

McGLINCHEY STAFFORD

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Attorneys for *Defendant* **ZALE DELAWARE, INC.**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

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

Plaintiff,

vs.

ZALE DELAWARE, INC., and DOES 1-
10, inclusive,

Defendant.

Case No '18CV2727 L RBB
Assigned to

**NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C. §§
1332(a), 1441(b), AND 1446**

*[Filed concurrently with Declaration of
Kambria Jarrett]*

Superior Court Case No.: 37-2018-
00055549-CU-NP-CTL
Action Filed: October 31, 2018
Trial Date: TBD

**TO THE CLERK OF THE ABOVE-ENTITLED COURT, AND TO
PLAINTIFF GORDON HENRY LOVETTE AND HIS ATTORNEYS OF
RECORD:**

PLEASE TAKE NOTICE that *Defendant* ZALE DELAWARE, INC.
("Defendant"), removes the above-captioned action from the Superior Court of the
State of California, County of San Diego to the United States District Court, Southern
District of California. This removal is based on 28 U.S.C. §§ 1332(d) (Class Action

1 Fairness Act), 1441(a), and 1446. Defendant makes the following allegations in
2 support of its Notice of Removal:

3 **I. STATEMENT OF JURISDICTION**

4 1. This Court has original jurisdiction over this action under the Class
5 Action Fairness Act of 2005 (“CAFA”). *See* 28 U.S.C. § 1332(d). CAFA grants
6 district courts original jurisdiction over civil actions filed under federal or state law in
7 which any member of a class of plaintiffs is a citizen of a state different from any
8 defendant and where the amount in controversy for the putative class members in the
9 aggregate exceeds the sum or the value of \$5,000,000, exclusive of interests and costs.
10 CAFA authorizes removal of such actions in accordance with 28 U.S.C. §1446.

11 2. This Court has jurisdiction over this case under CAFA, 28 U.S.C.
12 § 1332(d), and this case may be removed pursuant to the provisions of 28 U.S.C.
13 section 1441(a), in that it is a civil class action wherein: (1) the proposed class
14 contains at least 100 members; (2) Defendant is not a state, state officials, or other
15 governmental entity; (3) the total amount in controversy for all putative class members
16 exceeds \$5,000,000; and; (4) there is diversity between at least one class member and
17 Defendant.

18 3. CAFA’s diversity requirement is satisfied when at least plaintiff is a
19 citizen of a state in which the defendant is not a citizen. *See* 28 U.S.C. §§
20 1332(d)(2)(A), 1453.

21 4. As set forth below, this case meets all of CAFA’s requirements for
22 removal and is timely and properly removed by the filing of this notice.

23 **II. VENUE**

24 5. This action is filed in the San Diego County Superior Court (“Superior
25 Court”). Accordingly, venue properly lies in the United States District Court for the
26 Southern District of California pursuant to 28 U.S.C. §§ 84(d), 1441, 1446 and
27 1391(a).

1 **III. PLEADINGS, PROCESS, AND ORDERS**

2 6. On October 31, 2018, Plaintiff GORDON HENRY LOVETTE
 3 (“Plaintiff”) filed a Class Action Complaint (“Complaint” or “Compl.”) against
 4 Defendant in the Superior Court, which initiated, *Gordon Henry Lovette, individually,*
 5 *and on behalf of all others similarly situated v. Zale Delaware, Inc.* (“State Court
 6 Action”). The Complaint asserts causes of action for: (1) Violation of the California
 7 False Advertising Act (Cal. Bus. & Prof. Code §§ 17500, *et seq.*); Violation of Unfair
 8 Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and (3) Violation of
 9 Consumer Legal Remedies Act (Cal. Civ. Code §§ 1770, *et seq.*).

10 7. On November 5, 2018, Defendant was served with the Summons,
 11 Complaint, and Civil Case Cover Sheet. True and correct copies of the foregoing
 12 documents are attached hereto as **Exhibit A**.

13 8. As of the date of this notice, Defendant has not filed an answer or
 14 otherwise responded to the Complaint. Defendant is informed and believes that the
 15 Summons, Complaint and Civil Case Cover Sheet attached hereto as **Exhibit A**
 16 constitute all process, pleadings, and orders in the State Court Action

17 9. The Superior Court has scheduled a Case Management Conference for
 18 April 5, 2019. A true and correct copy of the docket for the State Court Action is
 19 attached hereto as **Exhibit B**.

20 **IV. TIMELINESS OF REMOVAL**

21 10. Pursuant to 28 U.S.C. §§ 1446(b), this notice has been timely filed
 22 because it is being filed within 30 days of Defendant’s receipt of the Complaint and
 23 within 1 year of the commencement of the State Court Action.

24 **V. NOTICE OF REMOVAL TO ADVERSE PARTIES AND STATE** 25 **COURT**

26 11. Pursuant to 28 U.S.C. § 1446(d), Defendant will promptly give written
 27 notice of the removal of this action to all adverse parties and will file a copy of the
 28 notice with the Clerk of the Superior Court.

1 **VI. CAFA JURISDICTION**

2 12. As stated above, CAFA grants federal district courts original jurisdiction
3 over civil class action lawsuits filed under federal or state law in which any member
4 of a class of plaintiffs is a citizen of a state different from any defendant, and where
5 the matter's amount in controversy exceeds \$5,000,000, exclusive of interest and
6 costs. *See* 28 U.S.C. § 1332(d). CAFA authorizes removal of such actions in
7 accordance with 28 U.S.C. § 1446. As set forth below, this case meets each CAFA
8 requirement for removal, and is timely and properly removed by the filing of this
9 notice.

10 **A. The Proposed Class Contains At Least 100 Members**

11 13. 28 U.S.C. § 1332(d)(5)(B) sets forth that the provisions of CAFA do not
12 apply to any class action where “the number of members of all proposed plaintiff
13 classes in the aggregate is less than 100.” This requirement is easily met in the case at
14 bar.

15 14. Plaintiff seeks to represent a class consisting of “All consumers, who,
16 between the applicable statute of limitations and the present, purchased or attempted
17 to purchase Class Products, and whose Class Products, namely Defendant’s jewelry
18 repair service, would not repair the jewelry even through (sic) the jewelry was
19 inspected semi-annually.” (*See* Compl., ¶ 56.)

20 15. The statute of limitations for a claim for Violation of the California False
21 Advertising Act is three years. *See* Cal Civ. Proc. Code § 338(a); *County of Fresno v.*
22 *Lehman*, 229 Cal.App.3d 340, 346 fn. 7 (1991); *Ries v. Arizona Beverages USA LLC*,
23 287 F.R.D. 523, 534 (N.D. Cal. 2012). The statute of limitations for a claim for
24 Violation of Unfair Competition Law is four years. *See* Cal. Bus. & Prof. Code §
25 17208. The statute of limitations for a claim for Violation of Consumer Legal
26 Remedies Act (“CLRA”) is three years. Cal. Civ. Code § 1783. Consequently, the
27 putative class period is between October 31, 2014 to the present.
28

1 16. Based on a preliminary review of Defendant's records, Defendant sold
 2 313,684 items of jewelry that qualified for the jewelry repair at issue ("Class
 3 Product") in the State of California during the putative class period of October 31,
 4 2014 to the present. (*See* Declaration of Kambria Jarrett ("Jarrett Decl."), ¶ 5.) Thus,
 5 there are well over 100 putative class members in this case according to Plaintiff's
 6 proposed class definition.

7 **B. Defendant Is Not A Governmental Entity**

8 17. Under 28 U.S.C. § 1332(d)(5)(B), CAFA does not apply to class actions
 9 where "primary defendants are States, State officials, or other governmental entities
 10 against whom the district court may be foreclosed from ordering relief."

11 18. Defendant is a corporation, not a state, state official or other government
 12 entity exempt from the CAFA. (*See* Jarrett Decl., ¶ 6.)

13 **C. There Is Diversity Between At Least One Class Member And One**
 14 **Defendant**

15 19. Plaintiff is a citizen of California. CAFA's minimal diversity requirement
 16 is satisfied, inter alia, when "any member of a class of plaintiffs is a citizen of a State
 17 different from any defendant." 28 U.S.C. §§ 1332(d)(2)(A); 1453(b). In a class action,
 18 only the citizenship of the named parties is considered for diversity purposes and not
 19 the citizenship of the class members. *Snyder v. Harris*, 394 U.S. 332, 339-40 (1969).
 20 Minimal diversity of citizenship exists here because Plaintiff and Defendant are
 21 citizens of different states.

22 20. Plaintiff is a resident of the County of San Diego and is a citizen of the
 23 State of California. For diversity purposes, a person is a "citizen" of the state in which
 24 he is domiciled. *See Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088 (9th Cir.
 25 1983); *see also Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001)
 26 (confirming that person's domicile is the place he resides with the intention to
 27 remain). Furthermore, allegations of residency in a state court complaint can create a
 28 rebuttable presumption of domicile supporting diversity of citizenship. *See Lew v.*

1 *Moss*, 797 F.2d 747, 751 (9th Cir. 1986); *see also State Farm Mut. Auto. Ins. Co. v.*
 2 *Dyer*, 19 F.3d 514, 519-20 (10th Cir. 1994) (allegation by party in state court
 3 complaint of residency “created a presumption of continuing residence in [state] and
 4 put the burden of coming forward with contrary evidence on the party seeking to
 5 prove otherwise”); *Smith v. Simmons*, 2008 U.S. Dist. LEXIS 21162, *22 (E.D. Cal.
 6 2008) (place of residence provides “prima facie” case of domicile).

7 21. Here, at the time Plaintiff commenced this action and, upon information
 8 and belief, at the time of removal, Plaintiff resided in San Diego County, in the State
 9 of California. Plaintiff alleges in his Complaint that he is “citizen and resident of the
 10 State of California, County of San Diego.” (*See* Compl., ¶ 5.) Defendant has thus
 11 established by a preponderance of the evidence that Plaintiff resided and was
 12 domiciled in California, and is therefore a citizen of California. *See Lew*, 797 F.2d at
 13 751; *Dyer*, 19 F.3d at 519-20; *Smith*, 2008 U.S. Dist. LEXIS 21162, at *22.

14 22. **Defendant is Not a Citizen of California.** For purposes of 28 U.S.C.
 15 section 1332, a corporation is deemed to be a citizen of any state by which it has been
 16 incorporated and of the state where it has its principal place of business. *See* 28 U.S.C.
 17 § 1332(c)(1). Defendant is a corporation incorporated under the laws of the State of
 18 Delaware, with its principal place of business at 9797 Rombauer Road, Dallas, Texas
 19 75019. (*See* Jarrett Decl., ¶ 6; Compl., ¶ 21.) Consequently, Defendant is a citizen of
 20 Delaware and Texas for purposes of diversity jurisdiction. *See* 28 U.S.C. § 1332(c)(1)
 21 (“[A] corporation shall be deemed to be a citizen of every State and foreign state by
 22 which is has been incorporated and of the State or foreign state where it has its
 23 principal place of business[.]”).

24 23. No other party has been named or served as of the date of this removal.
 25 Defendants “Does 1 through 10” are fictitious. The Complaint does not set forth the
 26 identity or status of any fictitious defendants, nor does it set forth any specific,
 27 charging allegation against any fictitious defendants. Thus, pursuant to 28 U.S.C. §
 28 1441(a), the citizenship of defendants sued under fictitious names must be disregarded

1 for purposes of determining diversity jurisdiction and cannot destroy the diversity of
 2 citizenship between the parties in this action. *See Newcombe v. Adolf Coors Co.*, 157
 3 F.3d 686, 690-91 (9th Cir. 1998).

4 24. This action satisfies diversity requirements because Plaintiff is a citizen
 5 of the State of California and Defendant is a citizen of the States of Delaware and
 6 Texas. Therefore, the complete diversity requirement of 28 U.S.C. § 1332(a) is
 7 satisfied along with the less strict diversity requirements under CAFA. *See* 28 U.S.C.
 8 §§ 1332(d)(2)(A), 1453.

9 **D. The Amount In Controversy Exceeds \$5,000,000**

10 25. Although Plaintiff does not specify the exact amount of damages being
 11 sought, the allegations in the Complaint demonstrate that the amount sought easily
 12 exceeds \$5,000,000 in the aggregate, exclusive of interest and costs.

13 26. “The amount in controversy is simply an estimate of the total amount in
 14 dispute, not a prospective assessment of defendant's liability.” *Lewis v. Verizon*
 15 *Commc'ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010). “[W]hen the complaint does not
 16 contain any specific amount of damages sought, the party seeking removal under
 17 diversity bears the burden of showing, by a preponderance of the evidence, that the
 18 amount in controversy exceeds the statutory amount.” *Id.* at 397. A party may make
 19 this showing with an “affidavit to show that the potential damages could exceed the
 20 jurisdictional amount.” *Id.*

21 27. Plaintiff, on behalf of himself and the putative class members, seeks
 22 “[a]ctual damages ... or full restitution of all funds acquired from Plaintiff and Class
 23 Members from the sale of misbranded Class Products during the relevant class
 24 period.” (*See* Compl., Prayer for Relief, ¶ 103.e.) As explained above, the class
 25 period is between October 31, 2014 to the present. During that time period,
 26 Defendant’s records show that it sold over 313,684 items of jewelry that qualified for
 27 the Class Product in the State of California. (*See* Jarrett Decl., ¶ 5.) With respect to
 28 Plaintiff’s CLRA claims, a minimum damages award of \$1,000 per violation is

1 allowed. *See* Cal. Civ. Code §1780(a)(1). If Plaintiff prevails on his claims, this
2 minimum award could be applied to each sale or transaction that constitutes deceptive
3 advertising or unfair competition. *See* Cal. Civ. Code §1761(e). As applied to
4 Defendant, who has sold over 313,684 items of jewelry that qualified for the Class
5 Product, this calculation of potential damages would easily surpass the \$5,000,000
6 threshold.

7 28. Thus, based on the size of the putative class, as well as the fees that
8 Plaintiff seeks to recover, the amount in controversy is well in excess of \$5,000,000,
9 exclusive of fees and interest.

10 29. Plaintiff also seeks, for all putative class members, punitive damages and
11 attorneys' fees. (*See* Compl., Prayer for Relief, ¶¶ 103.f.-g.) Punitive damages and
12 attorneys' fees are recoverable for a claim for Violation of Consumer Legal Remedies
13 Act. *See* Cal. Civ. Code § 1780(a)(4), (e). Consequently, these amounts should be
14 aggregated to determine the jurisdictional amount in controversy requirement. *See*
15 *Bell v. Preferred Life Assur. Soc'y*, 320 U.S. 238, 240 (1943) ("Where both actual and
16 punitive damages are recoverable under a complaint each must be considered to the
17 extent claimed in determining jurisdictional amount.").

18 30. Accordingly, Plaintiff's class-wide request for damages and restitution
19 appears to meet the jurisdictional minimum, although Defendant expressly denies that
20 Plaintiff is entitled to any such relief on behalf of himself or any class.

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1 **VII. CONCLUSION**

2 31. Defendant has established by a preponderance of the evidence that the
3 putative class exceeds 100 persons, that the dispute is between citizens of different
4 states, and that the amount in controversy for this class action exceeds the \$5 million
5 minimum for federal jurisdiction. For this reason and the others discussed above,
6 removal of this action is appropriate under 28 U.S.C. §1332(d).

7
8 DATED: December 3, 2018

McGLINCHEY STAFFORD

9
10 By: /s/ Dhruv M. Sharma
11 JEFFREY R. SEEWALD
12 DHRUV M. SHARMA
13 ALLISON O. CHUA
14 Attorneys for Defendant **ZALE**
15 **DELAWARE, INC.**
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Gordon Henry Lovette**DEFENDANTS**
Zale Delaware, Inc.**'18CV2727 L RBB****(b)** County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)Todd M. Friedman (SBN 216752) / Law Offices of Todd M. Friedman
21550 Oxnard Street, Suite 780, Woodland Hills, CA 91367
Tel: (877) 206-4741; Fax: (866) 633-0228

Attorneys (If Known)

Dhruv M. Sharma (SBN 279545) / Jeffrey R. Seewald (SBN 320818)
McGlinchey Stafford, 18201 Von Karman Avenue, Suite 350
Tel: (949) 381-5900; Fax: (949) 271-4040**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability			<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander			<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability			<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine			<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability			<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle			<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability			<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 490 Cable/Sat TV
<input checked="" type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice			<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 196 Franchise				<input checked="" type="checkbox"/> 890 Other Statutory Actions
				<input type="checkbox"/> 891 Agricultural Acts
				<input type="checkbox"/> 893 Environmental Matters
				<input type="checkbox"/> 895 Freedom of Information Act
				<input type="checkbox"/> 896 Arbitration
				<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
				<input type="checkbox"/> 950 Constitutionality of State Statutes

REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	Habeas Corpus:	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 864 SSID Title XVI	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	Other:	<input type="checkbox"/> 791 Employee Retirement Income Security Act		
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 540 Mandamus & Other			
		<input type="checkbox"/> 550 Civil Rights			
		<input type="checkbox"/> 555 Prison Condition			
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

IMMIGRATION
<input type="checkbox"/> 462 Naturalization Application
<input type="checkbox"/> 465 Other Immigration Actions

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §§ 1332(d), 1441, 1446

Brief description of cause:

Violations of the California False Advertising Act, Unfair Competition Law, and Consumer Legal Remedies Act

VII. REQUESTED IN COMPLAINT:☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

5,000,001.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

12/03/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Dhruv M. Sharma

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT “A”

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

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

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

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

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/31/2018 at 05:53:22 PM

Clerk of the Superior Court
By Rhonda Babers, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): The Hall of Justice
330 West Broadway
San Diego, CA 92101

CASE NUMBER:
(Número del Caso): 37-2018-00055549-CU-NP-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Todd M. Friedman, 21550 Oxnard St., Suite 780 Woodland Hills, CA 91367, 877-206-4741

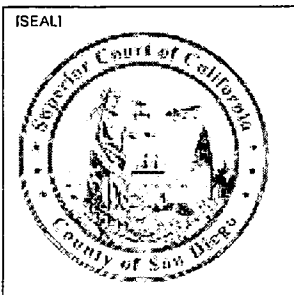
DATE: 11/02/2018
(Fecha)

Clerk, by
(Secretario)

R. Babers
R. Babers

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify): Zale Delaware, Inc.

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)

☐ other (specify):

- ☐ by personal delivery on (date):

Page 1 of 1

Todd M. Friedman (SBN 216752)
Adrian R. Bacon (SBN 280332)
Meghan E. George (SBN 274525)
Thomas E. Wheeler (SBN 308789)
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Attorneys for Plaintiff, and all others similarly situated

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
10/31/2018 at 05:53:22 PM
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By Rhonda Babers, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
UNLIMITED JURISDICTION**

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

Plaintiff,

vs.

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

Defendant.

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

CLASS ACTION COMPLAINT

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

Jury Trial Demanded

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

3 **NATURE OF THE ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 JURISDICTION AND VENUE

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

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

26 THE PARTIES

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

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

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

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

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

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

24 **PLAINTIFF'S FACTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 49. Such representations were clearly false because the true nature and quality of the
28

1 jewelry repair service was different than represented.

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

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

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

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

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

17 **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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

27 64. Plaintiff is a member of the Class he seeks to represent
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65. The claims of Plaintiff are not only typical of all Class members, they are identical.

3 66. All claims of Plaintiff and the Class are based on the exact same legal theories.

4 67. Plaintiff has no interest antagonistic to, or in conflict with, the Class.

5 68. Plaintiff is qualified to, and will, fairly and adequately protect the interests of
6 each Class Member, because Plaintiff bought Class Products from Defendant during the Class
7 Period. Defendant's unlawful, unfair and/or fraudulent actions concerns the same business
8 practices described herein irrespective of where they occurred or were experienced. Plaintiff's
9 claims are typical of all Class Members as demonstrated herein.

10 69. Plaintiff will thoroughly and adequately protect the interests of the Class, having
11 retained qualified and competent legal counsel to represent herself and the Class.

12 70. Common questions will predominate, and there will be no unusual manageability
13 issues.

FIRST CAUSE OF ACTION

Violation of the California False Advertising Act

16 (Cal. Bus. & Prof. Code §§ 17500 *et seq.*)

17 71. Plaintiff incorporates by reference each allegation set forth above as fully set
18 forth herein.

72. Pursuant to California Business and Professions Code section 17500, *et seq.*, it is unlawful to engage in advertising “which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading . . . [or] to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised.”

73. California Business and Professions Code section 17500, *et seq.*'s prohibition
against false advertising extends to the use of false or misleading written statements.

27 74. Defendant misled consumers by making misrepresentations and untrue

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

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

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

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

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

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

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

3 SECOND CAUSE OF ACTION

4 Violation of Unfair Business Practices Act

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

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

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

16 UNFAIR

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

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

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

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

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

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

25 FRAUDULENT

26 89. California Business & Professions Code § 17200 prohibits any "fraudulent ...
27 business act or practice." In order to prevail under the "fraudulent" prong of the UCL, a
28

1 consumer must allege that the fraudulent business practice was likely to deceive members of
2 the public.

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

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

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

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

21 UNLAWFUL

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

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

27 96. Defendant used false advertising, marketing, and misrepresentations to induce
28

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

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

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

14 **THIRD CAUSE OF ACTION**

15 **Violation of Consumer Legal Remedies Act**

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

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

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

- 22 a. Passing off goods or services as those of another; Cal. Civ. Code § 1770(1);
- 23 b. Representing that goods or services are of a particular standard, quality, or
- 24 grade, or that goods are of a particular style or model, if they are of another;
- 25 Cal. Civ. Code § 1770(7);
- 26 c. Advertising goods or services with intent not to sell them as advertised; Cal.
- 27 Civ. Code §1770(9);
- 28

d. Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law; Cal. Civ. Code §1770(14); and

e. Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not; Cal. Civ. Code §1770(16).

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

MISCELLANEOUS

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

PRAYER FOR RELIEF

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

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

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

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

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

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

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

11 **REQUEST FOR JURY TRIAL**

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

13 Dated: October 31, 2018

14 Respectfully submitted,

15 LAW OFFICES OF TODD M. FRIEDMAN, PC

16 By: 

17 TODD M. FRIEDMAN, ESQ.

18 Attorney for Plaintiff GORDON LOVETTE

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Exhibit A

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LAW OFFICES OF TODD M. FRIEDMAN, P.C.

ATTORNEYS FOR CONSUMERS

21550 OXNARD ST., STE 780
WOODLAND HILLS, CA 91367
877-206-4741 TOLL FREE
866-633-0228 FACSIMILE
CALIFORNIA OFFICE
WWW.TODDFLAW.COM

E-MAIL: TFRIEDMAN@TODDFLAW.COM

WRITER LICENSED IN:
CALIFORNIA
PENNSYLVANIA
ILLINOIS

September 20, 2018

Via Certified U.S. Mail

Zale Delaware, Inc.
375 Ghent Road
Akron OH 44333

Zale Delaware, Inc.
c/o C T Corporation System
818 West 7th Street, Suite 930
Los Angeles, CA 90017

Confidential Settlement Communication Pursuant to FRE 408 and CEC 1152 and
Notice of Violations of CLRA Pursuant to Cal. Civ. Code §§1782(a)(2)

Re: *Gordon Lovette v. Zale Delaware, Inc.*

To Whom It May Concern:

Please be advised that our office represents Gordon Lovette ("Plaintiff"), in pursuing class action wide legal claims against Zale Delaware, Inc. ("Defendant"), for violations of the Consumer Legal Remedies Act ("CLRA"), California Business, Professions Code §17200 ("UCL") and California Business and Professions Code §17500 ("FAL").

Having been formally notified of our representation, we respectfully demand you not contact our clients for any reason. Instead, please direct all future contact and correspondence to this office. We reserve the right to seek injunctive relief against you should you fail to honor these directives.

The purpose of this letter is to advise your company of its violations and to quickly resolve the matter of my client's right to compensation for the same, without resorting to expensive and unnecessary litigation. Before additional damages accrue, including needless attorney fees, we should work together expeditiously to correct the inequity that occurred in connection with your company's handling of the matters detailed below. Thus, please accept this correspondence as notice pursuant to the CLRA, of violations thereof. Be advised, you have thirty (30) calendar days from the date of receipt of this notice, to correct, repair, replace, or otherwise rectify the goods or services alleged to be in violation of § 1770 of the CLRA, as further outlined below.

Please review the violations set forth below and contact our offices immediately, to discuss settlement.

Facts

In or around July 2008, Plaintiff purchased a diamond ring (hereinafter, the "Ring") from Defendant. Along with the purchase of the Ring, Plaintiff purchased a lifetime warranty for the Ring, wherein Defendant represented that so long as Plaintiff brought the Ring for twice a year, for a semi-annual inspection, Defendant would replace or repair the Ring if the Ring needs to be repaired or replaced. Since July 2008, Plaintiff has continued to bring the Ring for inspection and cleaning to Defendant on a semi-annual basis. In or around February 2018, Plaintiff brought the Ring to Defendant because the diamond is loose and in danger of falling off. However, Defendant refused to repair the Ring. Defendant represented they cannot repair the ring unless the diamond falls off or Plaintiff may sell it to them at a reduced price.

The aforementioned representations were false, misleading, and outright deceptive. Defendant's service does not meet the standards for which Defendant represented. Defendant's representations about the types of services provided and its quality are material to Plaintiffs' decision to transact with Defendant. That is, had Plaintiff known that Defendant would not repair his Ring, even though Plaintiff complied with Defendant's terms of upkeep, as represented to Plaintiff at the onset of transacting, Plaintiff would not have transacted with Defendant. Furthermore, Plaintiffs had no reasonable opportunity to uncover such deception prior to transacting with Defendant.

Plaintiffs have been harmed as an actual and proximate result of Defendant's deception, and they therefore request recompense as stated in this letter.

CLRA (Cal. Civ. Code §1750 et seq.) Violations

Among other things, the CLRA prohibits the following "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction to result or which results in the sale or lease of goods or services" to a consumer:

1. Passing off goods or services as those of another *Cal. Civ. Code §1770(1)*
2. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another. *Cal. Civ. Code §1770(7)*
3. Advertising goods or services with intent not to sell them as advertised- *Cal. Civ. Code §1770(9)*;
4. Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law; - *Cal. Civ. Code §1770(14)*;

5. Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not. *Cal. Civ. Code* §1770(16)

Further, under the CLRA, a consumer may recover actual damages, an order enjoining any such practices that are prohibited by the CLRA, restitution of property, punitive damages, civil penalties, and reasonably attorney's fees and costs. *Cal. Civ. Code* §§1780, *et seq.*

By engaging in the conduct detailed above, Defendant violated Sections §1770(1), (7), (9), (14), and (16) of the CLRA, thereby entitling Plaintiff and similarly situated class members to attorney's fees and costs, and actual and punitive damages.

Unfair Competition Law (Cal. Bus. Prof. Code §17200)

The Unfair Competition Law, Cal. Bus. Prof. C. §17200 prohibits unlawful, unfair or fraudulent business acts or practices. Further, any person may bring an action to enjoin or restrain any violation of this act and recover actual damages resulting from such violations. *Cal. Bus. Prof. Code* §4381(b)-(c).

Defendant engaged in fraudulent, unfair and unlawful business practices through its conduct and violated the UCL. Defendant made representations to Plaintiffs that the solar panels installed would be enough wattage for their home and would save them money when in fact it had no intention of doing so, and this amounts to fraudulent and unfair business practices. Further, as noted above, Defendant violated the CLRA, thus engaging in unlawful business practices. Defendant's conduct, as detailed above, violates numerous provisions of the CLRA; consequently, said conduct constitutes unlawful business practices. Defendant's conduct entitles Plaintiffs to restitution and injunctive relief.

False Advertising Law (Cal. Bus. Prof. Code §17500)

The False Advertising Law, Cal. Bus. Prof. C. §17500 prohibits engaging in advertising "which is untrue or misleading, and which is known, or which by exercise of reasonable care should be known, to be untrue or misleading." Further, any person may bring an action to enjoin or restrain any violation of this act and recover actual damages resulting from such violations. *Cal. Bus. Prof. Code* §4381(b)-(c).

Defendant engaged in untrue and misleading advertising that violated the FAL. Defendant made and advertised misrepresentations as to the pricing of its services that it had no intention of honoring. Defendant's conduct entitles Plaintiffs to restitution and injunctive relief.

Class Potential

At this stage, Defendant's fraudulent and deceptive business practices have impacted thousands of consumers throughout the nation. Thus, we anticipate a nation-wide class of thousands of consumers whom Gordon Lovette will more than adequately represent the conduct detailed above is systematic in nature. Thus, certifying a class will be very straightforward. Upon certifying a class, we will seek not only actual damages, but punitive damages and statutory

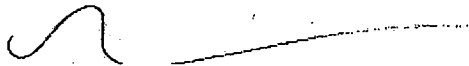
damages, in addition to attorney's fees and costs. Defendant is facing seven-figure liability, at the very least.

Demand

Ultimately, I am sure you can appreciate the need to address this issue with my clients and the need to avoid unnecessary litigation. My clients, too, appreciate the hardships of protracted litigation. Therefore, we are willing today to settle this matter outside litigation, if you contact our office immediately upon receipt of this letter.

If you chose to ignore this letter seeking settlement, then we will have no choice but to pursue my client's CLRA claims in a court of law. Please be advised that if such circumstances should arise, my demand shall be deemed withdrawn upon the filing of our complaint. Again, we hope that this can be avoided.

Best regards,

A handwritten signature in black ink, appearing to be 'Todd M. Friedman', with a long horizontal line extending to the right.

Todd M. Friedman, Esq.
Attorney at Law

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Todd M. Friedman, Esq. SBN 216752 Law Offices of Todd M. Friedman 21550 Oxnard St., Suite 780 Woodland Hills, CA 91367 TELEPHONE NO: 877-206-4741 FAX NO: 866-633-0228 ATTORNEY FOR (Name): Plaintiff, GORDON HENRY LOVETTE		FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 10/31/2018 at 05:53:22 PM Clerk of the Superior Court By Rhonda Babers, Deputy Clerk	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego 92101 BRANCH NAME: The Hall of Justice		CASE NUMBER: 37-2018-00055549-CU-NP-CTL JUDGE: Judge John S. Meyer DEPT:	
CASE NAME: Gordon Henry Lovette v. Zale Delaware, Inc., et al.			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input checked="" type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input checked="" type="checkbox"/> Large number of separately represented parties b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	d. <input type="checkbox"/> Large number of witnesses e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision
--	---

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive

4. Number of causes of action (specify): 3

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: October 31, 2018

Todd M. Friedman

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CIVIL CASE COVER SHEET

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

<p>Auto Tort</p> <ul style="list-style-type: none"> Auto (22)–Personal Injury/Property Damage/Wrongful Death Uninsured Motorist (46) <i>(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)</i> <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <ul style="list-style-type: none"> Asbestos (04) <ul style="list-style-type: none"> Asbestos Property Damage Asbestos Personal Injury/Wrongful Death Product Liability <i>(not asbestos or toxic/environmental)</i> (24) Medical Malpractice (45) <ul style="list-style-type: none"> Medical Malpractice–Physicians & Surgeons Other Professional Health Care Malpractice Other PI/PD/WD (23) <ul style="list-style-type: none"> Premises Liability (e.g., slip and fall) Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) Intentional Infliction of Emotional Distress Negligent Infliction of Emotional Distress Other PI/PD/WD <p>Non-PI/PD/WD (Other) Tort</p> <ul style="list-style-type: none"> Business Tort/Unfair Business Practice (07) Civil Rights (e.g., discrimination, false arrest) <i>(not civil harassment)</i> (08) Defamation (e.g., slander, libel) (13) Fraud (16) Intellectual Property (19) Professional Negligence (25) <ul style="list-style-type: none"> Legal Malpractice Other Professional Malpractice <i>(not medical or legal)</i> Other Non-PI/PD/WD Tort (35) <p>Employment</p> <ul style="list-style-type: none"> Wrongful Termination (36) Other Employment (15) 	<p>Contract</p> <ul style="list-style-type: none"> Breach of Contract/Warranty (06) <ul style="list-style-type: none"> Breach of Rental/Lease Contract <i>(not unlawful detainer or wrongful eviction)</i> Contract/Warranty Breach–Seller Plaintiff <i>(not fraud or negligence)</i> Negligent Breach of Contract/Warranty Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09) Collection Case–Seller Plaintiff Other Promissory Note/Collections Case Insurance Coverage <i>(not provisionally complex)</i> (18) Auto Subrogation Other Coverage Other Contract (37) <ul style="list-style-type: none"> Contractual Fraud Other Contract Dispute <p>Real Property</p> <ul style="list-style-type: none"> Eminent Domain/Inverse Condemnation (14) Wrongful Eviction (33) Other Real Property (e.g., quiet title) (26) <ul style="list-style-type: none"> Writ of Possession of Real Property Mortgage Foreclosure Quiet Title Other Real Property <i>(not eminent domain, landlord/tenant, or foreclosure)</i> <p>Unlawful Detainer</p> <ul style="list-style-type: none"> Commercial (31) Residential (32) Drugs (38) <i>(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)</i> <p>Judicial Review</p> <ul style="list-style-type: none"> Asset Forfeiture (05) Petition Re: Arbitration Award (11) Writ of Mandate (02) <ul style="list-style-type: none"> Writ–Administrative Mandamus Writ–Mandamus on Limited Court Case Matter Writ–Other Limited Court Case Review Other Judicial Review (39) <ul style="list-style-type: none"> Review of Health Officer Order Notice of Appeal–Labor Commissioner Appeals 	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)</p> <ul style="list-style-type: none"> Antitrust/Trade Regulation (03) Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (28) Environmental/Toxic Tort (30) Insurance Coverage Claims <i>(arising from provisionally complex case type listed above)</i> (41) <p>Enforcement of Judgment</p> <ul style="list-style-type: none"> Enforcement of Judgment (20) <ul style="list-style-type: none"> Abstract of Judgment (Out of County) Confession of Judgment <i>(non-domestic relations)</i> Sister State Judgment Administrative Agency Award <i>(not unpaid taxes)</i> Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Case <p>Miscellaneous Civil Complaint</p> <ul style="list-style-type: none"> RICO (27) Other Complaint <i>(not specified above)</i> (42) <ul style="list-style-type: none"> Declaratory Relief Only Injunctive Relief Only <i>(non-harassment)</i> Mechanics Lien Other Commercial Complaint Case <i>(non-tort/non-complex)</i> Other Civil Complaint <i>(non-tort/non-complex)</i> <p>Miscellaneous Civil Petition</p> <ul style="list-style-type: none"> Partnership and Corporate Governance (21) Other Petition <i>(not specified above)</i> (43) <ul style="list-style-type: none"> Civil Harassment Workplace Violence Elder/Dependent Adult Abuse Election Contest Petition for Name Change Petition for Relief From Late Claim Other Civil Petition
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EXHIBIT “B”

SUPERIOR COURT OF CALIFORNIA
County of SAN DIEGO
Register of Actions Notice

Case Number: 37-2018-00055549-CU-NP-CTL
Case Title: Lovette vs ZAle Delaware Inc [E-FILE]
Case Status: Pending
Case Category: Civil - Unlimited
Case Type: Non-PI/PD/WD tort - Other

Filing Date: 10/31/2018
Case Age: 33 days
Location: Central
Judicial Officer: John S. Meyer
Department: C-64

Future Events

Date	Time	Department	Event
04/05/2019	09:45 AM	C-64	Civil Case Management Conference - Complaint

Participants

Name	Role	Representation
Lovette, Gordon Henry	Plaintiff	Friedman, Todd M
Zale Delaware Inc	Defendant	

Representation

Name	Address	Phone Number
FRIEDMAN, TODD M	LAW OFFICES OF TODD M FRIEDMAN PC 21550 Oxnard Street 780 Woodland Hills CA 91367	(877) 206-4741

ROA#	Entry Date	Short/Long Entry	Filed By
1	10/31/2018	Complaint filed by Lovette, Gordon Henry. Refers to: Zale Delaware Inc	Lovette, Gordon Henry (Plaintiff)
2	10/31/2018	Civil Case Cover Sheet filed by Lovette, Gordon Henry. Refers to: Zale Delaware Inc	Lovette, Gordon Henry (Plaintiff)
3	10/31/2018	Original Summons filed by Lovette, Gordon Henry. Refers to: Zale Delaware Inc	Lovette, Gordon Henry (Plaintiff)
4	11/02/2018	Summons issued.	
5	10/31/2018	Case assigned to Judicial Officer Meyer, John.	
6	11/02/2018	Civil Case Management Conference scheduled for 04/05/2019 at 09:45:00 AM at Central in C-64 John S. Meyer.	
7	11/02/2018	Case initiation form printed.	

McGLINCHEY STAFFORD

Jeffrey R. Seewald (SBN 320818)
Dhruv M. Sharma (SBN 279545)
Allison O. Chua (SBN 284680)
18201 Von Karman Avenue, Suite 350
Irvine, California 92612
Telephone: (949) 381-5900
Facsimile: (949) 271-4040
Email: jseewald@mcglinchey.com
dsharma@mcglinchey.com
achua@mcglinchey.com

Attorneys for *Defendant* **ZALE DELAWARE, INC.**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

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

Plaintiff,

vs.

ZALE DELAWARE, INC., and DOES 1-
10, inclusive,

Defendant.

Case No: **'18CV2727 L RBB**
Assigned to

**DECLARATION OF KAMBRIA
JARRETT IN SUPPORT OF
NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C. §§
1332(a), 1441(b), AND 1446**

*[Filed concurrently with Notice of
Removal of Action]*

Superior Court Case No.: :: 37-2018-
00055549-CU-NP-CTL
Action Filed: October 31, 2018
Trial Date: TBD

I, Kambria Jarrett, declare as follows:

1. I am employed as Director of ESA/Insurance by *Defendant* ZALE DELAWARE, INC. ("Defendant"), and am authorized to sign this declaration on behalf of Defendant. This declaration is provided in support of Defendant's Notice of Removal of Action.

2. As part of my job responsibilities for Defendant, I have personal knowledge of and am familiar with the types of records maintained by Defendant and

1 the procedures for creating and maintaining those records. I have access to and have
2 reviewed the books, records and files of Defendant that pertain to the sale of
3 merchandise subject to Zales' Lifetime Diamond Commitment, the jewelry repair
4 service at issue in this litigation ("Class Product"), in the State of California.

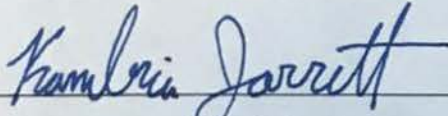
5 3. The information in this declaration is taken from Defendant's business
6 records regarding the Class Product (the "Records"). The Records are: (a) made at or
7 near the time of the occurrence of the matters recorded by persons with personal
8 knowledge of the information in the business record, or from information transmitted
9 by persons with personal knowledge; (b) kept in the course of Defendant's regularly
10 conducted business activities; and (c) it is the regular practice of Defendant to make
11 such records.

12 4. The Class Product is offered free of charge with the purchase of a
13 qualifying diamond.

14 5. Between October 31, 2014 and October 31, 2018, Defendant sold
15 313,684 items of jewelry that were subject to the Class Product in the State of
16 California.

17 6. Defendant is a corporation incorporated under the laws of the State of
18 Delaware with its principal place of business at 9797 Rombauer Road, Dallas Texas
19 75019.

20 I hereby declare under penalty of perjury under the laws of the United States of
21 America that the foregoing is true and correct. Executed this 30th day of November,
22 2018, at Dallas, Texas.

23
24 
25 Kambria Jarrett

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges Zale Delaware Falsely Advertises Nature, Quality of Jewelry Repair Services](#)
