

1 EVERSLEDs SUTHERLAND (US) LLP
Ian S. Shelton (SBN 264863)
2 ianshelton@eversheds-sutherland.com
500 Capitol Mall, Suite 1750
3 Sacramento, CA 95814
Telephone: (916) 844-2965
4 Facsimile: (916) 241-0501

5 EVERSLEDs SUTHERLAND (US) LLP
Ronald W. Zdrojeski (admitted *PHV*)
6 ronzdrojeski@eversheds-sutherland.com
1114 6th Avenue, 40th Floor
7 New York, NY 10036
Telephone: (212) 389-5000
8 Facsimile: (212) 389-5099
9

SERGENIAN ASHBY LLP
Joseph R. Ashby (SBN 248579)
joseph@sergenianashby.com
1055 West Seventh Street, 33rd Floor
Los Angeles, CA 90017
Telephone: (323) 318-7771

10 Attorneys for Defendants Nastygal.com USA
Inc., Nasty Gal Limited, and Boohoo
11 Group PLC

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 OLIVIA LEE, an individual, on behalf
15 of herself and all others similarly
16 situated,

17 Plaintiff,

18 vs.

19 NASTYGAL.COM USA INC. a
Delaware corporation, NASTY GAL
20 LIMITED, a United Kingdom private
limited company, BOOHOO GROUP
21 PLC, a Jersey public limited company ,
and DOES 1-100, inclusive,

22 Defendants.

NO. 2:20-cv-03332-GW-JEM

Consolidated for Pretrial Purposes with:

NO. 2:20-cv-04658-GW-JEM

NO. 2:20-cv-04659-GW-JEM

**AMENDED ANSWER TO FIRST
AMENDED CLASS ACTION
COMPLAINT BY DEFENDANTS
NASTYGAL.COM USA INC.,
NASTY GAL LIMITED, AND
BOOHOO GROUP PLC**

The Honorable George H. Wu

Courtroom: 9D

Address: U.S. Courthouse

350 W. First Street

Los Angeles, CA 90012

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ANSWER

Defendants Nastygol.com USA Inc., Nasty Gal Limited and Boohoo Group PLC (“Defendants”) hereby answer the First Amended Class Action Complaint (Dkt. 15) filed by Plaintiff Olivia Lee (“Plaintiff” or “Lee”).

I. BACKGROUND

1. Defendants admit that this action is brought against defendants Nastygol.com USA, Inc., Nasty Gal Limited, and Boohoo Group PLC.

Defendants deny all remaining allegations of paragraph 1, and specifically deny that they use a deceptive or false pricing scheme.

II. THE PARTIES

2. Defendants lack sufficient knowledge to admit or deny that Olivia Lee is a citizen of the State of California and resident of the County of San Francisco.

3. Defendants admit that Nastygol.com USA, Inc. is a Delaware corporation with its principal place of business in California.

4. Defendants admit the allegations in paragraph 4.

5. Defendants admit that Boohoo Group PLC is a public limited company incorporated in the Island of Jersey. Defendants admit that Boohoo Group PLC is the ultimate parent company of Defendant Nasty Gal Limited and Nastygol.com USA Inc. Defendants deny that Defendant Boohoo Group PLC is the “parent company” of “online brands boohoo, boohooMAN, PrettyLittleThing, Nasty Gal, Karen Millen, Coast, and Miss Pap.”

6. Paragraph 6 purports to define the defendants and no response is required.

7. Paragraph 7 states legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in paragraph 7.

8. Paragraph 8 states legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in paragraph 8.

1 9. Paragraph 9 states legal conclusions to which no response is required.
2 To the extent a response is required, Defendants deny the allegations in paragraph 9.

3 **III. JURISDICTION AND VENUE**

4 10. Paragraph 10 states legal conclusions to which no response is required.
5 To the extent a response is required, Defendants lack sufficient information to admit
6 or deny the allegations in paragraph 10.

7 11. Paragraph 11 states legal conclusions to which no response is required.
8 To the extent a response is required, Defendants lack sufficient information to admit
9 or deny the allegations in paragraph 11.

10 **IV. GENERAL ALLEGATIONS**

11 **A. Company Background**

12 12. Defendants admit that Defendant Nasty Gal Limited markets and sells
13 “Nasty Gal” clothing and other products over the internet. Defendants lack sufficient
14 knowledge to admit or deny when the company was founded or the whereabouts of
15 the company’s headquarters prior to being acquired by Boohoo Group PLC.
16 Defendants deny the remaining allegations in paragraph 12.

17 13. Defendants admit that Defendant Nasty Gal Limited operates an online
18 store for United States customers that can be found at <http://nastygal.com>, but
19 Defendants deny that Defendant Nastygal.com USA, Inc. operates that website.
20 Defendants deny Plaintiff’s characterization of that website, which speaks for itself.
21 Defendants deny the remaining allegations in paragraph 13.

22 **B. Nasty Gal’s False and Deceptive Pricing Scheme**

23 14. Defendants admit that, in the past, Defendant Nasty Gal Limited has
24 displayed some form of sale on its website from time to time. Defendants deny the
25 remaining allegations of paragraph 14.

26 15. Defendants deny the allegations in paragraph 15. Defendants also deny
27 the characterization of the website, which speaks for itself.
28

1 16. Defendants deny the characterization of the website, which speaks for
2 itself. Defendants deny the remaining allegations in paragraph 16.

3 17. Defendants deny the characterization of the website, which speaks for
4 itself. Defendants deny the remaining allegations in paragraph 17.

5 18. Paragraph 18 states legal conclusions to which no response is required.
6 To the extent a response is required, Defendants deny the allegations in paragraph
7 18.

8 **C. The Plaintiff's Purchase of Falsely Advertised Items from**
9 **Nastygal.com**

10 19. As to the allegations in paragraph 19 regarding Plaintiff and her
11 understanding of Defendant Nasty Gal Limited's website and pricing, Defendants
12 lack sufficient information to admit or deny. Defendants deny the remaining
13 allegations in paragraph 19.

14 20. As to the allegations in paragraph 20 regarding Plaintiff and her
15 understanding of Defendant Nasty Gal Limited's website and pricing, Defendants
16 lack sufficient information to admit or deny. Defendants deny the remaining
17 allegations in paragraph 20.

18 21. As to the allegations in paragraph 21 regarding Plaintiff's purchase and
19 her understanding of Defendant Nasty Gal Limited's website and pricing,
20 Defendants lack sufficient information to admit or deny. Defendants deny the
21 remaining allegations in paragraph 21.

22 22. As to the allegations in paragraph 22 regarding Plaintiff's purchase and
23 her understanding of Defendant Nasty Gal Limited's website and pricing,
24 Defendants lack sufficient information to admit or deny. Defendants deny the
25 remaining allegations in paragraph 22.

26 23. As to the allegations in paragraph 23 regarding Plaintiff's purchase and
27 her understanding of Defendant Nasty Gal Limited's website and pricing,
28

1 Defendants lack sufficient information to admit or deny. Defendants deny the
2 remaining allegations in paragraph 23.

3 24. As to the allegations in paragraph 24 regarding Plaintiff's purchase and
4 her understanding of Defendant Nasty Gal Limited's website and pricing,
5 Defendants lack sufficient information to admit or deny. Defendants deny the
6 remaining allegations in paragraph 24.

7 25. As to the allegations in paragraph 25 regarding Plaintiff's purchase and
8 her understanding of Defendant Nasty Gal Limited's website and pricing,
9 Defendants lack sufficient information to admit or deny. Defendants deny the
10 remaining allegations in paragraph 25.

11 **D. Research Shows that the Use of Reference Price Advertising**
12 **Schemes Similar to Nasty Gal's Deceptive Pricing Scheme**
13 **Influences Consumer Behavior and Affects Consumers'**
14 **Perceptions of a Product's Value**

15 26. Defendants deny the allegations in paragraph 26 concerning consumer
16 purchasing behavior as incomplete and/or incorrect statements of matters that are
17 properly the subject of expert testimony. Defendants refer to the publications and
18 the Ninth Circuit decision cited in paragraph 26, which speak for themselves, for
19 their true and complete contents and deny any characterization of the statement by
20 Plaintiff. Defendants deny the remaining allegations in paragraph 26.

21 27. Defendants deny the allegations in paragraph 27 concerning consumer
22 purchasing behavior as incomplete and/or incorrect statements of matters that are
23 properly the subject of expert testimony. Defendants refer to the publication cited in
24 paragraph 27, which speaks for itself, for its true and complete contents and deny
25 any characterization of the statements by Plaintiff. Defendants deny the remaining
26 allegations in paragraph 27.

27 28. Defendants deny the allegations in paragraph 28 concerning consumer
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1 purchasing behavior as incomplete and/or incorrect statements of matters that are
2 properly the subject of expert testimony. Defendants refer to the publication cited in
3 paragraph 28, which speaks for itself, for its true and complete contents and deny
4 any characterization of the statement by Plaintiff. Defendants deny the remaining
5 allegations in paragraph 28.

6 29. Defendants deny the allegations in paragraph 29 concerning consumer
7 purchasing behavior as incomplete and/or incorrect statements of matters that are
8 properly the subject of expert testimony. Defendants refer to the publication cited in
9 paragraph 29, which speaks for itself, for its true and complete contents and deny
10 any characterization of the statement by Plaintiff. Defendants deny the remaining
11 allegations in paragraph 29.

12 30. Defendants deny the allegations in paragraph 30 concerning consumer
13 purchasing behavior as incomplete and/or incorrect statements of matters that are
14 properly the subject of expert testimony. Defendants refer to the publication cited in
15 paragraph 30, which speaks for itself, for its true and complete contents and deny
16 any characterization of the statement by Plaintiff. Defendants deny the remaining
17 allegations in paragraph 30.

18 31. Defendants deny the allegations in paragraph 31 concerning consumer
19 purchasing behavior as incomplete and/or incorrect statements of matters that are
20 properly the subject of expert testimony. Defendants refer to the publications and
21 the Ninth Circuit case referenced in paragraph 31, which speak for themselves, for
22 their true and complete contents and deny any characterization of the statement by
23 Plaintiff. Defendants deny the remaining allegations in paragraph 31.

24 **V. CLASS ACTION ALLEGATIONS**

25 32. Defendants admit that Plaintiff purports to bring a class action lawsuit.
26 Defendants deny the remaining allegations in paragraph 32, and specifically deny
27 that this lawsuit should be certified as a class action under Rule 23 of the Federal
28

1 Rules of Civil Procedure.

2 33. Paragraph 33 purports to define class, to which no response is required.
3 Defendants deny that this lawsuit should be certified as a class action.

4 34. Defendants admit that Plaintiff purports to bring a class action lawsuit.
5 Defendants deny the remaining allegations in paragraph 34, and specifically deny
6 that this lawsuit should be certified as a class action under Rule 23 of the Federal
7 Rules of Civil Procedure.

8 35. Paragraph 35 purports to define class, to which no response is required.
9 Defendants deny that this lawsuit should be certified as a class action.

10 36. Paragraph 36 states legal conclusions to which no response is required.
11 To the extent a response is required, Defendants deny the allegations in paragraph
12 36 and specifically deny that this lawsuit should be certified as a class action under
13 Rule 23 of the Federal Rules of Civil Procedure.

14 37. **Numerosity.** Paragraph 37 states legal conclusions to which no
15 response is required. To the extent a response is required, Defendants deny the
16 allegations in paragraph 37 and specifically deny that it possesses all information
17 necessary to identify purported class members or any relief to which Plaintiff claims
18 she is entitled, and specifically deny that this lawsuit should be certified as a class
19 action under Rule 23 of the Federal Rules of Civil Procedure.

20 38. **Typicality.** Paragraph 38 states legal conclusions to which no response
21 is required. To the extent a response is required, Defendants deny the allegations in
22 paragraph 38 and specifically deny that this lawsuit should be certified as a class
23 action under Rule 23 of the Federal Rules of Civil Procedure.

24 39. **Adequacy of Representation.** Paragraph 39 states legal conclusions to
25 which no response is required. To the extent a response is required, Defendants deny
26 the allegations in paragraph 39 and specifically deny that this lawsuit should be
27 certified as a class action under Rule 23 of the Federal Rules of Civil Procedure.
28

1 40. **Existence and Predominance of Common Questions of Law or**
2 **Fact.** The allegations in paragraph 40, including subparagraphs (a) - (p) state legal
3 conclusions to which no response is required. To the extent a response is required,
4 Defendants deny the allegations in paragraph 40, and specifically deny that this
5 lawsuit should be certified as a class action under Rule 23 of the Federal Rules of
6 Civil Procedure.

7 41. **Superiority.** Paragraph 41 states legal conclusions to which no
8 response is required. To the extent a response is required, Defendants deny the
9 allegations in paragraph 41 and specifically deny that this lawsuit should be certified
10 as a class action under Rule 23 of the Federal Rules of Civil Procedure.

11 42. **Ascertainability.** Paragraph 42 states legal conclusions to which no
12 response is required. To the extent a response is required, Defendants deny the
13 allegations in paragraph 42 and specifically deny that it possesses all information
14 necessary to identify purported class members or any relief to which Plaintiff claims
15 she is entitled, and specifically deny that this lawsuit should be certified as a class
16 action under Rule 23 of the Federal Rules of Civil Procedure.

17 43. Paragraph 43 states legal conclusions to which no response is required.
18 To the extent a response is required, Defendants deny the allegations in paragraph
19 43 and specifically deny that this lawsuit should be certified as a class action under
20 Rule 23 of the Federal Rules of Civil Procedure.

21 **VI. ALTER EGO AND AGENCY RELATIONSHIP BETWEEN THE**
22 **DEFENDANTS**

23 44. Paragraph 44 states legal conclusions to which no response is required.
24 To the extent a response is required, Defendants deny the allegations in paragraph
25 44.

26 45. Paragraph 45 states legal conclusions to which no response is required.
27 To the extent a response is required, Defendants deny the allegations in paragraph
28

1 45.

2 46. Paragraph 46 states legal conclusions to which no response is required.
3 To the extent a response is required, Defendants deny the allegations in paragraph
4 46.

5 47. Paragraph 47 states legal conclusions to which no response is required.
6 To the extent a response is required, Defendants deny the allegations in paragraph
7 47.

8 48. Paragraph 48 states legal conclusions to which no response is required.
9 To the extent a response is required, Defendants deny the allegations in paragraph
10 48.

11 49. Paragraph 49 states legal conclusions to which no response is required.
12 To the extent a response is required, Defendants deny the allegations in paragraph
13 49.

14 50. Paragraph 50 states legal conclusions to which no response is required.
15 To the extent a response is required, Defendants deny the allegations in paragraph
16 50.

17 51. Paragraph 51 states legal conclusions to which no response is required.
18 To the extent a response is required, Defendants deny the allegations in paragraph
19 51. Defendants refer to the annual reports cited in paragraph 51, which speak for
20 themselves, for their true and complete contents and deny any characterization of
21 the statements by Plaintiff.

22 52. Paragraph 52 states legal conclusions to which no response is required.
23 To the extent a response is required, Defendants deny the allegations in paragraph
24 52. Defendants refer to the statements cited in paragraph 52, which speak for
25 themselves, for their true and complete contents and deny any characterization of
26 the statements by Plaintiff.

27 53. Paragraph 53 states legal conclusions to which no response is required.
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1 To the extent a response is required, Defendants deny the allegations in paragraph
2 53. Defendants refer to the investor communication cited in paragraph 53, which
3 speaks for itself, for its true and complete contents and deny any characterization of
4 the statements by Plaintiff.

5 54. Paragraph 54 states legal conclusions to which no response is required.
6 To the extent a response is required, Defendants deny the allegations in paragraph
7 54. Defendants refer to the investor communication cited in paragraph 54, which
8 speaks for itself, for its true and complete contents and deny any characterization of
9 the statements by Plaintiff.

10 55. Paragraph 55 states legal conclusions to which no response is required.
11 To the extent a response is required, Defendants deny the allegations in paragraph
12 55. Defendants refer to the annual report and LinkedIn page cited in paragraph 55,
13 which speak for themselves, for its true and complete contents and deny any
14 characterization of the statements by Plaintiff.

15 56. Paragraph 56 states legal conclusions to which no response is required.
16 To the extent a response is required, Defendants deny the allegations in paragraph
17 56.

18 57. Paragraph 57 states legal conclusions to which no response is required.
19 To the extent paragraph 57 is quoting a document, that document speaks for itself,
20 and Defendants deny any characterization of the statements by Plaintiff.

21 58. Paragraph 58 states legal conclusions to which no response is required.
22 To the extent a response is required, Defendants deny the allegations in paragraph
23 58. Defendants refer to the annual report cited in paragraph 58, which speaks for
24 itself, for its true and complete contents and deny any characterization of the
25 statements by Plaintiff.

26 59. Paragraph 59 states legal conclusions to which no response is required.
27 To the extent a response is required, Defendants deny the allegations in paragraph
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1 59.

2 60. Paragraph 60 states legal conclusions to which no response is required.
3 To the extent a response is required, Defendants deny the allegations in paragraph
4 60. Defendants refer to the statement cited in paragraph 60, which speaks for itself
5 for its true and complete contents and deny any characterization of the statements by
6 Plaintiff.

7 61. Paragraph 61 states legal conclusions to which no response is required.
8 To the extent a response is required, Defendants deny the allegations in paragraph
9 61.

10 62. Paragraph 62 states legal conclusions to which no response is required.
11 To the extent a response is required, Defendants deny the allegations in paragraph
12 62.

13 63. Paragraph 63 states legal conclusions to which no response is required.
14 To the extent a response is required, Defendants deny the allegations in paragraph
15 63.

16 64. The terms “substantial shareholders” and “substantial ownership
17 stakes” as used in paragraph 64 is vague and ambiguous, and on that basis
18 Defendants deny the allegations of paragraph 64.

19 65. Defendants admit that Nasty Gal Limited has an office located at 49-51
20 Dale Street, Manchester, England M1 2HF. Defendants deny the remaining
21 allegations in paragraphs 65.

22 66. Defendants deny the allegations in paragraph 66.

23 67. Paragraph 67 states legal conclusions to which no response is required.
24 To the extent a response is required, Defendants deny the allegations in paragraph
25 67.

26 68. Paragraph 68 states legal conclusions to which no response is required.
27 To the extent a response is required, Defendants deny the allegations in paragraph
28

1 68. Defendants refer to the annual report cited in paragraph 68, which speaks for
2 itself, for its true and complete contents and deny any characterization of the
3 statements by Plaintiff.

4 69. Defendants admit there are no physical “Nasty Gal” retail stores in the
5 U.S. Paragraph 69 otherwise states legal conclusions to which no response is
6 required. To the extent a response is required, Defendants deny the allegations in
7 paragraph 69.

8 70. Paragraph 70 states legal conclusions to which no response is required.
9 To the extent a response is required, Defendants deny the allegations in paragraph
10 70.

11 71. Paragraph 71 states legal conclusions to which no response is required.
12 To the extent a response is required, Defendants deny the allegations in paragraph
13 71.

14 72. Paragraph 72 states legal conclusions to which no response is required.
15 To the extent a response is required, Defendants deny the allegations in paragraph
16 72. Defendants refer to the statements cited in paragraph 72, which speak for
17 themselves for their true and complete contents and deny any characterization of the
18 statements by Plaintiff.

19 73. Paragraph 73 states legal conclusions to which no response is required.
20 To the extent a response is required, Defendants deny the allegations in paragraph
21 73. Defendants refer to Nasty Gal’s LinkedIn page cited in paragraph 73, which
22 speaks for itself, for its true and complete contents and deny any characterization of
23 the statements by Plaintiff.

24 74. Defendants refer to the press releases cited in paragraph 74, which
25 speak for themselves, for their true and complete contents and deny any
26 characterization of the statements by Plaintiff.

27 75. Defendants admit the Boohoo.com PLC changed its name to Boohoo
28

1 Group PLC in 2018 and acquired Nasty Gal in 2017. Defendants refer to the
2 statement cited in paragraph 75, which speaks for itself for its true and complete
3 contents and deny any characterization of the statements by Plaintiff.

4 76. Paragraph 76 states legal conclusions to which no response is required.
5 To the extent a response is required, Defendants deny the allegations in paragraph
6 76. Defendants refer to the annual report cited in paragraph 76, which speaks for
7 itself, for its true and complete contents and deny any characterization of the
8 statements by Plaintiff.

9 77. Paragraph 77 states legal conclusions to which no response is required.
10 To the extent a response is required, Defendants deny the allegations in paragraph
11 77. Defendants refer to the annual report cited in paragraph 77, which speaks for
12 itself, for its true and complete contents and deny any characterization of the
13 statements by Plaintiff.

14 78. Paragraph 78 states legal conclusions to which no response is required.
15 To the extent a response is required, Defendants deny the allegations in paragraph
16 78. Defendants refer to the statements cited in paragraph 78, which speak for
17 themselves, for their true and complete contents and deny any characterization of
18 the statements by Plaintiff.

19 79. Paragraph 79 states legal conclusions to which no response is required.
20 To the extent a response is required, Defendants deny the allegations in paragraph
21 79.

22 80. Paragraph 80 states legal conclusions to which no response is required.
23 To the extent a response is required, Defendants deny the allegations in paragraph
24 80.

25 81. Paragraph 81 states legal conclusions to which no response is required.
26 To the extent a response is required, Defendants deny the allegations in paragraph
27 81.

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1 82. Paragraph 82 states legal conclusions to which no response is required.
2 To the extent a response is required, Defendants deny the allegations in paragraph
3 82.

4 83. Paragraph 83 states legal conclusions to which no response is required.
5 To the extent a response is required, Defendants deny the allegations in paragraph
6 83.

7 84. Paragraph 84 states legal conclusions to which no response is required.
8 To the extent a response is required, Defendants deny the allegations in paragraph
9 84.

10 **VII. CLAIMS FOR RELIEF**

11 **FIRST CLAIM FOR RELIEF**

12 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW (CAL. BUS.**
13 **& PROF. CODE § 17200, et seq.)**

14 85. Defendants incorporate by reference their responses to paragraphs 1
15 through 84 of the complaint.

16 86. Paragraph 86 states legal conclusions to which no response is required.
17 To the extent a response is required, Defendants deny the allegations in paragraph
18 86.

19 87. Paragraph 87 states legal conclusions to which no response is required.
20 To the extent a response is required, Defendants deny the allegations in paragraph
21 87.

22 88. Paragraph 88 states legal conclusions to which no response is required.
23 To the extent a response is required, Defendants deny the allegations in paragraph
24 88.

25 89. Paragraph 89 states legal conclusions to which no response is required.
26 To the extent a response is required, Defendants deny the allegations in paragraph
27 89.

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1 90. Paragraph 90 states legal conclusions to which no response is required.
2 To the extent a response is required, Defendants deny the allegations in paragraph
3 90.

4 91. Paragraph 91 states legal conclusions to which no response is required.
5 To the extent a response is required, Defendants deny the allegations in paragraph
6 91.

7 92. Paragraph 92 states legal conclusions to which no response is required.
8 To the extent a response is required, Defendants deny the allegations in paragraph
9 92.

10 93. Paragraph 93 states legal conclusions to which no response is required.
11 To the extent a response is required, Defendants deny the allegations in paragraph
12 93.

13 94. Paragraph 94 states legal conclusions to which no response is required.
14 To the extent a response is required, Defendants deny the allegations in paragraph
15 94.

16 95. Paragraph 95 states legal conclusions to which no response is required.
17 To the extent a response is required, Defendants deny the allegations in paragraph
18 95.

19 96. Paragraph 96 states legal conclusions to which no response is required.
20 To the extent a response is required, Defendants deny the allegations in paragraph
21 96.

22 97. Paragraph 97 states legal conclusions to which no response is required.
23 To the extent a response is required, Defendants deny the allegations in paragraph
24 97.

25 98. Paragraph 98 states legal conclusions to which no response is required.
26 To the extent a response is required, Defendants deny the allegations in paragraph
27 98.

28

1 required. To the extent a response is required, Defendants deny the allegations in
2 paragraph 107.

3 108. Paragraph 108 states legal conclusions to which no response is
4 required. To the extent a response is required, Defendants deny the allegations in
5 paragraph 108.

6 109. Paragraph 109 states legal conclusions to which no response is
7 required. To the extent a response is required, Defendants deny the allegations in
8 paragraph 109.

9 **THIRD CLAIM FOR RELIEF**

10 **VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES**
11 **ACT, CAL. CIV. CODE § 1750, *et seq.***

12 110. Defendants incorporate by reference their responses to paragraphs 1
13 through 109 of the complaint.

14 111. Paragraph 111 states legal conclusions to which no response is
15 required. To the extent a response is required, Defendants deny the allegations in
16 paragraph 111.

17 112. Paragraph 112 states legal conclusions to which no response is
18 required. To the extent a response is required, Defendants deny the allegations in
19 paragraph 112.

20 113. Paragraph 113 and its subparagraphs (a)-(b) states legal conclusions to
21 which no response is required. To the extent a response is required, Defendants deny
22 the allegations in paragraph 113.

23 114. Paragraph 114 states legal conclusions to which no response is
24 required. To the extent a response is required, Defendants deny the allegations in
25 paragraph 114.

26 115. Paragraph 115 states legal conclusions to which no response is
27 required. To the extent a response is required, Defendants deny the allegations in
28

1 paragraph 115.

2 116. Defendants admit that Plaintiff sent a letter to Defendants regarding her
3 purchase, but Defendants deny that such a letter complied with the requirements of
4 the California Consumer Legal Remedies Act (“CLRA”). Defendants deny the
5 allegations in that letter and the remaining allegations in paragraph 116.

6 117. Defendants admit that Plaintiff sent a letter to Defendants regarding her
7 purchase, but Defendants deny that such a letter complied with the requirements of
8 the CLRA. Defendants deny the allegations in that letter and the remaining
9 allegations in paragraph 117.

10 118. Paragraph 118 states legal conclusions to which no response is
11 required. To the extent a response is required, Defendants deny the allegations in
12 paragraph 118.

13 **FOURTH CLAIM FOR RELIEF**

14 **FRAUD (INTENTIONAL MISREPRESENTATIONS)**

15 119. Defendants incorporate by reference their responses to paragraphs 1
16 through 118 of the complaint.

17 120. Paragraph 120 states legal conclusions to which no response is
18 required. To the extent a response is required, Defendants deny the allegations in
19 paragraph 120.

20 121. Paragraph 121 states legal conclusions to which no response is
21 required. To the extent a response is required, Defendants deny the allegations in
22 paragraph 121.

23 122. Paragraph 122 states legal conclusions to which no response is
24 required. To the extent a response is required, Defendants deny the allegations in
25 paragraph 122.

26 123. Paragraph 123 states legal conclusions to which no response is
27 required. To the extent a response is required, Defendants deny the allegations in
28

1 paragraph 123.

2 124. Paragraph 124 states legal conclusions to which no response is
3 required. To the extent a response is required, Defendants deny the allegations in
4 paragraph 124.

5 125. Paragraph 125 states legal conclusions to which no response is
6 required. To the extent a response is required, Defendants deny the allegations in
7 paragraph 125.

8 126. Paragraph 126 states legal conclusions to which no response is
9 required. To the extent a response is required, Defendants deny the allegations in
10 paragraph 126.

11 **FIFTH CLAIM FOR RELIEF**

12 **FRAUDULENT CONCEALMENT**

13 127. Defendants incorporate by reference their responses to paragraphs 1
14 through 126 of the complaint.

15 128. Paragraph 128 states legal conclusions to which no response is
16 required. To the extent a response is required, Defendants deny the allegations in
17 paragraph 128.

18 129. Paragraph 129 states legal conclusions to which no response is
19 required. To the extent a response is required, Defendants deny the allegations in
20 paragraph 129.

21 130. Paragraph 130 states legal conclusions to which no response is
22 required. To the extent a response is required, Defendants deny the allegations in
23 paragraph 130.

24 131. Paragraph 131 states legal conclusions to which no response is
25 required. To the extent a response is required, Defendants deny the allegations in
26 paragraph 131.

27 132. Paragraph 132 states legal conclusions to which no response is
28

1 required. To the extent a response is required, Defendants deny the allegations in
2 paragraph 132.

3 133. Paragraph 133 states legal conclusions to which no response is
4 required. To the extent a response is required, Defendants deny the allegations in
5 paragraph 133.

6 134. Paragraph 134 states legal conclusions to which no response is
7 required. To the extent a response is required, Defendants deny the allegations in
8 paragraph 134.

9 135. Paragraph 135 states legal conclusions to which no response is
10 required. To the extent a response is required, Defendants deny the allegations in
11 paragraph 135.

12 136. Paragraph 136 states legal conclusions to which no response is
13 required. To the extent a response is required, Defendants deny the allegations in
14 paragraph 136.

15 **SIXTH CLAIM FOR RELIEF**

16 **RESTITUTION FOR UNJUST ENRICHMENT**

17 137. Defendants incorporate by reference their responses to paragraphs 1
18 through 136 of the complaint.

19 138. Paragraph 138 states legal conclusions to which no response is
20 required. To the extent a response is required, Defendants deny the allegations in
21 paragraph 138.

22 139. Paragraph 139 states legal conclusions to which no response is
23 required. To the extent a response is required, Defendants deny the allegations in
24 paragraph 139.

25 140. Paragraph 140 states legal conclusions to which no response is
26 required. To the extent a response is required, Defendants deny the allegations in
27 paragraph 140.
28

1 141. Paragraph 141 states legal conclusions to which no response is
2 required. To the extent a response is required, Defendants deny the allegations in
3 paragraph 141.

4 **VIII. PRAYER FOR RELIEF**

5 The Prayer for Relief states legal conclusions for which no response is
6 necessary. To the extent a response is required, Defendants deny the allegations in
7 the Prayer for Relief.

8 Unless specifically admitted above, Defendants deny each and every
9 allegation in the complaint. Defendants further deny that Plaintiff is entitled to
10 judgment in her favor or for any relief, including the relief requested in the Prayer
11 for Relief.

12 **DEFENSES**

13 Without assuming the burden of proof on any matter where that burden rests
14 on Plaintiff, Defendants asserts the following defenses with respect to the complaint,
15 including affirmative defenses.

16 **First Defense**

17 142. The complaint fails, in whole or in part, to state a claim upon which
18 relief can be granted.

19 **Second Defense**

20 143. Plaintiff lacks standing to assert the claims alleged in the complaint.

21 **Third Defense**

22 144. All or part of the claims that Plaintiff asserts are barred by the doctrines
23 of estoppel, laches, unclean hands, waiver and/or acquiescence.

24 **Fourth Defense**

25 145. All or part of the claims that Plaintiff asserts are barred by the
26 applicable statute(s) of limitations and repose.
27
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Fifth Defense

146. The claims of absent class members are barred on an individual basis because the information that Plaintiff claim was deceptive was not material to her. On information and belief, most of Defendants’ customers shop at Nasty Gal because of its competitive pricing, and not because of Nasty Gal’s reference pricing. Purchasing behavior is complex, and the overwhelming majority of Defendants’ customers bought items for many different reasons that had no connection to the reference pricing, and without any misunderstanding as to what the Reference Price means.

Sixth Defense

147. The claims of Plaintiff and/or members of the purported class are barred in whole or in part, by the doctrine of accord and satisfaction. Over the preceding five years, many customers have returned their purchases for a full refund. These customers have no claim.

Seventh Defense

148. Plaintiff’s claims are barred to the extent he would be unjustly enriched by any recovery, including because he received the goods he purchased and did not return them.

Eighth Defense

149. All or part of the claims that Plaintiff asserts should be denied because Plaintiff cannot recover disgorgement of benefits and/or profits.

Ninth Defense

150. Plaintiff’s claims are not appropriate for certification under Rule 23 of the Federal Rules of Civil Procedure.

Tenth Defense

151. If Plaintiff sustained damages, which Defendants specifically deny, Plaintiff’s claims are barred, in whole or in party, because the conduct, actions, or omissions of other persons or entities, over which Defendants had no control, caused

1 or contributed to Plaintiff's alleged damages.

2 **Eleventh Defense**

3 152. Plaintiff's claims for equitable relief are barred by the existence of
4 adequate remedies at law, including Plaintiff's equitable claims under the UCL,
5 FAL, and "restitution for unjust enrichment."

6 **Twelfth Defense**

7 153. Plaintiff has not been damaged, and Defendants' conduct did not cause,
8 proximately cause, solely cause, or solely-proximately cause the damages and/or
9 injuries Plaintiff claims.

10 **Thirteenth Defense**

11 154. Plaintiff has failed to plead her claims with sufficient particularity.

12 **Fourteenth Defense**

13 155. The relief Plaintiff seeks is barred, in whole or part, because the
14 conduct complained of is not unlawful, unfair, fraudulent, deceptive, untrue, or
15 misleading.

16 **Fifteenth Defense**

17 156. To the extent Plaintiff seeks punitive damages, Plaintiff fails to allege
18 facts sufficient to entitle him to any award of such damages

19 **Sixteenth Defense**

20 157. Defendants did not engage in any conduct which would warrant or
21 form a valid basis for an award of punitive damages.

22 **Seventeenth Defense**

23 158. Plaintiff failed to adequately plead and/or allege that Defendants acted
24 with the requisite state of mind to warrant an award of punitive damages.

25 **Eighteenth Defense**

26 159. If Plaintiff sustained injuries or damages as alleged, which Defendants
27 deny, her injuries or damages were the result of intervening and/or superseding
28 causes, and not as a result of acts or omissions by Defendants.

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Nineteenth Defense

160. All or part of the claims that Plaintiff asserts are barred in whole or in part because she has not suffered any ascertainable loss of money or property.

Twentieth Defense

161. All or part of the claims that Plaintiff asserts are barred in whole or part by the First Amendment to the United States Constitution and the free speech provision of the California Constitution, which protect, among other things, Defendants’ right to promote and advertise the products at issue. The statutes upon which Plaintiffs rely, including California Business and Professions Code section 17501, unconstitutionally regulate free speech.

Twenty-first Defense

162. Some or all of Plaintiff’s claims are not amenable to judicial resolution based on the primary jurisdiction doctrine.

Twenty-second Defense

163. Some or all of Plaintiff’s claims are barred by the doctrine of federal preemption.

Twenty-third Defense

164. Plaintiff’s claims are barred because she failed to exhaust administrative remedies.

Twenty-fourth Defense

165. Plaintiff’s statutory claims are barred for failure to comply with procedural requirements, including but not limited to the procedural requirements set for in Civil Code section 1750 *et seq.*

Twenty-fifth Defense

166. Plaintiff’s claims are barred because Defendants were under no duty to disclose any of the purported information Plaintiff alleges was not disclosed.

Twenty-sixth Defense

167. Plaintiff’s claims under the California Business & Professions Code

1 section 17200 *et seq.* are exempted by the safe harbor provision in the California
2 Business and Professions Code section 17200 *et seq.* Plaintiff's claims under the
3 California Business & Professions Code section 17500 *et seq.* are exempted by the
4 safe harbor provision in the California Business & Professions Code section 17500
5 *et seq.*

6 **Twenty-seventh Defense**

7 168. All or part of the claims that Plaintiff asserts are void for vagueness
8 under the due process clauses of the United States and California Constitution.

9 **Twenty-eighth Defense**

10 169. Defendants assert that Plaintiff has failed to set forth her claims with
11 sufficient particularity to permit Defendants to raise all separate and affirmative
12 defenses. For this reason, and for others, Defendants reserve the right to amend
13 and/or supplement the averments of their Answer to assert any and all pertinent
14 defenses ascertained through further investigation and discovery or otherwise.
15 Defendants will rely on all defenses that may become available or apparent in
16 discovery or trial.

17 **PRAYER FOR RELIEF**

18 170. Defendants pray that the Court enter judgment that Plaintiff take
19 nothing by its complaint, denying Plaintiff all requested relief, enter an order
20 dismissing all claims with prejudice, and award Defendants such further relief as the
21 Court deems just and proper.

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DATED: January 29 , 2021 EVERSHEDES SUTHERLAND (US) LLP

By /s/ Ian S. Shelton
Ian S. Shelton

Attorneys for Defendants Nastygal.com
USA Inc., Nasty Gal Limited, and Boohoo
Group PLC