.

(j) The official rules for a sweepstakes shall disclose information about the date or dates the final winner or winners will be determined.

(k) For purposes of this section:

(1) "No-purchase-or-payment-necessary message" means the following statement or a statement substantially similar to the following statement: "No purchase or payment of any kind is necessary to enter or win this sweepstakes."

(2) "Official rules" means the formal printed statement, however designated, of the rules for the promotional sweepstakes appearing in the solicitation materials. The official rules shall be prominently identified and all references thereto in any solicitation materials shall consistently use the designation for the official rules that appears in those materials. Each sweepstakes solicitation shall contain a copy of the official rules.

Defendants did not create any form of Official Rules, prominently post them, or include them in any of the materials disseminated by Defendants.

61. In addition, as Draper James asserts it operates out of New York and that its principal place of business is located there, NY G.B.L. 369-e provides specific requirements for employing a promotional sweepstakes game:

1. Every person, firm or corporation proposing to engage in any game, contest or other promotion or advertising scheme or plan in connection with the promotion, advertising or sale of consumer products or services which offers the opportunity to receive gifts, prizes or gratuities, as determined by chance, without any consideration therefore, where the total announced value of the prizes offered is in excess of \$5,000 shall file with the Secretary of State, at least 30 days prior to the commencement of such game, contest or promotion upon a form that shall be provided, a statement setting forth: the minimum number of participating objects to be made available; the minimum number of prizewinning objects that will be included in such promotion or advertising scheme or plan; the proportionate opportunity of winning prizes; the minimum value of prizes to be made available; and the rules and regulations pertaining to such promotion or advertising scheme or plan, which shall include the period of time and the geographic area to be covered by the contest and such other information as the Secretary of State may, from time to time, require. The non-refundable filing fee of one hundred dollars shall accompany each such statement. Failure to

1 file such statement shall be a Class B Misdemeanor.

2 2. Every person, firm or corporation engaging in any promotion or
3 advertising game or contest of the type set forth in subdivision one of
4 this section, shall cause to be posted in a conspicuous and prominent
5 location in every retail establishment offering the opportunity to
6 participate in such game or contest and published in all advertising copy
used in connection therewith, a statement showing the minimum
number and value of prizes available to be won over a stated period of
time and stated geographic area, and the rules and regulations
pertaining to such promotion or advertising scheme or plan. Failure to
cause such posting and publication shall be a Class B Misdemeanor.

7 3. Every person, firm or corporation engaging in any promotion or
8 advertising game or contest of the type set forth in subdivision one of
9 this section shall establish and maintain a special trust account in a
10 branch of a national or state chartered banking institution with a balance
11 sufficient to pay or purchase the total value of prizes offered. In lieu of
12 establishing such trust account, said operator may furnish a bond, with
13 sufficient sureties, in an amount equal to the total value of all prizes
14 offered; such bond shall be in favor of the people of the State of New
15 York. A copy of a certificate of deposit indicating the balance of said
trust account or a copy of the surety bond shall be filed with the office
of the Secretary of State simultaneously with the filing of the statement
required by subdivision one hereof. The monies so held in escrow or
said surety bond shall at all times equal the total amount of prizes so
offered. The monies may be withdrawn, from time to time, in order to
pay, award or purchase prizes offered only upon certification to the
Secretary of State of the names and addresses of the winners and the
amount or value of the respective prizes.

16 4. Every person, firm or corporation engaging in any promotion or
17 advertising scheme or plan of the type set forth in subdivision one of
18 this section shall within 90 days following the completion of said
19 promotion or advertising scheme or plan, file with the Secretary of State
20 a listing of the name and address of each winner of every prize having
21 a value of more than \$25, the description of the prize won by each such
22 person, and the date when such prize was delivered to each such person,
23 and shall maintain complete records of such promotion or advertising
24 scheme or plan for a period of 6 months thereafter. Failure to file such
listing with the Secretary of State or to maintain such records shall be a
Class B Misdemeanor. A copy of such listing shall be furnished,
without charge, to any person who requests the same from said
promoter. Nothing herein shall prohibit a requirement that such request
must be accompanied by a stamped, self-addressed envelope provided
such requirement shall be included in and made a part of the rules and
regulations filed pursuant to subdivision one [of this section].

25 5. Every person, firm or corporation who prints, publishes or
26 circulates literature or advertising material, used in connection with any
27 promotion or advertising scheme or plan of the type set forth in
28 subdivision one of this section, which is false, deceptive or misleading,
shall be guilty of a Class B Misdemeanor.

62. After Plaintiffs and Class members registered on Draper James' website in response to Defendants' offer of what Defendants now claim was a "prize" of a free dress that was selected supposedly by random chance, Defendants turned around and sent solicitations and promotional materials to Plaintiffs and Class members for the purchase of goods from the Draper James' website. Defendants' offer to engage in some form of sweepstakes was thus issued in connection with the promotion, advertising or sale of consumer goods. Yet despite these specific requirements of the above law, there is no indication Defendants registered their sweepstakes with the New York Secretary of State; made the required filings with the Secretary of State and provided the required filing fee; posted the required bonds with the Secretary of State or set up the required trust accounts; posted the information required in subdivision (2) in retail stores or disclosed that information with any advertising disclosing the promotional offer; filed the list of winners and the other information required by law with the Secretary of State and made it publicly available upon request; made any of the undisclosed "rules" available, or otherwise complied with this law in any way. In addition, as detailed above Defendants published and circulated advertising material that did not timely disclose material information about the unreasonable limitations placed on the number of dresses that would be provided as part of this sweepstakes and that Defendants intended to use any entries for marketing purposes without obtaining permission or authorization to do so. In so doing, the materials used to advertise this campaign were false, deceptive or misleading, in violation of the law.

63. In addition, the official rules of a sweepstakes form an agreement between the sponsor and the entrants and establishes the terms of the parties' relationship. Such statements are required at a minimum to provide the official rules and regulations of the promotion, and the minimum number and value of prizes to be won. But as Defendants never complied with any of the above laws or published such rules, they never advised consumers of the material limitations in this program

1 – specifically that not only would every entrant not receive a dress, but that only 250
2 out of over 900,000 entrants would do so, meaning they were not accepting an offer
3 for a dress, but only a 1 in 3,600 chance of receiving one.

4 64. This was not some technical or inadvertent oversight, since
5 sweepstakes are a way of life for Draper James. For example, in August 2019,
6 Draper James operated a sweepstakes giving away a total of two swimsuits to
7 exactly one entrant. As here, the promotion was only open for a few days. As here,
8 Draper James claimed the “winners” would be notified shortly after the offer ended.
9 And as here, registrants received unsolicited advertisements when the registrants
10 provided their contact data as part of this sweepstakes (much less personal
11 information than requested here), but enough to added to their marketing customer
12 lists. See <https://draperjames.com/pages/sweepstakes>. But unlike here, Draper
13 James attempted to comply with the above referenced sweepstakes laws. Here they
14 made no effort to do so. Thus, Defendants were fully aware how to disclose they
15 were running a sweepstakes operation at the time of this offer, and had already used
16 a similar promotion as a marketing scheme and were set up to do so. Yet they failed
17 to do so here, in violation of such laws.

18 65. As a condition of entering into this sweepstakes, Plaintiffs and Class
19 members were required to provide consideration to Defendants that has independent
20 market value as alleged above in the form of non-public personal employment
21 information. Such information was then exploited by Defendants by, at a minimum,
22 using such information to send promotional advertising materials that could generate
23 income that would offset the actual costs of the “prizes”, if not result in a net profit
24 to Defendants. To the extent it was a condition of entry to provide consideration that
25 was then used by Defendants for further profit without providing an alternative
26 method of entry that did not require providing any form of consideration as a
27 condition for participation, Defendants’ program would violate state law
28 prohibitions on engaging in illegal lotteries without complying with significant filing

1 requirements, and would be illegal and in violation of the above laws..

2 66. While this might be viewed and has been publicly derided as a
 3 deceptive marketing ploy, when it is directed at teachers to create further profit
 4 during a pandemic, it becomes outrageous conduct. Such a material failure to comply
 5 with these laws is another fact that turns what Defendants would like to claim was
 6 an act of generosity (albeit one with a total cost, according to them, of less than
 7 \$11,000) into an illegal sweepstakes or lottery that resulted in Defendants creating a
 8 valuable data base they then turned around and exploited for commercial gain – all
 9 during a national pandemic where teachers have been forced to work from their
 10 homes, or not at all.

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

18 **CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**

20 **BREACH OF CONTRACT**

21 68. Plaintiffs incorporate by reference the allegations contained in the
 22 preceding paragraphs above.

23 69. Defendants, as the designers, manufacturers, marketers, distributors,
 24 promoters, owners and/or sellers of the Draper James line of products, made a
 25 specific offer of performance as set forth above. In doing so Defendants manifested
 26 a willingness to enter into a bargain that was accepted by Plaintiffs and Class
 27 members, forming either a unilateral or bilateral contract.

28 70. Defendants, in the clear and positive terms set forth above, promised to

1 render performance (i.e., provide consumers who provided information to
2 Defendants with a free dress) in exchange for the performance of a specific act by a
3 specific time without further communication and leaving nothing left open for
4 negotiation (i.e., Class members providing their personal, sensitive contact
5 information and employment identification information to Defendants). Plaintiffs
6 and Class members reasonably concluded that by providing such information an
7 agreement would be formed between the parties. Plaintiffs and Class members
8 reasonably might and would have concluded that by acting in accordance with
9 Defendants' requests a contract between them would be formed, making this
10 unilateral or bilateral contract irrevocable.

11 71. Consideration in the form of their highly personal employment
12 information was provided to Draper James by Plaintiffs and Class members.
13 Plaintiffs and Class members performed their part of the bargain by the performance
14 of specific acts as set forth above.

15 72. Based on these circumstances the parties intended to and did enter into
16 a contractual obligation for Defendants to provide a dress to Plaintiffs and Class
17 members in exchange for valuable consideration in the form of the non-public
18 personal information described above that they would not have otherwise provided
19 to Defendants if it were not for the above offer.

20 73. As a result of having entered into a unilateral or bilateral contract,
21 Defendants were required to satisfy all accepted offers. Instead, Defendants later
22 admitted they only intended to offer 250 dresses to the over 900,000 individuals who
23 accepted this offer, converting this offer into an illegal sweepstakes or lottery and
24 that would result in a net cost of a few thousand dollars to Defendants, if any.

25 74. Based on the nature of the misleading information set forth above,
26 Defendants either were or should have been aware that they would not perform the
27 offer as promised, and that any claim they would only do so for a tiny set of
28 individuals that was far less than any reasonably expected demand that they claim

1 they anticipated was unreasonable, as they failed to make reasonable quantities of
2 merchandise available in response to this offer. Defendants did not timely disclose
3 this material limitation at the time they both made this offer and it was accepted by
4 Plaintiffs and Class members

5 75. As a result of Defendants' failure to abide by their contractual
6 obligations, Plaintiffs and Class members did not receive the benefit of their bargain.

7 76. All conditions precedent to seeking liability for breach of contract have
8 been performed by or on behalf of Plaintiffs and Class members, specifically in
9 terms of their providing valuable consideration to Defendants.

10 77. Defendants have been placed on notice of these breaches within a
11 reasonable time after such breaches were discovered, and have been given an
12 opportunity to cure these breaches as to Plaintiffs and all Class members and provide
13 compensation to them prior to litigating this claim in this action. Defendants have
14 failed to voluntarily offer to take sufficient remedial measures, or otherwise provide
15 appropriate and complete relief at no cost to Plaintiffs and Class members.

16 78. As a direct and proximate cause of Defendants' breaches of contract,
17 Plaintiffs and Class members have been injured and harmed in an amount to be
18 determined at trial. At a minimum they request specific performance of the accepted
19 offer made by or at the behest of Defendants. Plaintiffs and Class members also seek
20 declaratory relief as to the rights and responsibilities of the parties to these
21 agreements.

22 **SECOND CAUSE OF ACTION**

23 **PROMISSORY ESTOPPEL AND FALSE PROMISE**

24 79. Plaintiffs incorporate by reference the allegations contained in the
25 preceding paragraphs above and plead this claim as an alternative to any direct
26 claims arising out of breach of contract.

27 80. The offer at issue herein was a promise made by Defendants that was
28 clear and unambiguous in its terms. As set forth in detail above, Defendants did not

1 intend to perform this promise at the time it was made in terms of offering a free
2 dress to all timely registrants, but intended to at most fulfill this promise and offer
3 only to 250 people.

4 81. Plaintiffs and Class members acted in affirmative response to and in
5 reliance on such promises by providing their sensitive personal information to
6 Defendants. Based on the language used by Defendants as set forth above and in
7 light of the surrounding circumstances at the time, such actions and reliance were
8 reasonable and foreseeable, and were a substantial factor in causing their harm.

9 82. Plaintiffs and Class members demonstrated their reliance in terms of
10 providing sensitive personal information to Draper James. They were injured,
11 harmed, damaged and/or suffered substantial detriment when they did not receive
12 the promised benefits, and when Defendants turned around and abused the use of
13 this personal data by bombarding these consumers with promotional offers.
14 Defendants also may not be adequately protecting the information provided in
15 consideration from unauthorized third-party access, nor providing adequate
16 protections of such information.

17 83. Defendants did not perform the promised acts and failed to satisfy their
18 obligations under these promises and offers.

19 84. In addition to prior demands made by consumers, Plaintiffs have made
20 written demand on behalf of themselves and all Class members for an appropriate
21 correction, replacement or other remedy for this breach. However, Defendants have
22 failed to offer to provide specific performance or other proper consideration to
23 Plaintiffs and all other Class members in response thereto.

24 85. Plaintiffs and Class members have been injured by Defendants' failure
25 to comply with their obligations arising out of the claims of promissory estoppel and
26 false promise, 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**

86. Plaintiffs incorporate by reference the above paragraphs except as to those for claims relating to breach of contract, and plead 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.

87. 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.

88. 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 Defendants offered to provide or the equivalent in money that should in equity and good conscience belong to Plaintiffs and Class members.

89. Class members conferred a benefit upon Defendants by providing valuable consideration and property to them in the form of valuable confidential personal information. Defendants, having been unjustly conferred a benefit by Class members that they thereafter exploited for sales purposes 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. Such property or the equivalent in money belongs in good conscience to Plaintiffs and Class members.

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

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

22 92. Under established principles of quasi-contract and assumpsit,
23 Defendants have an obligation created by law to perform the offers that were
24 accepted by Plaintiffs and Class members. This obligation is imposed by law,
25 regardless of the intent of the parties. Rather, equity and good conscience dictates
26 that under the circumstances Defendants as the benefitted parties should make an
27 offer of specific performance or the monies retained by Defendants to Plaintiffs and
28 Class members.

1 93. Under established principles of restitution recognized under the law, an
2 entity that has been unjustly enriched at the expense of another by the retention of a
3 benefit wrongfully obtained or retained at another's expense is required to make
4 restitution to the other. In addition, the circumstances here are such that, as between
5 the two, it is inequitable or unjust for Defendants to retain such a benefit based on
6 the conduct described above.

7 94. The above legal principles all require Defendants to pay restitution or
8 restitutionary damages and/or pay over such benefits when the retention of such
9 benefits would unjustly enrich Defendants. Other remedies and claims may not
10 permit Class members to obtain such relief or compel performance of the offers
11 made by Defendants and accepted by Plaintiffs and Class members, otherwise
12 leaving them without an adequate remedy at law.

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

23 96. In addition, as Defendants misrepresented, concealed and/or
24 suppressed material facts, in whole or in part, at the expense of Plaintiffs and Class
25 members with the apparent knowledge that they did not intend to honor their offer
26 and take advantage of consumers' vulnerability at the time of a nationwide and
27 international pandemic, Defendants' conduct warrants an assessment of exemplary
28 damages under this independent cause of action, in an amount sufficient to deter

1 such conduct in the future. This amount is to be determined according to proof.

2 97. Plaintiffs, both individually and on behalf of the Class, thus seek
3 appropriate restitutionary monetary relief and exemplary damages as appropriate for
4 sums certain as is permitted by law for such claims.

5 98. Plaintiffs also request an order for an accounting and prohibiting
6 Defendants from failing and refusing to immediately cease the wrongful conduct as
7 set forth above, enjoining Defendants from continuing to refuse to specifically
8 perform the offers that were made by Defendants and accepted by Plaintiffs and
9 Class members, and enjoining Defendants from using and converting the personal
10 information property entrusted to them by Plaintiffs and Class members for their
11 own profit and use.

12 99. Plaintiffs also request the Court order the payment of fees and costs
13 under principles of the common fund and private Attorney General doctrines, or as
14 otherwise permitted by statute.

15 **FOURTH CAUSE OF ACTION**

16 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT,** 17 **CAL.CIV.CODE §§1750, *et seq.* (“CLRA”)**

18 100. Plaintiffs incorporate by reference the allegations contained in the
19 preceding paragraphs above.

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

23 102. Plaintiffs and Class members are “consumers” within the meaning of
24 Cal. Civ. Code Section 1761(d).

25 103. The offer at issue is related to a “good” or “service” within the meaning
26 of Cal. Civ. Code Section 1761(a).

27 104. Defendants are “persons” under Cal. Civ. Code Section 1761(d).

28 105. 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 Sections 1770(a)(5) (Representing that goods or services have approval, characteristics, benefits, or quantities that they do not have), (10)(Advertising goods or services with intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity), (14) (Representing that a transaction confers or involves rights, remedies, or obligations that it does not have or involve, or that are prohibited by law), (16) (Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not) and/or (17) (Representing that the consumer will receive an economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction).

106. Defendants also actively concealed material facts about unreasonable limitations in quantity to be made available to Plaintiffs and Class members, supposedly only making available 250 dresses in response to over 900,000 acceptances of Defendants' offer. In addition, having spoken on the issue or possessing information in their exclusive possession, Defendants undertook a duty and obligation to speak completely and truthfully on this issue and timely inform consumers of all material facts (for example, that their interpretation of the term "while supplies last" meant that they were only going to make available 250 dresses as part of an illegal sweepstakes or lottery), and offer an appropriate correction, replacement or other remedy once the true facts were known. The statements by Defendants detailed above were untrue and misleading as they failed to disclose the material facts set forth above.

107. Based on the response to Defendants' offer and the significant reaction of thousands of Class members when the true facts were disclosed, a reasonable consumer would attach importance to Defendants' claims as to the terms of this offer. Based on the importance of such claims, these misrepresented and omitted facts would be and are presumptively material to a reasonable consumer for the

1 reasons set forth above. Such misstatements and omissions were also material
2 because if Plaintiffs and the Class members had been timely and fully informed of
3 the material facts later admitted by Defendants, they would not have entered into the
4 transactions at issue.

5 108. Plaintiffs and Class members reasonably acted in positive response to
6 and relied on such misrepresented and material facts by providing Defendants
7 sensitive personal information, including their employment information and copies
8 of their employment IDs, which Defendants thereafter used and exploited. Plaintiffs
9 and Class members are likely to have been deceived by such conduct.

10 109. The material facts Defendants have misrepresented, concealed and/or
11 suppressed concerning the material facts at issue were known and/or accessible to
12 Defendants, who had superior knowledge of and access to the facts. Defendants
13 either knew or reasonably should have known such facts as to the materially severe
14 limitations on quantity unilaterally imposed by Defendants, as well as Defendants'
15 intent to exploit and use the sensitive personal information provided by Plaintiffs
16 and Class members for commercial gain without their authorization or consent, were
17 not known to or reasonably discoverable by Class members or the public at the time
18 such statements were made by Defendants and acted upon by Class members. As set
19 forth above the material limitations set forth herein were not timely disclosed.

20 110. As a result of the misrepresentation, concealment and/or suppression of
21 these material facts, Plaintiffs and Class members did not receive the benefit of their
22 bargain as required by California law. Plaintiffs and Class members suffered damage
23 in amounts according to proof at time of trial.

24 111. Prior to filing this action or asserting a claim for damages under the
25 CLRA, Plaintiffs provided Defendants with notice of the violations of the CLRA
26 pursuant to Cal. Civ. Code Section 1782(a). The CLRA provides that a Complaint
27 for violation of the CLRA may assert claims for actual, consequential, statutory
28 and/or exemplary damages should the violations not be remedied within thirty (30)

1 days of receipt of this written notification. More than 30 days have elapsed since this
 2 notice was mailed and received by Defendants without a cure of Defendants'
 3 violations being offered to Plaintiffs and all other Class members. Plaintiffs thus
 4 assert a claim for damages on behalf of themselves and all Class members. In
 5 addition, as Defendants misrepresented, concealed and/or suppressed these material
 6 facts, in whole or in part, at the expense of Plaintiffs and Class members with the
 7 apparent knowledge that they did not intend to honor their offer, intended to exploit
 8 and use the sensitive personal information provided by Plaintiffs and Class members
 9 for commercial gain without their authorization or consent, and take advantage of
 10 these targeted consumers' vulnerability at the time of a nationwide and international
 11 pandemic, Plaintiffs and the Class further seek exemplary damages pursuant to Cal.
 12 Civ. Code Section 1780(a)(4).

13 112. Defendants should also be ordered to pay restitution as well as be
 14 enjoined from continuing to employ the unlawful methods, acts and practices alleged
 15 herein in order to prevent any future harm to the Class members and/or for the benefit
 16 of the general public pursuant to Cal. Civ. Code Section 1780(a)(2). Defendants
 17 should also be ordered to pay Plaintiffs' attorneys fees and costs according to proof.

18 **FIFTH CAUSE OF ACTION**

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

20 113. Plaintiffs incorporate by reference the allegations contained in the
 21 preceding paragraphs above, except any allegations as to entitlement to damages.

22 114. Defendants have engaged and continue to engage in acts and practices
 23 of unfair competition, as that term is defined in Business & Professions Code Section
 24 17200. As used in this Cause of Action, "unfair competition" means an unlawful,
 25 unfair or fraudulent business act or practice and false or misleading advertising and
 26 other unlawful practices as defined under Business & Professions Code Section
 27 17500 *et seq.* This conduct is actionable pursuant to Business & Professions Code
 28 Sections 17200 and 17203.

1 115. Defendants’ policies and practices as detailed herein caused substantial
2 injury to consumers with no countervailing legitimate benefit and are immoral,
3 unethical, oppressive, unscrupulous, and unconscionable, and thereby constitute
4 “unfair” business acts or practices within the meaning of the UCL.

5 116. Defendants’ policies and practices as detailed herein in terms of making
6 material misstatements and/or material omissions of as to the materially severe
7 limitations on quantity unilaterally imposed by Defendants, as well as Defendants’
8 intent to exploit and use the sensitive personal information provided by Plaintiffs
9 and Class members for commercial gain without their authorization or consent, as
10 set forth in detail above, all of which are likely to mislead Plaintiffs, Class members
11 and the public, constitute “fraudulent” business acts or practices within the meaning
12 of the UCL.

13 117. Defendants’ policies and practices as detailed herein are also
14 “unlawful” business practices in terms of violating, *inter alia*, the provisions of Cal.
15 Civ. Code Section 1750, *et seq.* cited above, systematic breaches of both contract
16 and the principles of restitution, promissory estoppel and false promise. In addition,
17 if Defendants are to be believed their program was intended to operate as a
18 sweepstakes or lottery, in violation of Cal Bus. & Prof Code Section 17539.1 and
19 17539.15 *et seq.* and NY GBL 369e as well as prohibitions on engaging in
20 unregistered lotteries. Defendants’ practices of exploiting and using the sensitive
21 personal information provided by Plaintiffs and Class members for commercial gain
22 without their authorization or consent, not providing any indication that such
23 information has been segregated, taken off company servers, is adequately protected
24 from cyber-attack or cyber criminals from being accessed (now that it is known how
25 much data they have collected) or responding to requests for the status of such
26 information is also violative of the law, including but not limited to relevant
27 provisions of the California Consumer Privacy Act, Cal. Civ. Code Section 1798.100
28 *et seq.* Plaintiffs have requested that, pursuant to the applicable provisions of state

1 and federal privacy laws, Defendants agree to immediately stop using or selling,
2 segregate, take off servers and encrypt all personally identifying information that
3 was gathered in response to this program so as to ensure that it is not subject to
4 cyber-attack or breach or further exploitation or use. Defendants have not stated
5 whether they are willing to do so.

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

21 119. Based on the conduct set forth above in terms of Defendants' claim that
22 their program was intended to operate as a sweepstakes, Defendants violated Bus. &
23 Prof. Code Sections 17539.1 and 17539.15 *et seq.*, as set forth above, which is
24 actionable directly by consumers pursuant to Cal. Bus. & Prof Code Section 17200.

25 120. As set forth in detail above, as a result of Defendants' acts of unfair
26 competition as alleged herein, Plaintiffs have suffered injury in fact and lost money
27 or property in the form of, *inter alia*, the loss of control of personal non-public
28 employment information they provided Defendants in which they have a vested

1 property interest and that they would not have provided had the true facts been timely
2 disclosed, and which personal information has its own independent economic value;
3 surrendered more in a transaction than they otherwise would have had the true facts
4 had been disclosed; acquired less in a transaction than they otherwise would have if
5 Defendants had complied with their obligations in terms of not receiving the
6 promised product; were deprived of property in terms of the products offered by
7 Defendants over which Plaintiffs had a cognizable claim in light of the statements
8 made by Defendants and the material facts they did not disclose as set forth above;
9 did not obtain the benefit of their promised bargain as Plaintiffs did not receive the
10 promised product; were required to enter into a transaction, in the form of providing
11 their personal information, that would have otherwise been unnecessary; and lost
12 property to which they were otherwise entitled in terms of the benefits that were
13 promised by Defendants that were not delivered by them. Meanwhile, Defendants
14 have illegally retained monies and property that should have been paid, provided or
15 (in the terms of additions to their customer database that were not permitted or
16 authorized) segregated and destroyed, unjustly enriching themselves thereby.

17 121. Pursuant to Business & Professions Code Sections 17203 and 17204,
18 the Court may enjoin such conduct on behalf of the Class and for the benefit of the
19 general public, order the provision of corrective notice, and order Defendants to
20 restore the status quo by providing Plaintiffs and Class members the benefits in terms
21 of what Defendants promised to provide or the equivalent in money, and segregate
22 and destroy all personal information and property provided by Plaintiffs and Class
23 members to Defendants. The Court may also order Defendants to disgorge any
24 profits Defendants may have obtained either directly or indirectly from Plaintiffs and
25 Class members as a result of this conduct, including from any resulting use of or
26 sales generated from this newly created customer data base. Plaintiffs request such
27 relief on behalf of themselves, the Class and for the benefit of the general public.
28

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

SIXTH CAUSE OF ACTION

VIOLATION OF NEW YORK GEN. BUS. LAW § 349

123. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs above.

124. New York General Business Law Section 349(a) provides in relevant part, “Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.” This section applies to all deceptive acts and practices declared to be unlawful, whether or not subject to the laws of any other State.

125. Defendants are engaged in consumer-oriented conduct, and as set forth above made the product offers and/or engaged in an illegal sweepstakes promotion as part of their business.

126. Defendants’ misrepresentations and failures to disclose material limitations in their offer to all consumers, only limiting it after the fact to 250 dresses with a cost to Defendants of under \$11,000 in response to an offer that was accepted by over 900,000 Class members, is materially deceptive misleading for the reasons set forth above.

127. In addition, for the reasons set forth above, Defendants’ acts of engaging in an illegal sweepstakes and/or lottery have been declared to be unlawful pursuant to N.Y. GBL 369-e and other provisions of New York law, and by engaging in illegal conduct Defendants engaged in conduct that was per se deceptive. Defendants also breached any resulting contracts created by Defendants’ conduct and representations, which is also a deceptive act or practice. Defendants’ practices of exploiting and using the sensitive personal information provided by Plaintiffs and Class members for Defendants’ commercial gain without the authorization or consent of Plaintiffs and Class members was also a deceptive act or practice.

1 4. For appropriate declaratory relief declaring the rights and
2 responsibilities of the parties;

3 5. For an injunction on behalf of the Class and for the benefit of the
4 general public, including an order for the provision of corrective notice and specific
5 performance and protecting the personal information and data provided by Plaintiffs
6 and Class members to Defendants in terms of prohibiting any further use and
7 segregating and destroying all personal information and property provided by
8 Plaintiffs and Class members to Defendants;

9 6. For pre- and post-judgment interest at the legal rate; and.

10 7. For such other relief as the Court may deem proper.

11 **JURY DEMAND**

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

13
14 DATED: July 17th, 2020



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28 Attorneys for Plaintiffs

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 are a resident of this County, either is or 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 District, 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 Sections 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.

I declare under penalty of perjury that the foregoing is true and correct. This declaration was signed this 17th day of July, 2020 at San Diego, California.



Alan M. Mansfield