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12 Attorneys for Plaintiffs
13 LULULEMON ATHLETICA CANADA INC.
14 LULULEMON USA INC.

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 LULULEMON ATHLETICA
18 CANADA INC. AND LULULEMON
19 USA, INC.,

20 Plaintiffs,

21 vs.

22 COSTCO WHOLESALE
23 CORPORATION

24 Defendant.

Case No. 2:25-cv-5864

**COMPLAINT JURY TRIAL
DEMANDED**

1 Plaintiffs lululemon athletica canada inc. and lululemon usa, inc. (“lululemon”
2 or “Plaintiffs”), by and through their undersigned counsel, for their Complaint against
3 Defendant Costco Wholesale Corporation (“Costco” or “Defendant”) allege as
4 follows:

5 **INTRODUCTION**

6 1. lululemon is a path-breaking athletic and lifestyle apparel company
7 founded in 1998 in Vancouver, British Columbia, Canada. lululemon designs,
8 manufactures, and distributes innovative, unique and high-performing apparel,
9 footwear and accessories that have achieved remarkable consumer success. Since its
10 inception, lululemon has been pioneering products that are sought after by athletes
11 as well as a growing core of consumers who desire everyday performance wear
12 consistent with their active lifestyles, including lululemon’s popular SCUBA®
13 hoodies and sweatshirts, DEFINE® jackets, and ABC pants.

14 2. As a design and innovation led company, lululemon has invested
15 substantial effort and resources to develop, promote, and protect its brands and
16 innovations. lululemon’s product design process is driven by extensive research,
17 guest feedback, and testing to develop high-performance products with innovative
18 design concepts, impressive construction techniques, and strategic fits. As a result,
19 consumers in the United States and around the world recognize, enjoy and rely upon
20 lululemon’s trademarks and creative designs as signifiers of lululemon’s high-quality
21 and high-performance products, placing them among the most recognizable athletic
22 and lifestyle apparel in the world.

23 3. lululemon files this action as part of its intellectual property enforcement
24 efforts directed to retailers who have chosen to copy rather than compete. Costco has
25 unlawfully traded upon Plaintiffs’ reputation, goodwill and sweat equity by selling
26 unauthorized and unlicensed apparel employing knockoff, infringing versions of
27 Plaintiffs’ well-known trade dress and design patents (the “Infringing Products”) and
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1 to recover fully for the monetary damages and significant harm to lululemon’s brands
2 and reputation caused by Defendant.

3 4. Given the success of Plaintiffs’ products, some companies have
4 replicated or copied Plaintiffs’ proprietary apparel designs to create what are
5 colloquially known in the fashion world as “knockoffs” or “dupes.” There is even a
6 hashtag “LululemonDupes” on social media platforms such as TikTok that social
7 media influencers use when promoting these copycat products. The Infringing
8 Products create an improper association with Plaintiffs’ authentic products. Upon
9 information and belief, some customers incorrectly believe these Infringing Products
10 are authentic lululemon apparel while still other customers specifically purchase the
11 Infringing Products because they are difficult to distinguish from authentic lululemon
12 products, particularly for downstream purchasers or observers.

13 5. These Infringing Products, including the products at issue in this
14 Complaint, infringe Plaintiffs’ intellectual property rights and damage Plaintiffs’
15 hard-earned reputation and immense goodwill. Plaintiffs’ have used various methods
16 to remove the infringing products from the market. Plaintiffs send cease and desist
17 letters to companies, including Defendant, who, through the advertising or sale of
18 dupes, infringe Plaintiffs’ intellectual property. Plaintiffs also enforce their
19 intellectual property rights in court.

20 6. Upon information and belief, one of the reasons retailers such as
21 Defendant, desire to sell dupes of Plaintiffs’ products is the potential for confusion
22 and perceived association between dupe products and Plaintiffs’ authentic products
23 that such sales create amongst their consumers that benefits the retailer. Indeed, one
24 of the purposes of selling “dupes” is to confuse consumers at the point-of-sale and/or
25 observers post-sale into believing that the “dupes” are Plaintiffs’ authentic products
26 when they are not. For example, *The Washington Post* published an article titled “Is
27 That Hoodie a Lululemon or a Costco Dupe? No One Has to Know But You.” As
28 another example, *The New York Times* recently published an article titled “Are These

1 \$20 Costco Pants a Lululemon Dupe? We Investigated.” A true and correct copy of
2 this article is attached as **Exhibit 1**. *The New York Times* article stated “[w]hen I
3 held these two pairs of pants and inspected their construction, they looked almost
4 identical. I asked Lululemon whether the brand made these pants for Kirkland.” That
5 same article stated: “If the promise of the Lululemon ABC pants is that they can fully
6 replace cotton chinos, Kirkland doesn’t even begin to deliver on that with its pants.”

7 7. Upon information and belief, Defendant is known to use manufacturers
8 of popular branded products for its own KIRKLAND® “private label” products.
9 Such private label sales accounts for over a third of Defendant’s sales, but neither
10 Defendant nor the original manufacturer informs their consumers of the connection
11 for many of the KIRKLAND-branded dupes. Upon information and belief, this
12 source ambiguity preconditions at least some consumers into believing that private
13 label, KIRKLAND-branded dupes are in fact manufactured by the authentic supplier
14 of the “original” products. Defendant does not dispel this ambiguity.

15 JURISDICTION AND VENUE

16 8. This is an action for trade dress infringement and unfair competition
17 under the Lanham Act (15 U.S.C. § 1051 *et seq.*), patent infringement arising under
18 the patent laws of the United States (35 U.S.C. § 1 *et seq.*), violation of the California
19 Unfair Business Practices Act (Cal. Bus. & Prof. Code § 17200 *et seq.*), and
20 violations of the common law of the state of California.

21 9. This Court has subject matter jurisdiction over the federal claims
22 asserted in this action under 28 U.S.C. §§ 1331 and 1338(a). This Court has
23 supplemental jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C.
24 § 1367(a) since they are so related to the federal claims that they form part of the
25 same case or controversy and derive from a common nucleus of operative fact.

26 10. This Court has personal jurisdiction over Defendant by virtue of
27 Defendant’s longstanding presence in this state, by having regular and established
28 places of business in this judicial district, by placing infringing products in the stream

1 of commerce marketed and directed to residents of this judicial district, by deriving
2 financial and commercial benefits from the sale of infringing products, by causing
3 injury to Plaintiffs within this judicial district and by being registered with the
4 Secretary of State of California to do business in this state.

5 11. Venue is proper under 28 U.S.C. §§ 1391(b)-(c) because a substantial
6 part of the events or omissions giving rise to the claims alleged in this lawsuit
7 occurred in this judicial district and Plaintiffs have been injured in this judicial district
8 and 28 U.S.C. § 1400(b) because Defendant has a regular and established place of
9 business in this judicial district and committed acts of infringement in this judicial
10 district.

11 **THE PARTIES**

12 12. Plaintiff lululemon usa, inc. is a Nevada corporation with a principal
13 place of business at 1818 Cornwall Avenue, Vancouver, British Columbia, V6J 1C7,
14 Canada. Plaintiff lululemon athletica canada inc. is a Canadian corporation with a
15 principal place of business at 1818 Cornwall Avenue, Vancouver, British Columbia,
16 V6J 1C7, Canada. Plaintiffs' performance apparel and accessories are available
17 throughout the United States online and through retail stores, including multiple
18 stores in this judicial district.

19 13. Upon information and belief, Defendant Costco Wholesale Corporation
20 is a corporation organized and existing under the laws of the state of Washington
21 with a principal place of business at 999 Lake Drive, Issaquah, Washington 98027.
22 Upon information and belief, Defendant owns and operates retail stores throughout
23 the United States, including multiple stores in this judicial district.

24 **FACTUAL BACKGROUND**

25 14. Since 1998, Plaintiffs have designed, distributed, strategically marketed,
26 offered for sale and sold premium athletic and casual lifestyle apparel and accessories
27 under distinctive trademarked brands and trade dress, including their wildly popular
28 SCUBA® hoodies and sweatshirts, DEFINE® jackets, and ABC pants.

1 15. The prestige and renown of Plaintiffs’ brands, including SCUBA
2 hoodies and sweatshirts, DEFINE jackets, and ABC pants are further enhanced by
3 careful marketing and distribution of Plaintiffs’ products.

4 16. Plaintiffs’ products have widespread recognition. Consumers
5 understand and have come to expect Plaintiffs’ products to be at the forefront of
6 design, creativity, high quality and unique innovation in the athletic and casual
7 lifestyle apparel market. Accordingly, consumers associate products originating
8 from, sponsored by, or affiliated with lululemon as associated with these
9 characteristics of quality and innovation.

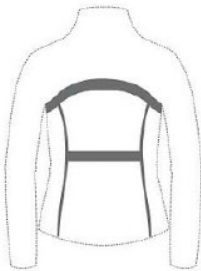

10 17. Plaintiffs are the owner of, and have widely promoted, trademarks and
11 trade dress, including for SCUBA hoodies and sweatshirts, DEFINE jackets, and
12 ABC pants, several of which are registered on the Principal Register of the U.S.
13 Patent & Trademark Office and which have earned substantial fame and considerable
14 goodwill among the public.

15 18. Plaintiffs have used their trademarks and trade dress on and in
16 association with its various lines of athletic and casual lifestyle apparel and
17 accessories, including SCUBA hoodies and sweatshirts, DEFINE jackets, and ABC
18 pants, as well as in connection with packaging, retail store services, and online e-
19 commerce.

20 19. Plaintiffs have also secured patent protection for their designs, including
21 designs embodied in the SCUBA hoodies and sweatshirts and DEFINE jackets.

22 **A. The Intellectual Property Protecting Plaintiffs’ DEFINE® Apparel**

23 20. Plaintiffs’ DEFINE jackets are protected by trade dress registered on the
24 Principal Register of the U.S. Patent & Trademark Office for which Plaintiff
25 lululemon athletica canada inc. owns all rights, title and interest, namely (the
26 “Registered DEFINE Trade Dress”):
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Reg. No.	Mark	Reg. Date	Date of First Use	Relevant Goods
7,526,264		October 8, 2024	2009	Clothing jackets
7,526,265		October 8, 2024	2009	Clothing jackets

21. True and correct copies of the certificates of registration for the Registered DEFINE Trade Dress are attached hereto as **Exhibits 2 and 3** and incorporated herein. These registrations are valid, subsisting and in full force and effect.

22. The Registered DEFINE Trade Dress has been used exclusively and continuously by Plaintiffs and their subsidiaries, since at least as early as 2009, and has never been abandoned.

23. Plaintiffs have also acquired extensive common law rights in the distinctive overall appearance and holistic design of its DEFINE jackets comprised of the following unique combination of elements (the “lululemon DEFINE Trade

1 Dress”). Examples of products bearing the lululemon DEFINE Trade Dress are
2 depicted below:



13 24. The lululemon DEFINE Trade Dress includes a jacket having:

- 14
- 15 • approximately mirror image curvilinear ornamental lines on the front of the jacket;
 - 16 • one set of the mirroring curvilinear ornamental lines on the front extend from the chest to the waist;
 - 17 • another set of the mirroring curvilinear lines extending from the chest toward the neck region;
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- a curved ornamental line that extends across the mid-back region of the jacket; and,
- an approximately mirror image curvilinear ornamental line from below the ornamental line across the mid-back of the region towards the bottom seam of the jacket.



25. The lululemon DEFINE Trade Dress has been used exclusively and continuously by Plaintiffs since at least as early as 2009, and has never been abandoned (the Registered DEFINE Trade Dress and lululemon DEFINE Trade Dress are collectively referred to as the “DEFINE Trade Dress”).

26. Plaintiffs have spent significant resources and effort to develop and promote public recognition of the DEFINE Trade Dress throughout the world. As a result of Plaintiffs’ extensive promotional efforts, sales and its continuous use for more than 15 years, Plaintiffs have attained high levels of recognition of the DEFINE Trade Dress. For example, Plaintiffs’ products bearing the DEFINE Trade Dress have been featured favorably in unsolicited media coverage such as *USA Today*, *People*, and *Yahoo! Style*. As another example, products bearing the DEFINE Trade Dress have appeared on popular shows such as *Bachelorette*, *Big Little Lies* and *New Girl*. As another example, products bearing the DEFINE Trade Dress have received millions of views on social media platforms such as TikTok and Instagram. Additionally, celebrities such as Kate Middleton, Nicole Kidman, Reese

1 Witherspoon, Kristin Davis, Kourtney Kardashian, LeAnne Rimes, and Kelly Ripa
2 have been “spotted” wearing Plaintiffs’ products featuring the DEFINE Trade Dress.
3 Images of some of these individuals are shown below:



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10 As a result of Plaintiffs’ longstanding and widespread use, sales and promotion of
11 the DEFINE Trade Dress, the public has come to recognize products bearing the
12 DEFINE Trade Dress as emanating from Plaintiffs and associate such products with
13 Plaintiffs’ high-quality goods and services. The DEFINE Trade Dress has
14 established strong secondary meaning and extensive goodwill.

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16 27. The DEFINE Trade Dress is non-functional. The design features
17 embodied by the DEFINE Trade Dress are not essential to the function of the product,
18 do not make the product cheaper or easier to manufacture, and do not affect the
19 quality of the product. The design elements of the DEFINE Trade Dress are not a
20 competitive necessity for apparel products. Examples of jackets that do not bear the
21 DEFINE Trade Dress are illustrated below:



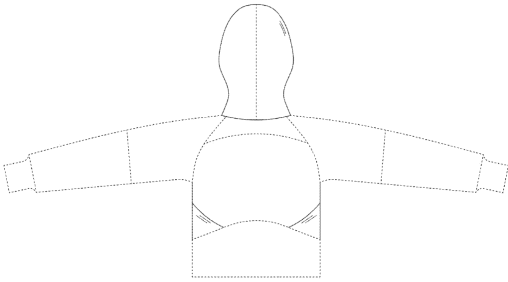
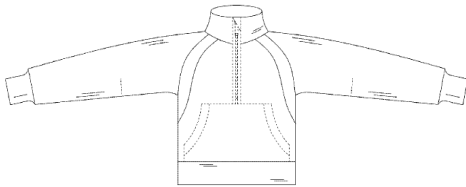
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28. The design features of the DEFINE Trade Dress are not comparatively simple or inexpensive to manufacture because the elements are more complex than other garments. For example, the ornamental lines in the DEFINE Trade Dress make products bearing the DEFINE Trade Dress more expensive to manufacture than other garments without these ornamental lines. The design of the DEFINE Trade Dress is not a competitive necessity.

B. The Intellectual Property Protecting Plaintiffs' SCUBA® Apparel

29. Plaintiffs' SCUBA hoodies and sweatshirts are protected by a number of patents, for example, U.S. Patent No. D989,442 issued on June 20, 2023 and U.S. Patent No. D1,035,219 issued on July 16, 2024 covering the ornamental design of the SCUBA hoodies and sweatshirts, true and correct copies of which are attached hereto as **Exhibits 4 and 5** and incorporated herein. Plaintiff lululemon athletica canada inc. owns all right, title and interest in these design patents.

Reg. No.	Exemplar Figures	Reg. Date	Claim
D989,442		June 20, 2023	The ornamental design for a garment, as shown and described
D1,035,219		July 16, 2024	The ornamental design for a garment, as shown and described

30. Plaintiffs have also acquired extensive common law rights in the distinctive overall appearance and design of their hoodies and sweatshirts sold under the SCUBA mark (the “SCUBA Trade Dress”). Examples of products bearing the SCUBA Trade Dress are depicted below:



- 1 31. The SCUBA Trade Dress includes sweatshirts and hoodies having:
- 2 • a kangaroo pocket on the front;
- 3 • the top of the kangaroo pocket is narrower than the bottom of the kangaroo
- 4 pocket;
- 5 • curved openings that extend from each side of the kangaroo pocket to
- 6 approximately the middle of the kangaroo pocket;
- 7 • a closed seam that extends linearly from approximately the middle of the
- 8 kangaroo pocket to the bottom seam of the kangaroo pocket;



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- 16 • a set of ornamental lines that extend from each side of the neck line toward the
- 17 underarm on the front of the sweatshirt, defining a region of visual texture
- 18 between the ornamental lines that differs from a visual texture of the adjacent
- 19 region.



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27 32. The SCUBA Trade Dress has been used exclusively and continuously

28 by Plaintiffs since at least as early as 2020, and has never been abandoned.

1 33. Plaintiffs have spent significant resources and effort to develop and
2 promote public recognition of the SCUBA Trade Dress throughout the world. As a
3 result of Plaintiffs’ extensive promotional efforts, sales and its continuous use,
4 Plaintiffs have attained high levels of recognition in the SCUBA Trade Dress. For
5 example, Plaintiffs’ products bearing the SCUBA Trade Dress have been featured
6 favorably in unsolicited media coverage such as *Yahoo! Life* and *Pop Sugar*.

7 34. As a result of Plaintiffs’ longstanding and widespread use, sales and
8 promotion of the SCUBA Trade Dress, the public has come to recognize products
9 bearing the SCUBA Trade Dress as emanating from Plaintiffs and to identify such
10 products with Plaintiffs’ high-quality goods and services. The SCUBA Trade Dress
11 has established strong secondary meaning and goodwill.

12 35. The SCUBA Trade Dress is non-functional. The design features
13 embodied by the SCUBA Trade Dress are not essential to the function of the product,
14 do not make the product cheaper or easier to manufacture, and do not affect the
15 quality of the product. The design elements of the SCUBA Trade Dress are not a
16 competitive necessity for apparel products. Examples of sweatshirts that do not bear
17 the SCUBA Trade Dress are illustrated below:



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36. The design features of the SCUBA Trade Dress are not comparatively simple or inexpensive to manufacture because the elements are more complex than other garments. For example, the ornamental lines in the SCUBA Trade Dress make products bearing the SCUBA Trade Dress more expensive to manufacture than other garments without these ornamental lines. The design of the SCUBA Trade Dress is not a competitive necessity.

37. Plaintiff lululemon athletica canada inc. is also the owner of all right, title, and interest in U.S. Trademark Registration No. 4,333,759 (the “’759 Registration) for SCUBA (the “SCUBA Mark”) for use in connection with clothing, namely hooded sweatshirts, jackets, coats, and tops. A true and correct copy of the Registration Certificate for the ’759 Registration is attached hereto as **Exhibit 6**.

38. lululemon sells numerous products under the TIDEWATER TEAL™ mark, including the viral sensation Everywhere Belt Bag, the ALIGN product franchise, CITY SWEAT joggers, LOUNGEFUL hoodies, SWIFTLY tank tops, and some of lululemon’s SCUBA Trade Dress products. lululemon has continuously and extensively used the TIDEWATER TEAL™ mark since at least 2019. Due to lululemon’s extensive efforts, as well as the publicity associated with lululemon’s apparel, the TIDEWATER TEAL™ mark is an important component of lululemon’s business and recognized as symbolizing lululemon’s high quality products.

1 39. As a result of lululemon’s long, continuous, extensive, and exclusive
2 use of the TIDEWATER TEAL™ mark, as well as its substantial marketing,
3 promotion, and sale of products under the mark, the public has come to recognize
4 this mark as identifying products that originate from lululemon. lululemon has spent
5 time, effort, and expense to create valuable goodwill in the TIDEWATER TEAL™
6 mark. Products sold under lululemon’s TIDEWATER TEAL™ mark typically sell
7 very quickly relative to lululemon’s other products. There are reddit threads
8 specifically discussing lululemon products sold under the TIDEWATER TEAL™
9 mark.

10 40. lululemon’s products sold under the TIDEWATER TEAL™ mark have
11 been featured favorably in unsolicited media coverage such as *Yahoo! Style*,
12 *Canadian Running*, and *ABC 7* (Los Angeles).

13 41. The top listings in a Google search for “tidewater teal” returns results
14 referencing lululemon products and do not refer to any other sellers of clothing or
15 bags. **Exhibit 7.**

16 42. Upon information and belief, none of lululemon’s competitors use
17 TIDEWATER TEAL in connection with clothing or bags other than the Infringing
18 Products.

19 **C. The Intellectual Property Protecting Plaintiffs’ ABC Pants**

20 43. Plaintiffs have also acquired extensive common law rights in the
21 distinctive overall appearance and holistic design of its ABC pants comprised of the
22 following unique combination of elements (the “ABC Trade Dress”). Examples of
23 products bearing the ABC Trade Dress are depicted below:
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44. The ABC Trade Dress includes pants comprised of a fabric that has a synthetic, flat, semi-matte appearance and appears to be largely made of a uniform texture with four-direction stretch, i.e., it appears to be able to stretch in four directions; an outlined area in the crotch region that is formed by ornamental lines at least one of which extends through the crotch region and at least partially down each leg and another of which is curved toward the back of the pants:



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2 an ornamental line extending across the rear of the pants above any pockets but below
3 any belt loops:



12 mirror image ornamental lines on the front of the pants extending in an arc from a
13 region near the waistband toward the side of the pants and the ending of which is
14 overlapped by a decorative metallic circle:
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25 45. Plaintiffs have spent significant resources and effort to develop and
26 promote public recognition of the ABC Trade Dress throughout the world. As a result
27 of Plaintiffs' extensive promotional efforts, sales and its continuous use for more than
28 ten years, Plaintiffs have attained high levels of recognition in the ABC Trade Dress.

1 For example, advertising for products bearing the ABC Trade Dress has featured
2 hockey great Wayne Gretzky, football star DK Metcalf, and football coach Sean
3 Payton wearing products bearing the ABC Trade Dress. As another example,
4 Plaintiffs’ products bearing the ABC Trade Dress have been featured favorably in
5 publications such as *Men’s Health*, *Esquire*, the *Wall Street Journal*, *New York*
6 *Magazine*, and *The New York Times*. Former President Barak Obama has also been
7 “spotted” wearing products bearing the ABC Trade Dress.

8 46. As a result of Plaintiffs’ longstanding and widespread use, sales and
9 promotion of the ABC Trade Dress, the public has come to recognize products
10 bearing the ABC Trade Dress as emanating from Plaintiffs and to identify such
11 products with Plaintiffs’ high-quality goods and services. The ABC Trade Dress has
12 established strong secondary meaning and goodwill.

13 47. The ABC Trade Dress is non-functional. The design features embodied
14 by the ABC Trade Dress are not essential to the function of the product, do not make
15 the product cheaper or easier to manufacture, and do not affect the quality of the
16 product. The design elements of the ABC Trade Dress are not a competitive
17 necessity for apparel products. Examples of pants that do not bear the ABC Trade
18 Dress are illustrated below:

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**Tommy Hilfiger Men's TH Flex
Stretch Chino Pant**



**Dockers Men's Easy Classic Fit
Khaki Stretch Pants**



H&M Relaxed-Fit Cargo Pants



Bonobos Course Legend Pants



1 48. The design features of the ABC Trade Dress are not comparatively
2 simple or inexpensive to manufacture because the elements are more complex than
3 other garments. For example, the ornamental lines in the ABC Trade Dress make
4 products bearing the ABC Trade Dress more expensive to manufacture than other
5 garments without these ornamental lines. The design of the ABC Trade Dress is not
6 a competitive necessity.

7 **D. Defendant's Infringing Activities**

8 49. Plaintiffs bring this action to combat Defendant's importation,
9 distribution, advertisement, marketing, offering for sale and sale in the U.S. of
10 apparel that infringe upon the SCUBA Hoodie Trade Dress, the SCUBA Patents, the
11 SCUBA Mark, the DEFINE Trade Dress, and the ABC Trade Dress.

12 50. Upon information and belief, Defendant Costco is a large online and
13 bricks-and-mortar retailer that sells a wide variety of apparel. Defendant competes
14 with Plaintiffs by selling apparel nationwide, including through numerous stores
15 located in this judicial district and its website (www.costco.com), which is accessible
16 to customers in this judicial district as well as throughout the country.

17 51. Upon information and belief, Defendant has imported into the U.S.,
18 distributed, advertised, marketed, offered for sale and/or sold at least the Infringing
19 Products identified under the names "Danskin Ladies Half-Zip Hoodie," "Danskin
20 Half-Zip Pullover," "Jockey Ladies Yoga Jacket," "Spyder Women's Yoga Jacket,"
21 "Hi-Tec Men's Scuba Full Zip," and "Kirkland 5 Pocket Performance Pant."

22 52. On November 11, 2024, lululemon wrote to Costco about its
23 infringement of lululemon's intellectual property, including the SCUBA Mark and
24 U.S. Design Patent Nos. D989,442 and D1,035,219 and U.S. Trademark Reg. No.
25 4,333,759. On information and belief, Costco subsequently removed at least some
26 of the products that infringed lululemon's SCUBA Mark, but later began selling the
27 infringing Hi-Tec Men's Scuba Full Zip.
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1 **i. The Infringing “Danskin Ladies Half-Zip”**

2 53. Upon information and belief, Defendant imported into the U.S.,
3 distributed, advertised, marketed, offered for sale and/or sold at least the Infringing
4 Products identified under the name “Danskin Half-Zip Pullover,” an exemplar of
5 which is shown below next to Plaintiffs’ genuine SCUBA product embodying
6 Plaintiffs’ SCUBA Trade Dress and the ornamental design of the Asserted Patents
7 (the “Danskin Pullover Products”):

lululemon SCUBA® Product	Danskin Half-Zip Pullover Front
	

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15 54. Upon information and belief, Defendant imported into the U.S.,
16 distributed, advertised, marketed, offered for sale, and/or sold at least some of the
17 Danskin Half-Zip Pullover products using the phrase “Tidewater Teal.”
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19 **ii. The Infringing “Danskin Ladies Half-Zip Hoodie”**

20 55. Upon information and belief, Defendant imported into the U.S.,
21 distributed, advertised, marketed, offered for sale and/or sold at least the Infringing
22 Products identified under the name “Danskin Ladies Half-Zip Hoodie,” an exemplar
23 of which is shown below next to Plaintiffs’ genuine SCUBA hoodies embodying
24 Plaintiffs’ SCUBA Trade Dress and the ornamental design of the Asserted Patents
25 (the “Danskin Hoodie Products”):
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lululemon SCUBA® Product	Danskin Half-Zip Hoodie Front
	

56. Upon information and belief, Defendant imported into the U.S., distributed, advertised, marketed, offered for sale, and/or sold at least some of the Danskin Half-Zip Hoodie products using the phrase “Tidewater Teal.”

iii. The Infringing “Jockey Ladies Yoga Jacket”

57. Upon information and belief, Defendant has imported into the U.S., distributed, advertised, marketed, offered for sale and/or sold at least the Infringing Products identified under the name “Jockey Ladies Yoga Jacket,” an exemplar of which is shown below next to Plaintiffs’ genuine DEFINE jackets embodying Plaintiffs’ DEFINE Trade Dress (the “Jockey Products”):

lululemon DEFINE® Jacket Front	Jockey Ladies Yoga Jacket Front
	

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lululemon DEFINE® Jacket Back	Jockey Ladies Yoga Jacket Back
	

iv. The Infringing “Spyder Women’s Yoga Jacket”

58. Upon information and belief, Defendant has imported into the U.S., distributed, advertised, marketed, offered for sale and/or sold at least the Infringing Products identified under the name “Spyder Women’s Yoga Jacket,” an exemplar of which is shown below next to Plaintiffs’ genuine DEFINE jackets embodying Plaintiffs’ DEFINE Trade Dress (the “Spyder Products”):

lululemon DEFINE® Jacket Front	Spyder Women’s Yoga Jacket Front
	

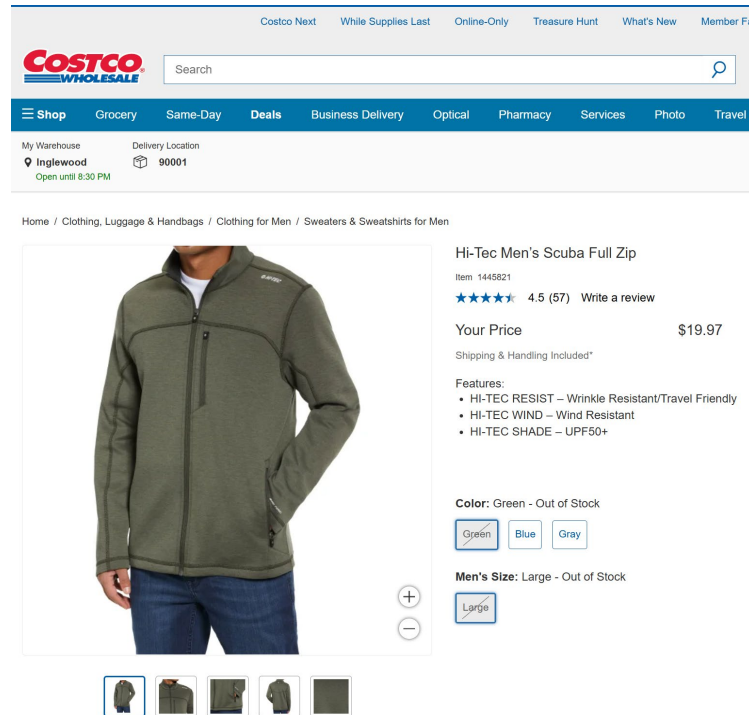
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lululemon DEFINE® Jacket Back	Spyder Women's Yoga Jacket Back
	

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1 **v. The Infringing “Hi-Tec Men’s Scuba Full Zip”**

2 59. Upon information and belief, Defendant has imported into the U.S.,
3 distributed, advertised, marketed, offered for sale and/or sold at least the Infringing
4 Products identified under the name “Hi-Tec Men’s Scuba Full Zip.” An image of
5 Defendant’s website advertising this product is shown below:



18 **vi. The Infringing “Kirkland 5 Pocket Performance Pant”**

19 60. Upon information and belief, Defendant has imported into the U.S.,
20 distributed, advertised, marketed, offered for sale and/or sold at least the Infringing
21 Products identified under the name “Kirkland 5 Pocket Performance Pant,” an
22 exemplar of which is shown below next to Plaintiffs’ genuine ABC Pant embodying
23 Plaintiffs’ ABC Trade Dress (the “5 Pocket Products”):

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lululemon ABC Pant Front



Kirkland 5 Pocket Pant Front



lululemon ABC Pant Back



Kirkland 5 Pocket Pant Back



FIRST CAUSE OF ACTION

(Trade Dress Infringement – 15 U.S.C. § 1114)

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2
3 61. Plaintiffs re-allege and incorporate by reference the allegations in
4 paragraphs 1 to 60 of this Complaint as though fully set forth herein.

5 62. Plaintiff lululemon athletica canada inc. is the exclusive owner of all
6 right, title and interest in the Registered DEFINE Trade Dress and the corresponding
7 United States Registration Nos. 7,526,264 and 7,526,265 covering the same are valid,
8 subsisting and in full force and effect.

9 63. The Registered DEFINE Trade Dress has acquired distinctiveness and
10 serves as a source-identifier for Plaintiffs’ apparel among consumers.

11 64. Upon information and belief, Defendant knew or had reason to know of
12 the Registered DEFINE Trade Dress and Plaintiffs’ exclusive rights to use of the
13 same in commerce.

14 65. Nevertheless, subsequent to Plaintiffs’ use and adoption of the
15 Registered DEFINE Trade Dress, and the development of secondary meaning in that
16 trade dress, Defendant has sold, offered to sell, marketed, distributed and is still
17 selling, offering to sell, marketing, distributing, and advertising the infringing Jockey
18 Products and the infringing Spyder Products.

19 66. Defendant is not, and has never been, authorized by Plaintiffs to use the
20 Registered DEFINE Trade Dress on or in connection with the sale of any goods.

21 67. Defendant’s actions have caused, and are likely to continue to cause
22 confusion, mistake, and deception among consumers as the origin, source,
23 sponsorship, approval, and/or affiliation of Defendant’s and/or its products with
24 Plaintiffs.

25 68. Upon information and belief, Defendants’ conduct is willful, deliberate,
26 intentional, and in bad faith, constituting exceptional circumstances under the
27 Lanham Act.
28

1 69. Defendants’ unauthorized use of the Registered DEFINE Trade Dress
2 constitutes willful trademark infringement in violation of the Lanham Act, 15 U.S.C.
3 § 1114(1)(a), damaging Plaintiffs in an amount to be proven at trial.

4 70. Defendant’s infringing conduct has directly and proximately caused
5 substantial, irreparable injury to Plaintiffs and to the business and goodwill
6 represented by the Registered DEFINE Trade Dress, and unless enjoined will
7 continue to do so, leaving Plaintiffs without an adequate remedy at law.

8 **SECOND CAUSE OF ACTION**

9 **(Trade Mark Infringement – 15 U.S.C. § 1114)**

10 71. Plaintiffs re-allege and incorporate by reference the allegations in
11 paragraphs 1 to 60 of this Complaint as though fully set forth herein.

12 72. Plaintiff lululemon athletica canada inc. is the exclusive owner of all
13 right, title and interest in the SCUBA Mark and the corresponding United States
14 Registration No. 4,333,759 covering the same is valid, subsisting and in full force
15 and effect.

16 73. Upon information and belief, Defendant knew or had reason to know of
17 the SCUBA Mark and Plaintiffs’ exclusive rights to use of the same in commerce.

18 74. Nevertheless, Defendant has sold, offered to sell, marketed, distributed
19 and is still selling, offering to sell, marketing, distributing, and advertising products
20 bearing marks that are confusingly similar to lululemon’s SCUBA Mark, including,
21 for example, Hi-Tec Men’s Scuba Full Zip.

22 75. Defendant’s actions are likely to cause (and may have already caused)
23 confusion, mistake, and deception among consumers as the origin, source,
24 sponsorship, approval, and/or affiliation of Defendant and/or its products with
25 Plaintiffs.

26 76. Defendant is not, and has never been, authorized by Plaintiffs to use the
27 SCUBA Mark on or in connection with the sale of any goods.
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1 77. Defendant's actions have caused, and are likely to continue to cause
2 confusion, mistake, and deception among consumers as the origin, source,
3 sponsorship, approval, and/or affiliation of Defendant's Hi-Tec Men's Scuba Full
4 Zip product with Plaintiffs.

5 78. Upon information and belief, Defendants' conduct is willful, deliberate,
6 intentional, and in bad faith, constituting exceptional circumstances under the
7 Lanham Act.

8 79. Defendants' unauthorized use of the SCUBA Mark constitutes willful
9 trademark infringement in violation of the Lanham Act, 15 U.S.C. § 1114(1)(a),
10 damaging Plaintiffs in an amount to be proven at trial.

11 80. Defendant's infringing conduct has directly and proximately caused
12 substantial, irreparable injury to Plaintiffs and to the business and goodwill
13 represented by the SCUBA Mark, and unless enjoined will continue to do so, leaving
14 Plaintiffs without an adequate remedy at law.

15 **THIRD CAUSE OF ACTION**

16 **(Trade Dress Infringement – 15 U.S.C. § 1125(a))**

17 81. Plaintiffs re-allege and incorporate by reference the allegations in
18 paragraphs 1 to 60 of this Complaint as though fully set forth herein.

19 82. Plaintiff lululemon athletica canada inc. is the exclusive owner of all
20 right, title and interest in the DEFINE Trade Dress.

21 83. The DEFINE Trade Dress has acquired distinctiveness and serve as a
22 source-identifier for Plaintiffs' apparel among consumers.

23 84. Upon information and belief, Defendant knew or had reason to know of
24 the DEFINE Trade Dress and Plaintiffs' exclusive rights to use of the same in
25 commerce.

26 85. Subsequent to Plaintiffs' use and adoption of the DEFINE Trade Dress,
27 and the development of secondary meaning in that trade dress, the Jockey Ladies
28 Yoga Jacket has been imported, distributed, advertised, offered for sale, and/or sold

1 by Defendant bearing a confusingly similar reproduction of the DEFINE Trade
2 Dress, such as to cause a likelihood of confusion as to the source, sponsorship or
3 approval by Plaintiffs of the Jockey Ladies Yoga Jacket.

4 86. Subsequent to Plaintiffs' use and adoption of the DEFINE Trade Dress,
5 and the development of secondary meaning in that trade dress, the Spyder Women's
6 Yoga Jacket has been imported, distributed, advertised, offered for sale, and/or sold
7 by Defendant bearing a confusingly similar reproduction of the DEFINE Trade
8 Dress, such as to cause a likelihood of confusion as to the source, sponsorship or
9 approval by Plaintiffs of the Spyder Women's Yoga Jacket.

10 87. The foregoing unlawful acts have been and are being done without
11 Plaintiffs' permission or authorization, and in total disregard of Plaintiffs' exclusive
12 rights to control their intellectual property. There are myriad other designs in the
13 athletic apparel industry, none of which necessitate copying or imitating the DEFINE
14 Trade Dress.

15 88. The importation, distribution, advertisement, offer for sale and sale by
16 Defendant of the Jockey Products and the Spyder Products bearing a confusingly
17 similar reproduction of the DEFINE Trade Dress, is likely to lead to and result in
18 confusion, mistake, or deception, and is likely to cause the public to believe that
19 Jockey Products and the Spyder Products are produced, sponsored, authorized, or
20 licensed by or are otherwise connected or affiliated with Plaintiffs.

21 89. Defendant's actions are likely to cause (and may have already caused)
22 confusion, mistake, and deception among consumers as to the origin, source,
23 sponsorship, approval, and/or affiliation of Defendant and/or its products with
24 Plaintiffs.

25 90. As a direct and proximate result of the foregoing acts, Plaintiffs have
26 suffered and will continue to suffer significant injuries in an amount to be determined
27 at trial. Plaintiffs are entitled to recover all damages, including attorneys' fees, that it
28

1 has sustained and will sustain, and all gains, profits and commercial advantages
2 obtained by Defendant as a result of its infringing acts.

3 91. Unless Defendant's unlawful acts are enjoined by this Court, there is no
4 adequate remedy at law that can fully compensate Plaintiffs for the harm caused by
5 Defendant's infringement, which is ongoing, and Plaintiffs are entitled to injunctive
6 relief enjoining Defendant from continuing to infringe the DEFINE Trade Dress or
7 any trade dress confusingly similar thereto.

8 **FOURTH CAUSE OF ACTION**

9 **(Trade Dress Infringement – 15 U.S.C. § 1125(a))**

10 92. Plaintiffs re-allege and incorporate by reference the allegations in
11 paragraphs 1 to 60 of this Complaint as though fully set forth herein.

12 93. Plaintiff lululemon athletica canada inc. is the exclusive owner of all
13 right, title and interest in the lululemon DEFINE Trade Dress.

14 94. The lululemon DEFINE Trade Dress has acquired distinctiveness and
15 serves as a source-identifier for Plaintiffs' apparel among consumers.

16 95. Upon information and belief, Defendant knew or had reason to know of
17 the lululemon DEFINE Trade Dress and Plaintiffs' exclusive rights to use of the same
18 in commerce.

19 96. Subsequent to Plaintiffs' use and adoption of the lululemon DEFINE
20 Trade Dress, and the development of secondary meaning in that trade dress, the
21 Jockey Ladies Yoga Jacket has been imported, distributed, advertised, offered for
22 sale, and/or sold by Defendant bearing a confusingly similar reproduction of the
23 lululemon define Trade Dress, such as to cause a likelihood of confusion as to the
24 source, sponsorship or approval by Plaintiffs of the Jockey Ladies Yoga Jacket.

25 97. Subsequent to Plaintiffs' use and adoption of the lululemon DEFINE
26 Trade Dress, and the development of secondary meaning in that trade dress, the
27 Spyder Women's Yoga Jacket has been imported, distributed, advertised, offered for
28 sale, and/or sold by Defendant bearing a confusingly similar reproduction of the

1 lululemon DEFINE Trade Dress, such as to cause a likelihood of confusion as to the
2 source, sponsorship or approval by Plaintiffs of the Spyder Women’s Yoga Jacket.

3 98. The foregoing unlawful acts have been and are being done without
4 Plaintiffs’ permission or authorization, and in total disregard of Plaintiffs’ exclusive
5 rights to control their intellectual property. There are myriad other designs in the
6 athletic apparel industry, none of which necessitate copying or imitating the
7 lululemon DEFINE Trade Dress.

8 99. The importation, distribution, advertisement, offer for sale and sale by
9 Defendant of Jockey Ladies Yoga Jacket bearing a confusingly similar reproduction
10 of the lululemon DEFINE Trade Dress, is likely to lead to and result in confusion,
11 mistake, or deception, and is likely to cause the public to believe that Jockey Ladies
12 Yoga Jacket is produced, sponsored, authorized, or licensed by or are otherwise
13 connected or affiliated with Plaintiffs.

14 100. The importation, distribution, advertisement, offer for sale and sale by
15 Defendant of Spyder Women’s Yoga Jacket bearing a confusingly similar
16 reproduction of the lululemon DEFINE Trade Dress, is likely to lead to and result in
17 confusion, mistake, or deception, and is likely to cause the public to believe that
18 Spyder Women’s Yoga Jacket is produced, sponsored, authorized, or licensed by or
19 are otherwise connected or affiliated with Plaintiffs.

20 101. Defendant’s actions are likely to cause (and may have already caused)
21 confusion, mistake, and deception among consumers as to the origin, source,
22 sponsorship, approval, and/or affiliation of Defendant and/or its products with
23 Plaintiffs.

24 102. As a direct and proximate result of the foregoing acts, Plaintiffs have
25 suffered and will continue to suffer significant injuries in an amount to be determined
26 at trial. Plaintiffs are entitled to recover all damages, including attorneys’ fees, that it
27 has sustained and will sustain, and all gains, profits and commercial advantages
28 obtained by Defendant as a result of its infringing acts.

1 103. Unless Defendant’s unlawful acts are enjoined by this Court, there is no
2 adequate remedy at law that can fully compensate Plaintiffs for the harm caused by
3 Defendant’s infringement, which is ongoing, and Plaintiffs are entitled to injunctive
4 relief enjoining Defendant from continuing to infringe the lululemon DEFINE Trade
5 Dress, or any trade dress confusingly similar thereto.

6 **FIFTH CAUSE OF ACTION**

7 **(Trade Dress Infringement – 15 U.S.C. § 1125(a))**

8 104. Plaintiffs re-allege and incorporate by reference the allegations in
9 paragraphs 1 to 60 of this Complaint as though fully set forth herein.

10 105. Plaintiff lululemon athletica canada inc. is the exclusive owner of all
11 right, title and interest in the SCUBA Trade Dress.

12 106. The SCUBA Trade Dress has acquired distinctiveness and serves as a
13 source-identifier for Plaintiffs’ apparel among consumers.

14 107. Upon information and belief, Defendant knew or had reason to know of
15 the SCUBA Trade Dress and Plaintiffs’ exclusive rights to use of the same in
16 commerce.

17 108. Subsequent to Plaintiffs’ use and adoption of the SCUBA Trade Dress,
18 and the development of secondary meaning in that trade dress, the Danskin Half-Zip
19 Pullover and the Danskin Half-Zip Hoodie has been imported, distributed, advertised,
20 offered for sale, and/or sold by Defendant bearing confusingly similar reproductions
21 of the SCUBA Trade Dress, such as to cause a likelihood of confusion as to the
22 source, sponsorship or approval by Plaintiffs of the Danskin Half-Zip Pullover and/or
23 the Danskin Half-Zip Hoodie.

24 109. The foregoing unlawful acts have been and are being done without
25 Plaintiffs’ permission or authorization, and in total disregard of Plaintiffs’ exclusive
26 rights to control their intellectual property. There are myriad other designs in the
27 athletic apparel industry, none of which necessitate copying or imitating the SCUBA
28 Trade Dress.

1 110. The importation, distribution, advertisement, offer for sale and sale by
2 Defendant of Danskin Half-Zip Pullover and the Danskin Half-Zip Hoodie bear
3 confusingly similar reproductions of the SCUBA Trade Dress respectively, is likely
4 to lead to and result in confusion, mistake, or deception, and is likely to cause the
5 public to believe that Danskin Half-Zip Pullover and the Danskin Half-Zip Hoodie
6 are produced, sponsored, authorized, or licensed by or are otherwise connected or
7 affiliated with Plaintiffs.

8 111. Defendant's actions are likely to cause (and may have already caused)
9 confusion, mistake, and deception among consumers as to the origin, source,
10 sponsorship, approval, and/or affiliation of Defendant and/or its products with
11 Plaintiffs.

12 112. As a direct and proximate result of the foregoing acts, Plaintiffs have
13 suffered and will continue to suffer significant injuries in an amount to be determined
14 at trial. Plaintiffs are entitled to recover all damages, including attorneys' fees, that it
15 has sustained and will sustain, and all gains, profits and commercial advantages
16 obtained by Defendant as a result of its infringing acts.

17 113. Unless Defendant's unlawful acts are enjoined by this Court, there is no
18 adequate remedy at law that can fully compensate Plaintiffs for the harm caused by
19 Defendant's infringement, which is ongoing, and Plaintiffs are entitled to injunctive
20 relief enjoining Defendant from continuing to infringe SCUBA Trade Dress or any
21 trade dress confusingly similar thereto.

22 **SIXTH CAUSE OF ACTION**

23 **(Trade Dress Infringement – 15 U.S.C. § 1125(a))**

24 114. Plaintiffs re-allege and incorporate by reference the allegations in
25 paragraphs 1 to 60 of this Complaint as though fully set forth herein.

26 115. Plaintiff lululemon athletica canada inc. is the exclusive owner of all
27 right, title and interest in the ABC Trade Dress.
28

1 116. The ABC Trade Dress has acquired distinctiveness and serves as a
2 source-identifier for Plaintiffs' apparel among consumers.

3 117. Upon information and belief, Defendant knew or had reason to know of
4 the ABC Trade Dress and Plaintiffs' exclusive rights to use of the same in commerce.

5 118. Subsequent to Plaintiffs' use and adoption of the ABC Trade Dress, and
6 the development of secondary meaning in that trade dress, the Kirkland 5 Pocket
7 Performance Pants has been imported, distributed, advertised, offered for sale, and/or
8 sold by Defendant bearing a confusingly similar reproduction of the ABC Trade
9 Dress, such as to cause a likelihood of confusion as to the source, sponsorship or
10 approval by Plaintiffs of the Kirkland 5 Pocket Performance Pants.

11 119. The foregoing unlawful acts have been and are being done without
12 Plaintiffs' permission or authorization, and in total disregard of Plaintiffs' exclusive
13 rights to control their intellectual property. There are a myriad of other designs in the
14 athletic apparel industry, none of which necessitate copying or imitating the ABC
15 Trade Dress.

16 120. The importation, distribution, advertisement, offer for sale and sale by
17 Kirkland 5 Pocket Performance Pants bearing confusingly similar reproductions of
18 the ABC Trade Dress, is likely to lead to and result in confusion, mistake, or
19 deception, and is likely to cause the public to believe that Kirkland 5 Pocket
20 Performance Pants are produced, sponsored, authorized, or licensed by or are
21 otherwise connected or affiliated with Plaintiffs.

22 121. Defendant's actions are likely to cause (and may have already caused)
23 confusion, mistake, and deception among consumers as to the origin, source,
24 sponsorship, approval, and/or affiliation of Defendant and/or its products with
25 Plaintiffs.

26 122. As a direct and proximate result of the foregoing acts, Plaintiffs have
27 suffered and will continue to suffer significant injuries in an amount to be determined
28 at trial. Plaintiffs are entitled to recover all damages, including attorneys' fees, that it

1 has sustained and will sustain, and all gains, profits and commercial advantages
2 obtained by Defendant as a result of its infringing acts.

3 123. Unless Defendant's unlawful acts are enjoined by this Court, there is no
4 adequate remedy at law that can fully compensate Plaintiffs for the harm caused by
5 Defendant's infringement, which is ongoing, and Plaintiffs are entitled to injunctive
6 relief enjoining Defendant from continuing to infringe ABC Trade Dress or any trade
7 dress confusingly similar thereto.

8 **SEVENTH CAUSE OF ACTION**

9 **(Trade Mark Infringement – 15 U.S.C. § 1125(a))**

10 124. Plaintiffs re-allege and incorporate by reference the allegations in
11 paragraphs 1 to 60 of this Complaint as though fully set forth herein.

12 125. Plaintiff lululemon athletica canada inc. is the exclusive owner of all
13 right, title and interest in the TIDEWATER TEAL™ Mark.

14 126. The TIDEWATER TEAL™ Mark has acquired distinctiveness and
15 serves as a source-identifier for Plaintiffs' apparel among consumers.

16 127. Upon information and belief, Defendant knew or had reason to know of
17 the TIDEWATER TEAL™ Mark and Plaintiffs' exclusive rights to use of the same
18 in commerce.

19 128. Subsequent to Plaintiffs' use and adoption of the TIDEWATER
20 TEAL™ Mark, and the development of secondary meaning in that mark, Defendant
21 has sold, offered to sell, marketed, distributed and is still selling, offering to sell,
22 marketing, distributing, and advertising products bearing marks that are confusingly
23 similar to lululemon's TIDEWATER TEAL™ Mark, including, for example,
24 Danskin Ladies Half-Zip and Danskin Ladies Half-Zip Hoodie in Tidewater Teal.

25 129. Defendant's actions are likely to cause (and may have already caused)
26 confusion, mistake, and deception among consumers as the origin, source,
27 sponsorship, approval, and/or affiliation of Defendant and/or its products with
28 Plaintiffs.

1 130. Defendant is not, and has never been, authorized by Plaintiffs to use the
2 TIDEWATER TEAL™ Mark on or in connection with the sale of any goods.

3 131. Defendant's actions have caused, and are likely to continue to cause
4 confusion, mistake, and deception among consumers as the origin, source,
5 sponsorship, approval, and/or affiliation of Defendant's Danskin Ladies Half-Zip and
6 Danskin Ladies Half-Zip Hoodie products with Plaintiffs.

7 132. Upon information and belief, Defendants' conduct is willful, deliberate,
8 intentional, and in bad faith, constituting exceptional circumstances under the
9 Lanham Act.

10 133. Defendants' unauthorized use of the TIDEWATER TEAL™ Mark
11 constitutes willful trademark infringement in violation of the Lanham Act, 15 U.S.C.
12 § 1125(a), damaging Plaintiffs in an amount to be proven at trial.

13 134. Defendant's infringing conduct has directly and proximately caused
14 substantial, irreparable injury to Plaintiffs and to the business and goodwill
15 represented by the TIDEWATER TEAL™ Mark, and unless enjoined will continue
16 to do so, leaving Plaintiffs without an adequate remedy at law

17 **EIGHTH CAUSE OF ACTION**

18 **(False Designation of Origin, Passing Off, & Federal Unfair Competition)**

19 135. Plaintiffs re-allege and incorporate by reference the allegations in
20 paragraphs 1-134 of this Complaint as though fully set forth herein.

21 136. This is a claim for unfair competition and false designation of origin
22 arising under 15 U.S.C. § 1125(a).

23 137. Defendant's use of the DEFINE Trade Dress, SCUBA Trade Dress,
24 ABC Trade Dress, SCUBA Mark, and the TIDEWATER TEAL™ Mark (the
25 "lululemon Marks") without Plaintiffs' consent, constitutes false designation of
26 origin, false or misleading description of fact, false or misleading representation of
27 fact, which is likely to cause confusion, or to cause mistake, or to deceive as to the
28 affiliation, connection or association of such entity with another entity, or as to origin,

1 sponsorship, or approval of its goods or commercial activities by another entity in
2 violation of 15 U.S.C. § 1125(a).

3 138. Defendant's use of lululemon Marks without Plaintiffs' consent,
4 constitutes a false designation of origin, false or misleading description of fact, or
5 false or misleading representation of fact, which in commercial advertising or
6 promotion, misrepresents the nature, characteristics, qualities, or geographic origin
7 of its products or commercial activities in violation of 15 U.S.C. § 1125(a).

8 139. Defendant's use of lululemon Marks, without Plaintiffs' consent,
9 constitutes a false designation of origin, false or misleading description of fact, or
10 false or misleading representation of fact, that Defendant and/or its products originate
11 from, are sponsored or approved by, and/or are affiliated with Plaintiffs, when they
12 are not.

13 140. Plaintiffs are informed and believe and, based thereon, allege that
14 Defendant's acts of false designation of origin, passing off, and unfair competition
15 have been willful and without regarding to Plaintiffs' rights.

16 141. Pursuant to 15 U.S.C. § 1117, Plaintiffs are entitled to recover (1)
17 Defendant's profits, (2) any damages sustained by Plaintiffs, and (3) the costs of the
18 action. In assessing damages, the Court may enter judgment up to three times actual
19 damages, and in awarding profits, the Court may in its discretion enter judgment for
20 such sum as the Court finds to be just, according to the circumstances of the case.
21 The Court may also award Plaintiffs their reasonable attorneys' fees for the necessity
22 of bringing this claim in an exceptional case.

23 142. Plaintiffs have been damaged by Defendant's conduct in an amount to
24 be determined at trial.

25 143. Due to Defendant's actions, constituting false designation or origin,
26 false or misleading statement, false or misleading description of fact, false or
27 misleading representations of fact, passing off, and unfair competition, Plaintiffs
28

1 have suffered and continue to suffer great and irreparable injury, for which Plaintiffs
2 have no adequate remedy at law.

3 144. Defendant will continue its false designation of origin, false or
4 misleading statements, false or misleading descriptions of fact, false or misleading
5 representations of fact, passing off, and unfair competition, unless and until
6 Defendant is enjoined by this Court.

7 **NINTH CAUSE OF ACTION**

8 **(California Common Law Trade Dress and Trade Mark Infringement)**

9 145. Plaintiffs re-allege and incorporate by reference the allegations
10 paragraphs 1 to 134 of this Complaint as though fully set forth herein.

11 146. Defendant's infringement of the lululemon DEFINE Trade Dress,
12 SCUBA Trade Dress, and ABC Trade Dress also constitutes trade dress infringement
13 under common law of the state of California.

14 147. The Infringing Products imported, distributed, advertised, offered for
15 sale, and/or sold by Defendant bear confusingly similar reproductions of the
16 lululemon DEFINE Trade Dress, SCUBA Trade Dress, and/or ABC Trade Dress
17 respectively, such as to cause a likelihood of confusion as to the source, sponsorship
18 or approval by Plaintiffs of the Infringing Products.

19 148. Defendant's unauthorized use of the lululemon DEFINE Trade Dress,
20 SCUBA Trade Dress, and/or ABC Trade Dress has caused and is likely to cause
21 confusion as to the source of Infringing Products among consumers.

22 149. As a direct and proximate result of the foregoing acts, Plaintiffs have
23 suffered and will continue to suffer significant injuries in an amount to be determined
24 at trial. Plaintiffs are entitled to recover all damages, including attorneys' fees, that
25 they have sustained on account of Defendant's infringement, and all gains, profits
26 and advantages obtained by Defendant as a result of its unlawful acts.

27 150. Defendant's unlawful acts were willful, deliberate, and intended to
28 cause confusion among the public, taken in reckless disregard of Plaintiffs' rights.

1 As such, an award of exemplary and punitive damages is necessary in an amount
2 sufficient to deter Defendant's similar misconduct in the future.

3 **TENTH CAUSE OF ACTION**

4 **(California Unfair Competition – Cal. Bus. & Prof. Code § 17200 *et. seq.*)**

5 151. Plaintiffs re-allege and incorporate by reference the allegations in
6 paragraphs 1 to 60 of this Complaint as though fully set forth herein.

7 152. Defendant's misappropriation and unauthorized use of the DEFINE
8 Trade Dress, SCUBA Trade Dress, ABC Trade Dress, SCUBA Mark, and
9 TIDEWATER TEAL Mark to promote the Infringing Products is likely to confuse
10 or mislead consumers into believing that those products are affiliated with and/or
11 approved, authorized, licensed and/or sponsored by Plaintiffs, constituting deceptive,
12 unfair and fraudulent business practices and unfair competition in violation of
13 California Unfair Business Practices Act, Cal. Bus. & Prof. Code § 17200 *et. seq.*

14 153. Upon information and belief, Defendant's deceptive, unfair and
15 fraudulent business practices were willfully undertaken with full knowledge of the
16 DEFINE Trade Dress, SCUBA Trade Dress, SCUBA Mark, and ABC Trade Dress
17 and with intent to misappropriate Plaintiffs' goodwill and reputation established in
18 the DEFINE Trade Dress, SCUBA Trade Dress, ABC Trade Dress, SCUBA Mark,
19 and TIDEWATER TEAL Mark.

20 154. As a direct and proximate result of the foregoing unlawful acts,
21 Plaintiffs have suffered and will continue to suffer significant injuries in an amount
22 to be determined at trial.

23 155. Plaintiffs are entitled to all available relief provided under the California
24 Unfair Business Practices Act, Cal. Bus. & Prof. Code § 17200 *et. seq.*, including an
25 accounting and disgorgement of all illicit profits that Defendant made on account of
26 its deceptive, unfair and fraudulent business practices.

27 156. As Plaintiffs have not adequate remedy at law, Plaintiffs are entitled to
28 injunctive relief enjoining Defendant from its unlawful acts.

ELEVENTH CAUSE OF ACTION

(California Common Law Unfair Competition)

157. Plaintiffs re-allege and incorporate by reference the allegations in paragraphs 1 to 60 of this Complaint as though fully set forth herein.

158. Defendant’s misappropriation and unauthorized use of the lululemon DEFINE Trade Dress, SCUBA Trade Dress, and ABC Trade Dress to promote and sell the Infringing Products also constitutes unfair competition in violation of common law of the state of California.

159. Plaintiffs have spent substantial time, resources and effort in creating, designing, developing, marketing and selling the DEFINE® jackets and the SCUBA® hoodies and sweatshirts, and ABC Pants the embodiments of the lululemon DEFINE Trade Dress, SCUBA Trade Dress, and ABC Trade Dress respectively, which consumers recognize as originating exclusively from Plaintiffs.

160. Upon information and belief, Defendant introduced the Infringing Products into the stream of commerce in order to exploit Plaintiffs’ goodwill and reputation established in the DEFINE® jackets, the SCUBA® hoodies and sweatshirts, and the ABC Pants for Defendant’s own financial and commercial gain.

161. Defendant’s unauthorized use of the lululemon DEFINE Trade Dress, SCUBA Trade Dress, and ABC Trade Dress has resulted in Defendant unfairly benefitting from Plaintiffs’ goodwill and reputation established in the DEFINE® jackets, the SCUBA® hoodies and sweatshirts, and the ABC Pants.

162. Upon information and belief, Defendant’s unlawful acts are willful, deliberate, and intended to cause confusion among the public and taken in reckless disregard of Plaintiffs’ rights. As such, an award of exemplary and punitive damages is necessary in an amount sufficient to deter Defendant from similar misconduct in the future.

163. As a direct and proximate result of the foregoing acts, Plaintiffs have suffered and will continue to suffer significant injuries in an amount to be determined

1 at trial. Plaintiffs are entitled to recover all damages, including attorneys’ fees, that
2 Plaintiffs have sustained on account of Defendant’s unfair competition, and all gains,
3 profits and advantages obtained by Defendant as a result of its unlawful acts. As
4 Plaintiffs have no adequate remedy at law for Defendant’s ongoing unlawful conduct,
5 Plaintiffs are also entitled to injunctive relief enjoining Defendant from its unlawful
6 acts.

7 **TWELFTH CAUSE OF ACTION**

8 **(Design Patent Infringement – 35 U.S.C. § 271)**

9 164. Plaintiff lululemon athletica canada inc. re-alleges and incorporates by
10 reference the allegations in paragraphs 1 to 60 of this Complaint as though fully set
11 forth herein.

12 165. Plaintiff lululemon athletica canada inc. also owns a number of patents
13 to protect its valuable designs and inventions. For example, lululemon owns U.S.
14 Patent Nos. D989,442 and D1,035,219, which cover the ornamental design of the
15 SCUBA® hoodies (collectively, the “Asserted Patents”).

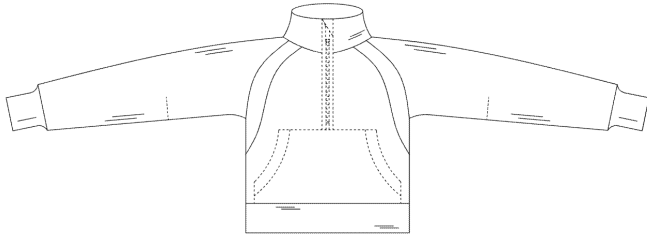

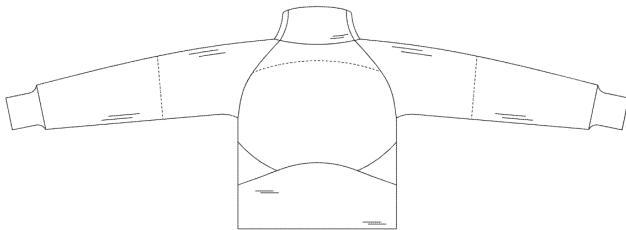

16 166. Plaintiff lululemon athletica canada inc. is the owner by assignment of
17 all rights, title and interest in and to the Asserted Patents.

18 167. Defendant, through its agents, employees and/or servants has
19 knowingly, intentionally, and willfully infringed, and upon information and belief
20 continues to infringe, the Asserted Patents by making, using, selling, offering for sale,
21 and/or importing products, including the Danskin Half-Zip Pullover and the Danskin
22 Half-Zip Hoodie (“Danskin Pullover Products”) in violation of 35 U.S.C. § 271.

23 168. An ordinary observer, giving such attention as a purchaser usually gives,
24 would perceive the design of the Infringing Products to be at least substantially the
25 same as the designs of the Asserted Patents because the resemblance is such as to
26 deceive such an observer inducing them to purchase one supposing it to be the other.

27 169. Upon information and belief, Defendant imported into the U.S.,
28 distributed, advertised, marketed, offered for sale and/or sold infringing Danskin

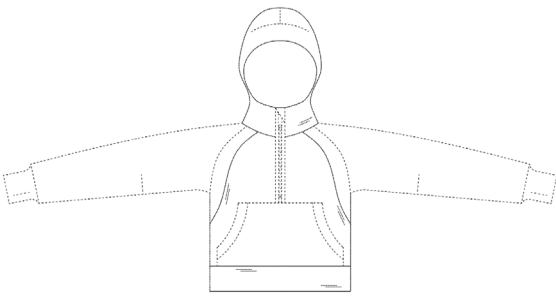

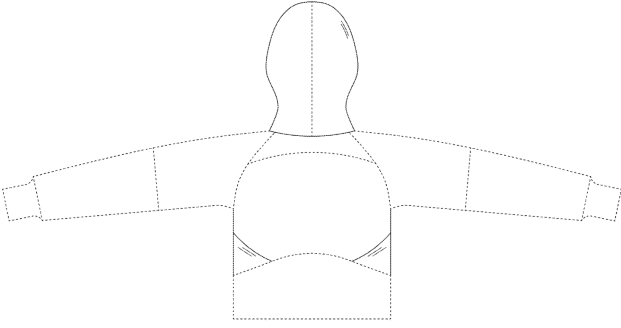

1 Pullover Products, an exemplar of which is shown below next to Fig. 1 of U.S. Patent
2 No. D1,035,219 covering Plaintiffs' genuine SCUBA apparel:

3 U.S. Patent No. D1,035,219	4 Danskin Half-Zip Pullover
5  6 7 8 FIG. 1	
9 10 11  12 13 14 FIG. 2	

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170. Upon information and belief, Defendant imported into the U.S., distributed, advertised, marketed, offered for sale and/or sold infringing Danskin Hoodie Products, an exemplar of which is shown below next to Fig. 1 of U.S. Patent No. D989,442 covering Plaintiffs' genuine SCUBA apparel:

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U.S. Patent No. D989,442	Danskin Half-Zip Hoodie Front
 <p data-bbox="560 651 625 682">FIG. 1</p>	
 <p data-bbox="560 1213 625 1245">FIG. 2</p>	

171. The Federal Circuit has held that a design patent is infringed if the accused product looks substantially the same, in light of the existing prior art, to the patented design in the eyes of an ordinary observer. *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 682-83 (Fed. Cir. 2008). As can be seen in the side-by-side comparisons of representative figures from the D219 and D442 Patents above, the Danskin Pullover Products are “substantially the same” to Plaintiffs’ patented design, and thus, infringe.

1 172. Plaintiff lululemon athletica canada inc. has not granted Defendant a
2 license or otherwise given Defendant any permission to the Asserted Patents and
3 Defendant's infringement of the Asserted Patents is in total disregard of Plaintiff
4 lululemon athletica canada inc.'s patent rights.

5 173. Plaintiff lululemon athletica canada inc. has suffered and will continue
6 to suffer significant damages in an amount to be determined at trial as a direct and
7 proximate result of Defendant's infringement. Pursuant to 35 U.S.C. §§ 284 and 289,
8 Plaintiff lululemon athletica canada inc. is entitled to recover all damages it has
9 sustained on account of Defendant's infringement, including all gains and profits and
10 other commercial advantages unlawfully obtained by Defendant.

11 174. Defendant's infringement is willful, deliberate, and done in reckless
12 disregard of the Asserted Patents despite having been on notice. Defendant
13 knowingly took these actions understanding the objectively high likelihood its
14 actions constituted infringement of the Asserted Patents. Defendant's willful acts
15 make this an exceptional case entitling Plaintiff lululemon athletica canada inc. to
16 enhanced damages and reasonable attorneys' fees in accordance with 35 U.S.C.
17 § 285.

18 175. There is no adequate remedy at law that can fully compensate Plaintiff
19 for the harm caused by Defendant's infringement of the Asserted Patents, which is
20 ongoing, unless Defendant's unlawful acts are enjoined by this Court. Plaintiff
21 lululemon athletica canada inc. is entitled to injunctive relief under 35 U.S.C. § 283
22 enjoining Defendant from its continuing infringement of the Asserted Patents.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, lululemon athletica canada inc. and lululemon usa inc.
25 respectfully pray for judgment against Costco Wholesale Corporation as follows:

26 1. Enter judgment that Defendant has violated the Lanham Act, 15 U.S.C.
27 § 1125(a), the California Unfair Business Practices Act, Cal. Bus. & Prof. Code §
28

1 17200 *et. seq.*, the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, and the
2 common law of California,

3 2. Enter judgment against Defendant that the above acts were willful and
4 intentional, making this an exceptional case.

5 3. An Order that Defendant pay to Plaintiff lululemon athletica canada inc.
6 actual damages in the form of lost profits, or in the alternative, other damages
7 adequate to compensate for its patent infringement, but in no event less than a
8 reasonable royalty for the use made of the Plaintiff lululemon athletica canada inc.'s
9 design patents in accordance with 35 U.S.C. § 284 and/or, at Plaintiff's election,
10 Defendant's total profits as a result of Defendant's infringement of Plaintiff's design
11 patents, pursuant to 25 U.S.C. § 289;

12 4. Enter an order permanently enjoining and restraining Defendant and its
13 officers, directors, agents, employees, attorneys, successors, and assigns, and all
14 others in active concert or participation with any of them, from:

15 a. Manufacturing, importing, advertising, marketing, promoting,
16 supplying, distributing, offering for sale, or selling Infringing Products or any
17 other products that are identical or confusingly similar to Plaintiffs' DEFINE
18 Trade Dress, SCUBA Trade Dress, and ABC Trade Dress.

19 b. Manufacturing, importing, advertising, marketing, promoting,
20 supplying, distributing, offering for sale, or selling Infringing Products or any
21 other products under the SCUBA Mark and the TIDEWATER TEAL Mark or
22 any confusingly similar mark to the SCUBA Mark or the TIDEWATER TEAL
23 Mark.

24 c. Manufacturing, importing, advertising, marketing, promoting,
25 supplying, distributing, offering for sale, or selling Infringing Products or any
26 other products that infringe the Asserted Patents.

27 d. Committing any acts calculated to cause consumers to believe
28 that Defendant's goods are sold under the authorization, control or supervision

1 of Plaintiffs, or are sponsored by, approved by, or otherwise connected with
2 Plaintiffs;

3 e. Otherwise engaging in any other activity constituting unfair
4 competition with Plaintiffs, or acts and practices that deceive consumers, the
5 public and/or the trade, including without limitation, the use of indicia,
6 designations and design elements used or owned by or associated with
7 Plaintiff; and

8 f. Causing, engaging in or permitting others to do any of the
9 aforesaid acts.

10 5. Order Defendant to remove from any print or digital materials, or the
11 internet, including its websites and social media accounts, any advertising or
12 promotion or other activities that display the Infringing Products, or any confusingly
13 similar products;

14 6. Order Defendant to file with the Court and serve on counsel for
15 Plaintiffs within thirty (30) days after the entry of any injunction issued by the Court
16 in this action, a sworn written statement as provided in 15 U.S.C. § 1116(a) setting
17 forth in detail the manner and form in which Defendant has complied with the
18 injunction;

19 7. Enter an order for an accounting of all gains, profits and advantages
20 derived by Defendant on account of the unlawful acts complained of herein pursuant
21 to 15 U.S.C. § 1117(a), and any other applicable federal statute or California state
22 and common law;

23 8. Award damages equal to Defendant's profits and all damages sustained
24 by Plaintiffs as a result of Defendant's unlawful acts;

25 9. Award treble damages on account of Defendant's willful infringement
26 and punitive damages for violations of California law;

27 10. Plaintiffs' costs, attorneys' fees, and interest as allowed under
28 applicable federal and California state laws; and

1 11. For such other and further relief as the Court may deem necessary, just,
2 and proper.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiffs hereby demand a jury trial on all claims herein.

5 Dated: June 27, 2025

MORGAN, LEWIS & BOCKIUS LLP
Ali Razai

7 By: /s/ Ali S. Razai

8 Ali S. Razai
9 Brandon G. Smith
Jack Hendershot

10 Attorneys for Plaintiff
11 LULULEMON ATHLETICA
CANADA, INC.

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