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 11 R and A Synergy, LLC

12  
 13 **UNITED STATES DISTRICT COURT**  
 14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
 15 **WESTERN DIVISION**

16 R AND A SYNERGY LLC, a  
 17 California limited liability company,  
 18  
 19 Plaintiff,  
 20 vs.  
 21 SPANX, INC., a Georgia corporation,  
 22  
 23 Defendant.

CASE NO.: 2:17-cv-9147

COMPLAINT FOR:

- (1) COPYRIGHT INFRINGEMENT [17 U.S. Code § 502];
- (2) TRADE DRESS INFRINGEMENT [15 U.S.C. § 1125];
- (3) UNFAIR CMPETITION AND FALSE ADVERTISING [15 U.S.C. §1125(a)];
- (4) UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN [15 U.S.C. §1125(a)];
- (5) UNFAIR COMPETITION AND FALSE ADVERTISING [CAL. BUS. & PROF. CODE §§ 17200 and 17500 *ET SEQ.*]; AND
- (6) UNFAIR OR DECEPTIVE ACTS OR PRACTICES [CLRA CAL. CIV. CODE §§ 1750, 1770 AND 1780 *ET SEQ.*].

[DEMAND FOR TRIAL BY JURY]

1 Plaintiff R and A Synergy, LLC, by and through its counsel, Avyno Law  
2 P.C., for its complaint against Defendant Spanx, Inc., alleges as follows:

3  
4 **PARTIES**

5 1. Plaintiff R and A Synergy, LLC (“Plaintiff R and A”) is a California  
6 limited liability corporation with its principal place of business in Los Angeles  
7 County, CA. Plaintiff R and A is engaged in the development and sales of slip-on  
8 sleeves made to wear under sleeveless and strapless dresses and has made, sold  
9 and/or licensed such products for sale since December 2011.

10 2. Defendant Spanx, Inc. (“Defendant Spanx”) is a Georgia corporation,  
11 with its principal place of business at 3035 Peachtree Road, Suite 200, Atlanta,  
12 Georgia 30305. Defendant Spanx manufactures and sells undergarments and  
13 clothing, targeted primarily to women, in the categories of leggings, tops, active  
14 wear, shapewear, bras, panties and hosiery.

15 3. Defendant Spanx is a corporation domiciled in Georgia, organized  
16 under the laws of that state, and maintains its principal business office in Georgia.  
17 Defendant Spanx maintains two retail stores in the Los Angeles area. One retail  
18 store is located at 395 Santa Monica Place #102, Santa Monica, CA 90401. The  
19 other retail store is located in the Los Angeles International Airport, Terminal 2,  
20 200 World Way, Los Angeles, CA 90045. Plaintiff R and A further alleges that  
21 Defendant Spanx has committed the various acts (alleged below) which were  
22 expressly aimed at Plaintiff R and A, a California domiciliary, and that jurisdiction  
23 over Defendant Spanx is further established by: (1) their purposeful activities or  
24 transactions with California, or residents thereof, by which they purposefully avail  
25 themselves of the privilege of conducting activities in this forum; (2) the fact that  
26 the claims alleged herein arise out of or relate to their forum-related activities; and  
27 (3) the fact that the exercise of jurisdiction is reasonable, or comports with fair play  
28 and substantial justice.

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**JURISDICTION AND VENUE**

4. This is an action arising under the Lanham Act, 15 U.S.C. Section 1125(a). This Court has federal question jurisdiction over these claims pursuant to 15 U.S.C. Section 1121 (action arising under the Lanham Act); 28 U.S.C. Section 1331 (federal question); 28 U.S.C. Section 1338(a) (any Act of Congress relating to trademarks); and 28 U.S.C. Section 1338(b) (action asserting claim of unfair competition joined with a substantial and related claim under the trademark laws).

5. This Court has jurisdiction over the state law claims in this action pursuant to 28 U.S.C. Section 1367(a) because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

6. Based on information and belief this Court has specific personal jurisdiction over Defendant Spanx because it has purposefully committed, and continues to commit acts within the State of California, the acts from which these claims arise. The Court also has general personal jurisdiction over Defendant Spanx as it conducts continuous, systematic, and routine business within the State of California and the County of Los Angeles.

7. Venue is proper in the United States District Court for the Central District of California pursuant to U.S.C. Sections 1391(b) and 1391(c) because a substantial part of the events giving rise to the claims occurred in this District.

**FACTUAL BACKGROUND**

8. Plaintiff R and A is engaged in the development and sales of slip-on sleeves made to wear under sleeveless and strapless dresses (“under sleeves”) and has made, sold and/or licensed such under sleeves for sale, continuously and without interruption since December 2011.

9. In 2008, Ruthann Greenblat, CEO and shareholder of Plaintiff R and A, conceived of the unique idea to create a sleeved garment specifically designed

1 as a layering piece to wear under sleeveless and strapless tops and dresses  
2 (“outergarment”).

3 10. From 2008-2011, Plaintiff R and A focused its efforts on research,  
4 design and development of its under sleeves product line, spending a great amount  
5 of time and resources building its business, protecting and developing its  
6 intellectual property and designing its product line.

7 11. On February 20, 2009, Plaintiff R and A filed a trademark application  
8 for the mark SLEEVEY WONDERS, which federally registered as US 3,890,712.

9 12. Commencing in 2009, Plaintiff R and A also began filing a series of  
10 utility and design patents covering certain under sleeve styles, many of which have  
11 since issued and several of which are still pending.

12 13. Figures 31-35 of US Patent No. 8,365,313, filed on February 3, 2010,  
13 with a priority date of February 3, 2009, show renderings of Plaintiff R and A’s  
14 conception of slip-on sleeves made to wear under sleeveless and strapless tops and  
15 dresses that give the appearance of being part of the outer garment with which they  
16 are worn. *Exhibit A* is a true and correct copy of US Patent No. 8,365,313.

17 14. On December 15, 2011, Plaintiff R and A launched its first website  
18 offering under sleeves for sale under the brand name SLEEVEY WONDERS  
19 (“Sleevey Website”). The SLEEVEY WONDERS under sleeves were advertised  
20 on the Sleevevy Website (www.sleeveywonders.com), as shown on *Exhibit B*,  
21 which website has been marked with copyright notices since its original launch.

22 15. Prior to the launch of the SLEEVEY WONDERS under sleeves, no  
23 category of garment existed for slip-on sleeves made to wear under sleeveless and  
24 strapless tops and dresses that give the appearance of being part of the  
25 outergarment with which they are worn.

26 16. The same subject matter that appeared on the Sleevevy Website also  
27 appeared on the hangtags sold with all SLEEVEY WONDERS products (“Sleevey  
28 Hangtag”). A true and correct copy of the Sleevevy Hangtag is set forth on *Exhibit*  
*C*.

1 17. The Sleevey Hangtag is the subject of Federal Copyright Registration  
2 No. VA-2-075-388. A true and correct copy of Federal Copyright Registration No.  
3 VA-2-075-388 is attached as *Exhibit D*.

4 18. Both the Sleevey Website and the Sleevey Hangtag illustrate a woman  
5 wearing the SLEEVEY WONDERS' under sleeves, a magician's hat and a waving  
6 of a magic wand.

7 19. Both the Sleevey Website and the Sleevey Hangtag advertise the  
8 under sleeves as:

9 Reversible slip on sleeves made to wear UNDER all your sleeveless &  
10 strapless tops & dresses, magically transforming your outfit into something  
11 NEW!

12 20. Both the Sleevey Website and the Sleevey Hangtag use a  
13 mathematical equation to show that the combination of the under sleeves added  
14 with a sleeveless over garment equals a new outfit. The equation uses a plus  
15 symbol and an equal sign.

16 21. The Sleevey Hangtag further includes an illustration of paper dolls  
17 wearing an under sleeve and separate outer garments that can be affixed to and  
18 interchanged with the paper dolls to show the various outfits and styles that can be  
19 worn.

20 22. The Sleevey Hangtag further provides a bullet point list of "What  
21 Sleevey Wonders Can Do For You" beyond covering "bare, flabby arms."

22 23. Since December 15, 2011, Plaintiff R&A's SLEEVEY WONDERS  
23 brand has used the tagline, "Beautify your arms & expand your wardrobe ..." on  
24 the Sleevey Website and on the Sleevey Hangtag.

25 24. For at least the last four years, Plaintiff R and A has marketed its  
26 product using the tag-line, "Made in the USA, with love." True and correct copies  
27 of the use of the tag-line can be found at *Exhibit E*.

28 25. Commencing in December 2011, Plaintiff R and A marketed its  
SLEEVEY WONDERS' under sleeves on both the Sleevey Website and Sleevey

1 Hangtag as a product: (i) “to wear UNDER all your sleeveless & strapless tops &  
2 dresses;” and (ii) “magically transforming your outfit into something NEW!;” and  
3 (iii) to “expand your wardrobe.”

4 26. In addition to manufacturing and selling SLEEVEY WONDERS’  
5 under sleeves, Plaintiff R and A also entered into a license agreement in November  
6 2012 with Magic Tap LLC (“Magic Tap”), which licensed Plaintiff R and A’s  
7 under sleeves on a non-exclusive basis for sale under the brand SLEEVEY  
8 MAGIC.

9 27. On December 19, 2012, Plaintiff R and A filed a trademark  
10 application for the mark SLEEVEY MAGIC, which federally registered on April  
11 8, 2014 as US 4,511,938, in connection with women’s tops and foundation  
12 garments.

13 28. Magic Tap, under license from Plaintiff R and A, sold thousands of  
14 under sleeves under the trademark SLEEVEY MAGIC until its license terminated  
15 in 2015. Magic Tap advertised and sold the SLEEVEY MAGIC under sleeves  
16 through a direct TV site, through YouTube channels, on its website and through  
17 retail stores, including but not limited to, Walgreens.

18 29. The under sleeves sold under the trademark SLEEVEY MAGIC and  
19 SLEEVEY WONDERS were identical. Both products are made of a nylon and  
20 spandex blend.

21 30. The SLEEVEY WONDERS under sleeves are light weight, sheer,  
22 form fitted sleeved garments that fit snugly around the arms of the wearer and  
23 that, when worn under a sleeveless outer garment, give the appearance of the  
24 sleeveless over garment having sleeves, thereby creating a new look and allowing  
25 women to wear sleeveless outer garments year round.

26 31. Ruthann Greenblat, Plaintiff R and A’s CEO, designed the under  
27 sleeves using fabrics of different ornamental appearance to create different looks.  
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1 The SLEEVEY WONDERS under sleeves were designed and are sold in mesh,  
2 lace, dotted mesh, jersey and fishnet.

3 32. Ruthann Greenblat also designed and Plaintiff R and A sells several  
4 different styles of under sleeves, including basic, bell, bandeau, flutter, waterfall,  
5 halter, shirred, tunic and trellis.

6 33. The SLEEVEY WONDERS under sleeves of various ornamental  
7 styles is also designed and sold in a variety of colors including black, white, grey,  
8 coral, pink, mint, cobalt blue, periwinkle blue, apple green, olive green, forest  
9 green, navy, red, silver, turquoise, eggplant, brown and off-white. *Exhibit F* is a  
10 true and correct copy of the various styles of under sleeves product sold under the  
11 brand name SLEEVEY WONDERS.

12 34. Plaintiff R and A markets and sells it's under sleeves showing the  
13 under sleeves on a mannequin next to a person wearing the under sleeves under a  
14 sleeveless or strapless dress or top.

15 35. Plaintiff R and A also markets and sells its SLEEVEY WONDERS  
16 under sleeves products by photographing a person wearing a sleeveless dress or top  
17 without the undersleeves next to a photograph of a person wearing SLEEVEY  
18 WONDERS under sleeves under various styles of sleeveless dresses or tops.

19 36. Plaintiff R and A maintains a webpage, an Instagram account and a  
20 Facebook page. Plaintiff R and A has maintained a website continuously and  
21 without interruption since December 15, 2011, maintained its Instagram account  
22 continuously and without interruption since 2013 and maintained its Facebook  
23 Page continuously and without interruption since 2012.

24 37. Plaintiff R and A further engages the services of independent  
25 marketing and sales consultants in the US and foreign jurisdictions that have been  
26 responsible for marketing, selling and placing the SLEEVEY WONDERS under  
27 sleeves products in retail stores and boutiques across the United States. Such  
28

1 independent marketing and sales consultants have further been responsible for the  
2 placement of SLEEVEY WONDERS under sleeves in various catalogs.

3 38. Since December 2011, Plaintiff R and A participated in numerous  
4 tradeshows, including but not limited to the following nationally and  
5 internationally recognized trade shows: WWIN Las Vegas, Atlanta Gift and  
6 Atlanta Fashion, Dallas World Trade Center, MODA NY, NEAC, Metro, and  
7 TRENDS.

8 39. In addition to its sales on the Sleevey Website, SLEEVEY  
9 WONDERS under sleeves products are sold in at least 1500 retail stores across the  
10 United States and Canada, as well as stores in Australia, New Zealand and the UK.

11 40. Since its inception, Plaintiff R and A has generated over 5.8 million  
12 dollars in revenue from the sales of under sleeves product through its website, to its  
13 retailers and distributors and through its licensees.

14 41. The SLEEVEY WONDERS under sleeves have been worn by the  
15 following celebrities and/or received national recognition in the following ways: (i)  
16 SLEEVEY WONDERS basic mesh under sleeves are worn by Lily Tomlin on  
17 Grace & Frankie, a Netflix original; (ii) SLEEVEY WONDERS under sleeves  
18 worn by Jane Fonda; (iii) featured in A Cup of Frosting blog; (iv) featured in LA  
19 Times Travel, (v) featured in O, The Oprah Magazine; (vi) featured in Curvy  
20 Magazine; (vii) featured in First Magazine; and (viii) featured in Huffington Post  
21 as #2 Must Have Travel Accessory in an article featuring 30 Must have Travel  
22 Accessories for 2015.

23 42. On May 15, 2013, Jillian Doyle, Assistant to Sara Blakely, CEO of  
24 Defendant Spanx, ordered two SLEEVEY WONDERS under sleeves from  
25 Plaintiff R and A for Lisa Magazine, Executive Assistant to Sara Blakely. The two  
26 under sleeves were shipped directly to Defendant Spanx's headquarters in Georgia.  
27 Plaintiff R and A sent one basic  $\frac{3}{4}$  length black lace product and basic  $\frac{3}{4}$  length  
28 ivory mesh product to Defendant Spanx's headquarters in fulfillment of the order.

1 **Exhibit G** attached hereto is a true and correct copy of the receipt sent to  
2 Defendant Spanx in 2013 with the order.

3 43. The SLEEVEY WONDERS under sleeves shipped to Defendant  
4 Spanx's headquarters in May 2013, included the Sleevey Hangtag.

5 44. In April and May 2016, Plaintiff R and A's legal counsel left  
6 messages for Spanx General Counsel, Leslie Slavich, inquiring about whether  
7 Defendant Spanx had any interest in discussing a potential business arrangement  
8 with the owners of the Sleevey Wonder's under sleeves. Ms. Slavich never  
9 returned any of the messages.

10 45. Thereafter, on or around September 12, 2017, Defendant Spanx came  
11 out with a product sold under the brand SHEER FASHION. The SHEER  
12 FASHION products are sold as layering pieces to be worn under sleeveless  
13 garments. The line includes crop tops that are indistinguishable in appearance to  
14 the SLEEVEY WONDERS under sleeves when worn under a sleeveless outer  
15 garment.

16 46. Like the SLEEVEY WONDERS' under sleeves, Spanx SHEER  
17 FASHION products are long sleeve crop tops sold in sheer mesh, polka dot and  
18 lace, and are nearly identical in appearance to the SLEEVEY WONDERS under  
19 sleeves when worn under a sleeveless dress or top. **Exhibit H** attached hereto is a  
20 true and correct depiction of SHEER FASHION products and SLEEVEY  
21 WONDERS under sleeves products shown side-by-side.

22 47. By selling SHEER FASHION products nearly identical in appearance  
23 to the SLEEVEY WONDERS under sleeves products, Defendant Spanx has acted  
24 in willful disregard of the laws protecting Plaintiff R and A's goodwill, and they  
25 have intentionally confused and deceived, or threatened to confuse and deceive, the  
26 consuming public concerning the source, affiliation, connection, or sponsorship of  
27 Defendant Spanx's Sheer Fashion products. By its wrongful conduct, Defendant  
28 Spanx has traded upon and diminished Plaintiff R and A's reputation and goodwill

1 in a manner likely to cause confusion over the source, affiliation, connection, or  
2 sponsorship of Plaintiff R and A's and Defendant Spanx's goods.

3 48. Thereafter, on Monday, September 25 of 2017, Defendant Spanx  
4 launched a product sold under the brand name ARM TIGHTS, using the slogan  
5 "Transform Your Wardrobe!" and claiming ARM TIGHTS to be "Spanx's Next  
6 Billion-Dollar Idea." Attached as *Exhibit I* is a true and correct copy Defendant  
7 Spanx's website advertising ARM TIGHTS and a true and correct copy of an  
8 article published on September 25, 2017 by Inc.

9 49. Similar to SLEEVEY WONDERS under sleeves, the ARM TIGHTS  
10 products are sold as a layering piece to be worn under sleeveless garments.

11 50. Similar to the basic style SLEEVEY WONDERS under sleeves,  
12 Spanx ARM TIGHTS are long sleeved crop tops that are indistinguishable in  
13 appearance from the basic style SLEEVEY WONDERS under sleeves when worn  
14 under a sleeveless dress or top. *Exhibit J* attached hereto is a true and correct  
15 depiction of ARM TIGHTS products and SLEEVEY WONDERS under sleeves  
16 products shown side-by-side.

17 51. Except for the yellow ARM TIGHTS, ARM TIGHTS are available in  
18 all the same colors as the SLEEVEY WONDERS under sleeves products and  
19 provides a fitted look on the arms of the wearer, identical to that of the SLEEVEY  
20 WONDERS under sleeves products.

21 52. ARM TIGHTS are sold in a hosiery type packing ("Arm Tights  
22 Packaging") with several advertising inserts in the packaging ("Arm Tights  
23 Packaging Inserts"). *Exhibit K* is a true and correct copy of the Arm Tights  
24 Packaging and *Exhibit L* is a true and correct copy of the Arm Tights Packaging  
25 Inserts.

26 53. ARM TIGHTS are sold and advertised for sale on Defendant Spanx's  
27 website ([www.spanx.com](http://www.spanx.com)). *Exhibit M* is a true and correct copy of the relevant  
28 pages of Defendant Spanx's website.

1           54. Similar to the slogan of Plaintiff R and A, “magically transforming  
2 your outfit into something NEW!”, Defendant Spanx advertises ARM TIGHTS on  
3 its website and its product packaging using the slogan “Transform your wardrobe!”  
4 and advertises its product as being magic. *Exhibit N* is true and correct copies of  
5 Defendant Spanx advertisements using the slogan “Transform your wardrobe!” and  
6 advertising the product as magic.

7           55. Similar to the SLEEVEY WONDERS Sleevey Hangtag including  
8 paper dolls, the ARM TIGHTS Packaging Inserts also includes paper dolls wearing  
9 a sleeved under garment with various interchangeable outfits that fit over the paper  
10 dolls. *Exhibit O* is a side-by-side comparison of true and correct copies of the  
11 paper doll advertising used by both Plaintiff R and A and Defendant Spanx.

12           56. Similar to the Sleevey Hangtag providing a bullet point list of “What  
13 Sleevey Wonders Can Do For You,” the ARM TIGHTS Packaging further  
14 includes a list of “What’s it do?” which includes a bullet point list of product  
15 benefits. *Exhibit P* is a side-by-side comparison of true and correct copies of the  
16 bullet point list of both Plaintiff R and A and Defendant Spanx.

17           57. Similar to the Sleevey Website and Sleevey Hangtag using an  
18 equation to show that the product combines items to create new items, the Arm  
19 Tights Packaging uses a similar equation to show that ARM TIGHTS together with  
20 sleeveless tops and dresses expands a person’s wardrobe. *Exhibit Q* is a side-by-  
21 side comparison of true and correct copies of the equations used by both Plaintiff R  
22 and A and Defendant Spanx.

23           58. Similar to Plaintiff R and A’s use of the slogan “Made in the USA,  
24 with love” to advertise its product, Defendant Spanx also uses the phrase  
25 “#Madewithlove” to advertise its products for sale. *Exhibit R* is a side-by-side  
26 comparison of true and correct copies of both Plaintiff R and A and Defendant  
27 Spanx using the respective slogans.  
28

1           59. By selling ARM TIGHTS products nearly identical in appearance to  
2 the SLEEVEY WONDERS Sleevey under sleeves products and blatantly lifting  
3 slogans and product packaging materials from Plaintiff R and A, Defendant Spanx  
4 has acted in willful disregard of the laws protecting Plaintiff R and A’s goodwill,  
5 and they have intentionally confused and deceived, or threatened to confuse and  
6 deceive, the consuming public concerning the source, affiliation, connection, or  
7 sponsorship of Defendant Spanx’s ARM TIGHTS products. By its wrongful  
8 conduct, Defendant Spanx has traded upon and diminished Plaintiff R and A’s  
9 reputation and goodwill in a manner likely to cause confusion over the source,  
10 affiliation, connection, or sponsorship of Plaintiff R and A’s and Spanx’s goods.

11           60. Further, after receiving Sleevey Wonders under sleeves products,  
12 packaging and hangtags, Defendant Spanx willfully and intentionally copied,  
13 reproduced, printed, displayed, offered for sale, and sold products that featured  
14 unlicensed copies of Plaintiff R and A’s copyrighted work.

15           61. Defendant Spanx further claims ARM TIGHTS to be a revolutionary  
16 new invention that reinvents the way that women get dressed and that is able to  
17 transform one’s wardrobe “unlike any other layering options” on the market to  
18 wear everything in one’s closet, year round. See *Exhibit S*, which is a true and  
19 correct copy of an Instagram advertisement for ARM TIGHTS.

20           62. CEO Sara Blakely through Defendant Spanx’s advertising and her  
21 own statements to media has misled the public into believing that she was the first  
22 to market with a revolutionary concept that solves a problem that has never been  
23 solved before. When, in fact, Defendant Spanx and Blakely had knowledge that  
24 Plaintiff R and A already had a light weight, form fitting, crop top, product on that  
25 market that was a layering piece, made of a smoothing design that flattened the  
26 arms and was designed specifically for wearing under sleeveless garments,  
27 providing extra coverage for sleeveless looks year round. See *Exhibit T*, which is  
28 a true and correct copy of an Instagram advertisement for ARM TIGHTS.

1           63. CEO Sara Blakely on Good Morning America, which aired on  
2 October 27, 2017, claimed that she invented a product that filled a “white space.”  
3 In particular, she claimed to have so many sleeveless dresses and shirts that hang  
4 in her closet that she could not wear in the fall or winter, but now she can with  
5 her invention:

6           Yes, because I have my own invention, just like all of these entrepreneurs  
7 and Spanx has launching Arm Tights, so, so listen, I’m wearing them  
8 right now so they’re amazing. They allow women to wear everything  
9 sleeveless in their closet year-round. And, so I always say, when I look  
10 for entrepreneurs, I look for people who fill the white space, someone  
11 who solves a problem, comes up with a better solution and then can  
12 explain to me why they are the best option. And, my frustration with this  
13 was that I had so many sleeveless dresses and shirts that hang in my closet  
14 that I can’t wear in the fall or winter so this is a sleeveless dress and I  
15 threw on this shimmer silver.

14 **Exhibit U** is a true and correct copy of the transcript provided by ABC of this  
15 segment.

16           64. A feature article in the New York Post about Defendant Spanx’s new  
17 product, ARM TIGHTS, noted that “Spanx founder Sara Blakely insists that the  
18 invention wasn’t born out of a desire to slenderize arms but to squeeze more looks  
19 out of warm-weather clothing as temps drop.” The article quoted Blakely as  
20 stating, “My favorite things to invent are the ones women didn’t realize they  
21 needed and can’t live without.... Tights have been around for our legs for so many  
22 years, I was thinking, ‘Why aren’t there tights for our arms?’” **Exhibit V** is a true  
23 and correct copy of a mobile preview of the New York Post article.

24           65. Due to the identical look of SLEEVEY WONDERS under sleeves and  
25 ARM TIGHTS garments, Blakely, through her false statements identifying her as  
26 the creator of a new product category, is further intentionally confusing and  
27 deceiving the consuming public as to the source, affiliation, connection, or  
28 sponsorship of Spanx’s ARM TIGHTS products.

1           66. In fact, the SLEEVEY WONDERS under sleeves product worn by  
2 Lily Tomlin on Grace and Frankie, a Netflix Original, has already been confused  
3 by consumers as ARM TIGHTS products in comments posted on Defendant  
4 Spanx’s Instagram account.

5           67. Blakely is further misleading the public to believe that her mission is  
6 supporting women, namely, supporting women who live an entrepreneurial life,  
7 when in fact she is knowingly and intentionally capitalizing on Plaintiff R and A’s  
8 and its CEO Ruthann Greenblat’s ideas, another female business owner and  
9 entrepreneur.

10           68. For example, under the About Us page of Defendant Spanx website  
11 ([spanx.com/about-us](http://spanx.com/about-us)), it states the following:

12           “In March of 2012, Founder Sara was named the world's youngest, self-  
13 made female billionaire by Forbes Magazine and one of TIME's 100 Most  
14 Influential People. Headquartered in Atlanta, GA and opening retail shops  
15 across the United States, SPANX can now be found worldwide in more  
16 than 50 countries. In addition to keeping butts covered from Savannah to  
17 Singapore, SPANX also shapes the world by focusing on our mission: To  
18 help women feel great about themselves and their potential.”

18           ***Exhibit W*** is a true and correct copy of the [spanx.com](http://spanx.com) About Us page  
19 ([spanx.com/about-us](http://spanx.com/about-us)).

20           69. Even more misleading are the statements found under the Elevating  
21 Women page of Defendant Spanx’s website ([spanx.com/elevatingwomen](http://spanx.com/elevatingwomen)), which  
22 states:

23           “I am committed to the belief that we would all be in a much better place if  
24 half the human race (WOMEN) were empowered to prosper, invent, be  
25 educated, start their own businesses, run for office — essentially be given  
26 the chance to SOAR!

26           — Sara Blakely

27           We're about supporting women living an entrepreneurial life. Not just  
28 traditional entrepreneurs, but women from all walks and talks doing what  
they do best... artists, filmmakers, teachers, accountants, stay-at-home

1 moms... anyone with the courage, creativity and confidence to pursue their  
2 dreams.”

3 **Exhibit X** is a true and correct copy of the spanx.com Elevating Women page  
4 (spanx.com/elevatingwomen).

5 70. Upon information and belief, women buy Defendant Spanx’s products  
6 and support Defendant Spanx’s business, at least in part, upon Blakely and  
7 Defendant Spanx’s claims of supporting women and women entrepreneurs.

8 71. Defendant Spanx and Plaintiff R and A are direct competitors of one  
9 another, selling nearly identical products, sold for the same purpose and use, to the  
10 same target market (females), at similar price points (\$30.00-\$57.00), and through  
11 the same channels of trade (on-line, catalog sales and direct marketing to target  
12 consumers, retail stores and boutique).

13 72. In fact, Plaintiff R and A has already been notified by at least one  
14 boutique that Plaintiff R and A lost sales to the boutique because the boutique  
15 carried Defendant Spanx’s products and has lost customers recently that are also  
16 known to carry Defendant Spanx’s products.

17 73. On November 7, 2017, Ruthann Greenblat, CEO of Plaintiff R and A,  
18 sent a letter to Sara Blakely, CEO of Defendant Spanx, calling to her attention the  
19 fact that Defendant Spanx purchased SLEEVEY WONDERS under sleeves in  
20 2013 and that Defendant Spanx and Blakely were now falsely claiming Plaintiff R  
21 and A’s idea was their own. Greenblat further expressed her shock in Defendant  
22 Spanx and Blakely’s claims given that Blakely had built the SPANX brand and her  
23 foundation on the importance of helping and mentoring other women. **Exhibit Y**  
24 is a true and correct copy of the November 7, 2017 letter to Defendant Spanx.

25 74. On November 14, 2017, Defendant Spanx’s attorneys, King and  
26 Spalding, responded, in part, by: (i) distinguishing the products claiming that  
27 Defendant Spanx’s packaging and promotional materials are readily  
28 distinguishable from and not likely to be confused with those of Plaintiff R and A;

1 and (ii) claiming that Defendant Spanx’s current offerings are all in a pull-on style,  
2 whereas Sleevey Wonders under sleeves products snap under the bust. *Exhibit Z*  
3 is a true and correct copy of the November 14, 2017 letter to Ruthann Greenblat,  
4 CEO of Plaintiff R and A.

5 75. Contrary to claims by Defendant Spanx’s attorney’s in the November  
6 14, 2017 letter, for the reasons set forth above, Defendant Spanx’s packing and  
7 promotional materials infringe upon Plaintiff R and A’s copyright in the Sleevey  
8 Website and Sleevey Hangtags. Defendant Spanx’s website and packaging and  
9 promotional materials also use confusingly similar slogans to those used  
10 continuously by Plaintiff R and A for years. Defendant Spanx’s ARM TIGHTS  
11 and SHEER FASHION products are nearly identical to one another and are  
12 indistinguishable from the basic style SLEEVEY WONDERS under sleeves when  
13 worn under sleeveless tops. Further, the original basic style SLEEVEY  
14 WONDERS under sleeves are pull-on style, similar to Defendant Spanx’s current  
15 offerings. *Exhibit A1* is a true and correct copy of a post on Defendant Spanx’  
16 Facebook page with a follower commenting on ARM TIGHTS -- “they look a lot  
17 like Sleevey Wonders.”

18 76. Over the past five (5) years, Plaintiff R and A has been aggressively  
19 enforcing its rights against knock-offs in the market place to protect its new under  
20 sleeves product category of a form fitting, arm smoothing, crop top, layering piece,  
21 which Plaintiff R and A –not Defendant Spanx – first brought to the marketplace.

22  
23 **FIRST CAUSE OF ACTION**  
24 **(Copyright Infringement - 17 U.S. Code § 502)**

25 77. Plaintiff R and A repeats and re-alleges each allegation set forth above  
26 as if set forth fully herein.

27 78. Plaintiff R and A is the author and registered copyright owner of the  
28 Sleevey Hangtag (the “R and A copyrighted work”).

1 79. Defendant Spanx had access to Plaintiff R and A's Sleevey Hangtag.

2 80. Defendant Spanx copied, reproduced, printed, displayed, offered for  
3 sale, and sold products that featured R and A's copyrighted work, without  
4 limitation, Plaintiff R and A's paper doll illustrations, use of equations to show  
5 wardrobe expansion, bullet point list explaining what the product can do, product  
6 features, marketing buzz words, catch phrases, slogans, image reproductions and  
7 product depiction and product layout and presentation.

8 81. Defendant Spanx's acts of infringement were willful and/or reckless.

9 82. By copying, distributing, displaying, publishing, and otherwise  
10 exploiting R and A copyrighted work, Defendant Spanx infringed Plaintiff R and  
11 A's copyrights in the Sleevey Hangtag and R and A copyrighted work under 17  
12 USC § 502 *et seq.* and caused Plaintiff R and A significant injuries, damages, and  
13 losses in amounts to be determined at trial.

14 83. Plaintiff R and A seeks all damages recoverable under the Copyright  
15 Act (17 USC Chapter 5), including statutory or actual damages, including  
16 Defendant Spanx's profit attributable to the infringements, and damages suffered  
17 as a result of the lack of compensation, credit, and attribution from any diminution  
18 in the value of R and A copyrighted work.

19

20

**SECOND CAUSE OF ACTION**  
**(Trade Dress Infringement – Lanham Act 15 U.S.C. § 1125)**

21

22 84. Plaintiff R and A repeats and re-alleges each allegation set forth above  
23 as if set forth fully herein.

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85. Plaintiff R and A has manufactured, advertised, distributed, marketed,  
promoted and offered it SLEEVEY WONDERS under sleeves since December 15,  
2011.

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86. Plaintiff R and A's SLEEVEY WONDERS under sleeves having been  
sold continuously and without interruption over five years, across the United States

1 and internationally have acquired secondary meaning such that consumers  
2 recognize SLEEVEY WONDERS under sleeves as coming from a unique source  
3 which is Plaintiff R and A.

4 87. Both Defendant Spanx's ARM TIGHTS and SHEER FASHION  
5 products use the look and feel and fabric designs of Plaintiff R and A's SLEEVEY  
6 WONDERS under sleeves such that they are likely to cause confusion as to the  
7 source of SLEEVEY WONDERS under sleeves products with SPANX products or  
8 vice versa (creating reverse confusion).

9 88. Defendant Spanx knew of the commercial success of Plaintiff R and  
10 A's SLEEVEY WONDERS under sleeves and Defendant Spanx willfully used the  
11 look and feel of Plaintiff R and A's under sleeves' trade dress in connection with  
12 the sale, offering for sale, distribution and/or advertising of ARM TIGHTS and  
13 SHEER FASHION products in a manner likely to cause confusion, or to cause  
14 mistake, or to deceive customers that Defendant Spanx's ARM TIGHTS and  
15 SHEER FASHION products are products from Plaintiff R and A or otherwise  
16 associated with or authorized by Plaintiff R and A, and/or deceive customers into  
17 thinking that SLEEVEY WONDERS under sleeves are those of Defendant Spanx,  
18 thereby creating reverse confusion.

19 89. Defendant Spanx's conduct described above constitutes trade dress  
20 infringement in violation of 15 U.S.C. § 1125.

21 90. The actions of Defendant Spanx, if not enjoined, will continue.

22 91. Plaintiff R and A have suffered and continue to suffer damages in an  
23 amount to be proven at trial.

24 92. Plaintiff R and A is further entitled to injunctive relief to prevent  
25 Defendant Spanx's infringement.

26 93. Pursuant to 15 U.S.C. §§ 1117 and 1125, Plaintiff R and A is entitled  
27 to recover damages, profits made by Defendant Spanx and the costs of this action.  
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**THIRD CAUSE OF ACTION**

**(Federal Unfair Competition and False Advertising under 15 U.S.C. §1125(a) against all Defendants)**

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94. Plaintiff R and A repeats and re-alleges each allegation set forth above as if set forth fully herein.

95. Plaintiff R and A and Defendant Spanx are direct competitors of one another.

96. Defendant Spanx’s actions described above and specifically, without limitation, Defendant Spanx: (i) claims of reinventing the way that women get dressed and transforming one’s wardrobe “unlike any other layering options” on the market to wear everything in one’s closet, year round, and filling a “white space” with its product; and (ii) use of Plaintiff R and A’s marketing materials is misleading the public into believing that Defendant Spanx was the first to market with a revolutionary concept that solves a problem that has never been solved before.

97. Defendant Spanx CEO Blakely, through her false statements identifying Defendant Spanx as the creator of a new product category and use of Plaintiff R and A’s marketing and advertising is further intentionally confusing and deceiving the consuming public as to the source, affiliation, connection, or sponsorship of the Spanx ARM TIGHTS products.

98. Defendant Spanx’s use in commerce to advertise, market, and sell ARM TIGHTS throughout the United States, including California using false and misleading statements and basing its advertising on Plaintiff R and A’s advertising constitute unfair competition and false advertising in violation of 15 U.S.C. § 1125(a).

99. Consumers are likely to be misled and deceived by Defendant Spanx’s representations.



1           106. In connection with Defendant Spanx’s sales and marketing of ARM  
2 TIGHTS and SHEER FASHION products, Defendant Spanx has used a false  
3 designation of origin, false or misleading description of fact or false or misleading  
4 representation of fact and have advertised and offered products nearly identical in  
5 appearance to Plaintiff R and A’s products, using Plaintiff R and A’s marketing  
6 and advertising materials, passing off Defendant Spanx’s work as its own, and/or  
7 misleading the public into believe that Plaintiff R and A’s products are those of  
8 Defendant Spanx.

9           107. Defendant Spanx is selling products nearly identical in appearance to  
10 Plaintiff R and A’s SLEEVEY WONDERS under sleeves products so as to  
11 confuse the consumers as to source.

12           108. Defendant Spanx also advertises and offers services using marketing  
13 material similar in appearance to, and using similar phrases and illustrations as,  
14 Plaintiff R and A’s marketing material, without limitation, Plaintiff R an A’s paper  
15 doll illustrations, use of equations to show wardrobe expansion, bullet point list  
16 explaining what the product can do, product features, marketing buzz words, catch  
17 phrases, slogans, image reproductions and product depiction and product layout  
18 and presentation.

19           109. Consumers are likely to be misled and deceived by Defendant Spanx’s  
20 representations and use of confusingly similar products and marketing materials.

21           110. Defendant Spanx knew or should have known that its statements, its  
22 products and use of Plaintiff R and A’s marketing and advertising materials were  
23 likely to mislead and confuse the public.

24           111. Further, Plaintiff R and A’s SLEEVEY WONDERS under sleeves  
25 having been sold continuously and without interruption for over five years, across  
26 the United States and internationally, and have acquired secondary meaning such  
27 that consumers recognize SLEEVEY WONDERS under sleeves as coming from a  
28 unique source which is Plaintiff R and A.

1           112. Both Defendant Spanx's ARM TIGHTS and SHEER FASHION  
2 products use the look and feel of Plaintiff R and A's SLEEVEY WONDERS under  
3 sleeves such that they are likely to cause confusion as to the source of SLEEVEY  
4 WONDERS under sleeves products with SPANX products or vice versa (creating  
5 reverse confusion).

6           113. Defendant Spanx knew of the commercial success of Plaintiff R and  
7 A's SLEEVEY WONDERS under sleeves and Defendant Spanx willfully used the  
8 look and feel of Plaintiff R and A's under sleeves' trade dress in connection with  
9 the sale, offering for sale, distribution and/or advertising of ARM TIGHTS and  
10 SHEER FASHION products in a manner likely to cause confusion, or to cause  
11 mistake, or to deceive customers that Defendant Spanx's products derives from  
12 Plaintiff R and A's under sleeves products or otherwise associated with or  
13 authorized by Plaintiffs, and/or deceive customers into thinking that SLEEVEY  
14 WONDERS under sleeves are those of Defendant Spanx, thereby creating reverse  
15 confusion.

16           114. Defendant Spanx's sale of product confusingly similar in appearance  
17 to Plaintiff R and A's under sleeves products and its advertising, marketing, and  
18 selling ARM TIGHTS and SHEER FASHION products throughout the United  
19 States, including California, using confusing similar product, false and misleading  
20 statements and advertising and marketing confusing similar to Plaintiff R and A's  
21 advertising and marketing, all in a manner likely to cause mistake, or to deceive  
22 customers that Defendant Spanx's products from Plaintiff R and A's under sleeves  
23 products or otherwise associated with or authorized by Plaintiff R and A, and/or  
24 deceive customers into thinking that SLEEVEY WONDERS under sleeves are  
25 those of Defendant Spanx, constitute unfair competition and false advertising in  
26 violation of 15 U.S.C. §1125(a). As a result, Plaintiff R and A has suffered and  
27 will continue to suffer damage to its business, reputation, and goodwill.  
28



1 mislead the public into believe that Plaintiff R and A under sleeves products are  
2 those of Defendant Spanx.

3 122. Defendant Spanx has advertised and offered services using market  
4 material similar in appearance to, and using similar phrases and illustrations as,  
5 Plaintiff R and A's marketing material.

6 123. Consumers are likely to be misled and deceived by Defendant Spanx's  
7 representations, and Defendant Spanx knew or should have known that its  
8 statements and use of Plaintiff R and A's marketing and advertising materials were  
9 likely to mislead.

10 124. Further, Plaintiff R and A's SLEEVEY WONDERS under sleeves  
11 having been sold continuously and without interruption for over five years, across  
12 the United States and internationally, and have acquired secondary meaning such  
13 that consumers recognize SLEEVEY WONDERS under sleeves as coming from a  
14 unique source which is Plaintiff R and A.

15 125. Both Defendant Spanx's ARM TIGHTS and SHEER FASHION  
16 products use the look and feel of Plaintiff R and A's SLEEVEY WONDERS under  
17 sleeves such that they are likely to cause confusion as to the source of SLEEVEY  
18 WONDERS under sleeves products with Defendant Spanx's products or vice versa  
19 (creating reverse confusion).

20 126. Defendant Spanx knew of the commercial success of Plaintiff R and  
21 A's SLEEVEY WONDERS under sleeves and Defendant Spanx willfully used the  
22 look and feel of Plaintiff R and A under sleeves' trade dress in connection with the  
23 sale, offering for sale, distribution and/or advertising of ARM TIGHTS and  
24 SHEER FASHION products in a manner likely to cause confusion, or to cause  
25 mistake, or to deceive customers that Defendant Spanx's products derives from  
26 Plaintiff R and A or otherwise associated with or authorized by Plaintiff R and A,  
27 and/or deceive customers into thinking that SLEEVEY WONDERS under sleeves  
28 are those of Defendant Spanx, thereby creating reverse confusion.



1           131. In September 2017, Defendant Spanx launched products in direct  
2 competition with Plaintiff R and A: ARM TIGHTS and SHEER FASHION  
3 products.

4           132. In connection with Defendant Spanx's sales and marketing of ARM  
5 TIGHTS and SHEER FASHION products, Defendant Spanx has used a false  
6 designation of origin, false or misleading description of fact or false or misleading  
7 representation of fact and have advertised and offered products nearly identical in  
8 appearance to Plaintiff R and A's under sleeves products, using Plaintiff R and A's  
9 marketing and advertising materials, passing it off as its own.

10           133. Defendant Spanx is selling products nearly identical in appearance to  
11 Plaintiff R and A's SLEEVEY WONDER under sleeves product so as to confuse  
12 the consumers as to source.

13           134. Defendant Spanx is using a false designation of origin, false or  
14 misleading description of facts and/or false or misleading representation of fact to  
15 mislead the public into believe that Plaintiff R and A under sleeves products are  
16 those of Defendant Spanx.

17           135. Defendant Spanx has advertised and offered services using market  
18 material similar in appearance to, and using similar phrases and illustrations as,  
19 Plaintiff R and A's marketing material.

20           136. Consumers are likely to be misled and deceived by Defendant Spanx's  
21 representations, and Defendant Spanx knew or should have known that its  
22 statements and use of Plaintiff R and A's marketing and advertising materials were  
23 likely to mislead.

24           137. Further, Plaintiff R and A's SLEEVEY WONDERS under sleeves  
25 having been sold continuously and without interruption for over five years, across  
26 the United States and internationally, and have acquired secondary meaning such  
27 that consumers recognize SLEEVEY WONDERS under sleeves as coming from a  
28 unique source which is Plaintiff R and A.

1           138. Both Defendant Spanx's ARM TIGHTS and SHEER FASHION  
2 products use the look and feel of Plaintiff R and A's SLEEVEY WONDERS under  
3 sleeves such that they are likely to cause confusion as to the source of SLEEVEY  
4 WONDERS under sleeves products with Defendant Spanx's products or vice versa  
5 (creating reverse confusion).

6           139. Defendant Spanx knew of the commercial success of Plaintiff R and  
7 A's SLEEVEY WONDERS under sleeves and Defendant Spanx willfully used the  
8 look and feel of Plaintiff R and A under sleeves' trade dress in connection with the  
9 sale, offering for sale, distribution and/or advertising of ARM TIGHTS and  
10 SHEER FASHION products in a manner likely to cause confusion, or to cause  
11 mistake, or to deceive customers that Defendant Spanx's products derives from  
12 Plaintiff R and A or otherwise associated with or authorized by Plaintiff R and A,  
13 and/or deceive customers into thinking that SLEEVEY WONDERS under sleeves  
14 are those of Defendant Spanx, thereby creating reverse confusion.

15           140. Defendant Spanx sale of product confusingly similar in appearance to  
16 Plaintiff R and A's under sleeves products and its advertising, marketing, and  
17 selling ARM TIGHTS and SHEER FASHION products throughout the United  
18 States, including California, using confusing similar product, false and misleading  
19 statements and advertising and marketing confusingly similar to Plaintiff R and  
20 A's advertising and marketing, all in a manner likely to deceive consumers that  
21 Defendant Spanx's products derives from Plaintiff R and A or otherwise is  
22 associated, sponsored, affiliated, or connected with or certified by Plaintiff R and  
23 A, and/or deceive consumers as to the source of Spanx's products into thinking  
24 that SLEEVEY WONDERS under sleeves are those of Defendant Spanx,  
25 constitute unfair or deceptive acts or practices under California Consumers Legal  
26 Remedies Act (Cal. Civ. Code §§ 1750, 1770 and 1780 *et seq.*). As a result,  
27 Plaintiff R and A has suffered and will continue to suffer damage to its business,  
28 reputation, and goodwill.



1 the manner in which Defendant Spanx has complied with the terms of the  
2 injunction;

3 C. That Defendant Spanx be ordered to correct any erroneous impression  
4 persons may have derived concerning the nature, characteristics, or qualities or  
5 source of ARM TIGHTS and SHEER FASHION products, including without  
6 limitation, ceasing to advertise the product under the brand ARM TIGHTS as a  
7 solution to women's fashion that never before existed.

8 D. That Defendant Spanx be adjudged to have violated 15 U.S.C. § 501  
9 *et seq.* by having copied, reproduced, printed, displayed, offered for sale, and sold  
10 products that featured Plaintiff R and A's copyrighted work.

11 E. That Defendant Spanx be adjudged to have violated 15 U.S.C. § 1125  
12 *et seq.* by willfully using the look and feel of Plaintiff R and A under sleeves' trade  
13 dress in connection with the sale, offering for sale, distribution and/or advertising  
14 of ARM TIGHTS and SHEER FASHION products in a manner likely to cause  
15 confusion, or to cause mistake, or to deceive customers into believing that  
16 Defendant Spanx's products are Plaintiff R and A's products or otherwise  
17 associated with or authorized by Plaintiff R and A, and/or deceive customers into  
18 thinking that SLEEVEY WONDERS under sleeves are those of Defendant Spanx,  
19 thereby creating reverse confusion.

20 F. That Defendant Spanx be adjudged to have violated 15 U.S.C. § 1125  
21 by unfairly competing against Plaintiff R and A by using false, deceptive or  
22 misleading descriptions or representations of fact that misrepresent the nature,  
23 quality and characteristics of Defendant Spanx's products;

24 G. That Defendant Spanx be adjudged to unlawfully and unfairly compete  
25 against Plaintiff R and A under the laws of the State of California, Cal. Bus. &  
26 Prof. Code § 17200, *et seq.*;

27  
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1 H. That Defendant Spanx be adjudged to unlawfully and unfairly compete  
2 against Plaintiff R and A under the laws of the State of California, California  
3 Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750, 1770 and 1780 *et seq.*)

4 I. That Plaintiff R and A be awarded damages pursuant to 15 U.S.C. § 504  
5 and 505 sufficient to compensate it for the damage caused by Defendant Spanx's  
6 infringement of Plaintiff R and A's copyrighted work;

7 J. That Plaintiff R and A be awarded damages pursuant to 15 U.S.C. §  
8 1117(a) for unfair competition and false advertising and trade dress infringement,  
9 in an amount, sufficient to compensate it for the damage caused by Defendant  
10 Spanx;

11 K. That Plaintiff R and A be awarded Defendant Spanx's profits derived  
12 by reason of said acts, or as determined by said accounting;

13 L. That such damages and profits be trebled and awarded to Plaintiff R  
14 and A and that it be awarded its costs, attorneys' fees and expenses in this suit  
15 under 15 U.S.C. § 1117 and § 504, as a result of Defendant Spanx's willful,  
16 intentional, and deliberate acts in violation of the Lanham Act and the Copyright  
17 Act;

18 M. That Plaintiff R and A be awarded damages in an amount sufficient to  
19 compensate it for the damage caused by Defendant Spanx's unfair competition and  
20 false advertising under California Business and Professions Code §§ 17200 and  
21 17500 *et seq.* and trademark infringement under federal law and California  
22 common law;

23 N. That Plaintiff R and A be awarded damages in an amount sufficient to  
24 compensate it for the damage caused by Defendant Spanx's unfair or deceptive  
25 acts or practices under California Consumers Legal Remedies Act (Cal. Civ. Code  
26 §§ 1750, 1770 and 1780 *et seq.*).

27 O. That Plaintiff R and A be granted prejudgment and post judgment  
28 interest;

1 P. That Plaintiff R and A be granted costs associated with the  
2 prosecution of this action; and

3 Q. That Plaintiff R and A be granted such further relief as the Court may  
4 deem just, including but not limited to punitive damages and attorneys' fees.  
5

6 Dated: December 20, 2017

**AVYNO LAW P.C.**

7  
8 By: /s/ Jennifer H. Hamilton  
9 Jennifer H. Hamilton

10 Attorneys for Plaintiff  
11 R and A Synergy, LLC  
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**DEMAND FOR JURY TRIAL**

Plaintiff R and A requests a jury trial on all issues properly triable to a jury.

Dated: December 20, 2017

Avyno Law P.C.

/s/ Jennifer H. Hamilton

Jennifer H. Hamilton

Attorneys for Plaintiff  
R and A Synergy, LLC