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6 Attorneys for Defendant  
PVH RETAIL STORES LLC  
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN DIEGO**

10  
11 MIGUEL OLMEDO, and SIOBHAN MORROW  
on behalf of themselves and all others similarly  
12 situated,

13 Plaintiffs,

14 v.

15 PVH RETAIL STORES LLC, a Delaware Limited  
Liability Company, and DOES 1-20,

16 Defendants.  
17

Case No. 37-2019-00003250-CU-MC-CTL  
(Assigned to The Hon. Richard S. Whitney,  
Dept. C-68)

**DEFENDANT PVH RETAIL STORES  
LLC'S ANSWER TO COMPLAINT**

18 Defendant PVH Retail Stores LLC ("PVH Retail"), for itself alone and for no other  
19 defendant, hereby answers the Complaint filed by plaintiffs Miguel Olmedo and Siobhan Morrow  
20 (collectively "Plaintiffs") as follows:

21 **GENERAL DENIAL**

22 1. Pursuant to the provisions of Section 431.30(d) of the California Code of Civil  
23 Procedure, PVH Retail denies, generally and specifically, each and every allegation of the Complaint  
24 and every purported cause of action alleged therein. PVH Retail further denies that Plaintiffs have  
25 been damaged in the alleged manner and amount, or in any manner or amount whatsoever, and  
26 further denies that Plaintiffs are entitled to any relief whatsoever by any of PVH Retail's alleged acts  
27 or omissions.  
28

1 **FIRST AFFIRMATIVE DEFENSE**

2 **(Failure to State a Cause of Action)**

3 2. The Complaint, and each and every purported cause of action contained therein, fails  
4 to state facts sufficient to constitute a cause of action against PVH Retail.

5  
6 **SECOND AFFIRMATIVE DEFENSE**

7 **(PVH Retail's Good Faith)**

8 3. The Complaint, and each and every purported cause of action contained therein, is  
9 barred on the ground that PVH Retail has acted in good-faith compliance with California law.

10  
11 **THIRD AFFIRMATIVE DEFENSE**

12 **(Justification)**

13 4. The Complaint, and each and every purported cause of action contained therein, is  
14 barred on the ground that PVH Retail's conduct was justified.

15  
16 **FOURTH AFFIRMATIVE DEFENSE**

17 **(Lack of Standing)**

18 5. The Complaint, and each and every purported cause of action contained therein, is  
19 barred on the ground that Plaintiffs, and each of them, lack standing.

20  
21 **FIFTH AFFIRMATIVE DEFENSE**

22 **(Lack of Actual Injury)**

23 6. The Complaint, and each and every purported cause of action contained therein, is  
24 barred on the ground that Plaintiffs, and each of them, and the putative class members they seek to  
25 represent suffered no actual injury as a result of the alleged conduct set forth in the Complaint.

1 **SIXTH AFFIRMATIVE DEFENSE**

2 **(Lack of Proximate Causation)**

3 7. The Complaint, and each and every purported cause of action contained therein, is  
4 barred, in whole or in part, on the ground that the claimed losses that Plaintiffs alleged they suffered  
5 were not proximately caused by any alleged act or omission by PVH Retail.

6  
7 **SEVENTH AFFIRMATIVE DEFENSE**

8 **(Lack of Proximate Causation)**

9 8. The Complaint, and each and every purported cause of action contained therein, is  
10 barred, in whole or in part, on the ground that the claimed losses that Plaintiffs alleged they suffered  
11 were not proximately caused by any alleged act or omission by PVH Retail.

12  
13 **EIGHTH AFFIRMATIVE DEFENSE**

14 **(Unjust Enrichment)**

15 9. The Complaint, and each and every purported cause of action contained therein, is  
16 barred, in whole or in part, on the ground that Plaintiffs, and each of them, and the putative class  
17 members they seek to represent, would be unjustly enriched if they were to prevail on any of the  
18 causes of action.

19  
20 **NINTH AFFIRMATIVE DEFENSE**

21 **(Benefit of the Bargain)**

22 10. The Complaint, and each and every purported cause of action contained therein, is  
23 barred, in whole or in part, on the ground that Plaintiffs, and each of them, and the putative class  
24 members they seek to represent, already received the benefit of their bargain and neither law nor  
25 equity may be invoked to obtain a windfall.

1 **TENTH AFFIRMATIVE DEFENSE**

2 **(No Cumulative Remedies)**

3 11. The Complaint, and each and every purported cause of action contained therein, is  
4 barred, in whole or in part, to the extent that Plaintiffs seek cumulative remedies.

5  
6 **ELEVENTH AFFIRMATIVE DEFENSE**

7 **(Lack of Justifiable Reliance)**

8 12. The Complaint, and each and every purported cause of action contained therein, is  
9 barred, in whole or in part, because Plaintiffs, and the putative class members they seek to represent,  
10 did not and could not have justifiably relied on the alleged misrepresentations or omissions alleged  
11 in the Complaint.

12  
13 **TWELFTH AFFIRMATIVE DEFENSE**

14 **(Waiver)**

15 13. The Complaint, and each and every purported cause of action contained therein, is  
16 barred, in whole or in part by the doctrine of waiver by reason of the actions, acquiescence and  
17 course of conduct by Plaintiffs and/or the putative class members they seek to represent.

18  
19 **THIRTEENTH AFFIRMATIVE DEFENSE**

20 **(Knowing and Voluntary Payment by Plaintiffs)**

21 14. The Complaint, and each and every purported cause of action contained therein, is  
22 barred, in whole or in part, by the doctrine of waiver by reason of the actions, by Plaintiffs' and the  
23 putative class members' knowing and voluntary payment of the sums in dispute.

24  
25 **FOURTEENTH AFFIRMATIVE DEFENSE**

26 **(Set-Off)**

27 15. The Complaint, and each and every purported cause of action contained therein, is  
28 subject to set-off of all sums due and owing to PVH Retail, or the reasonable value of goods and

1 service that Plaintiffs and the putative class members they seek to represent received from PVH  
2 Retail.

3  
4 **FOURTEENTH AFFIRMATIVE DEFENSE**

5 **(Failure to Mitigate)**

6 16. The Complaint, and each and every purported cause of action contained therein, is  
7 barred in whole or in part by the failure of Plaintiffs and the putative class members they seek to  
8 represent to mitigate, reduce, or otherwise avoid their claimed damages or injuries, all of which are  
9 denied by PVH Retail.

10  
11 **FIFTEENTH AFFIRMATIVE DEFENSE**

12 **(Punitive Damages Unavailable)**

13 17. The Complaint, and each and every purported cause of action contained  
14 therein, fails to state facts sufficient to support an award of punitive damages.

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16  
17 **SIXTEENTH AFFIRMATIVE DEFENSE**

18 **(Common Questions of Law and Fact do Not Predominate)**

19 18. The putative class alleged in the Complaint cannot be certified because common  
20 questions of law and fact do not predominate over questions affecting the individual purported class  
21 members Plaintiffs seek to represent.

22  
23 **SEVENTEENTH AFFIRMATIVE DEFENSE**

24 **(Lack of Typicality)**

25 19. The putative class alleged in the Complaint cannot be certified because Plaintiffs'  
26 claims are not typical of the claims of the putative class they seek to represent.

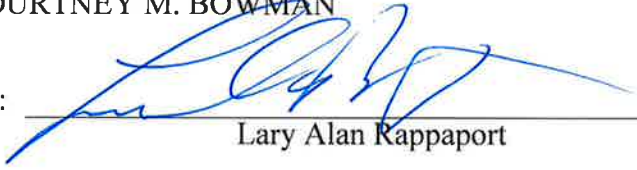
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WHEREFORE, PVH Retail prays:

- 1. That Plaintiffs take nothing by reason of their Complaint;
- 2. That PVH Retail be awarded its costs of suit herein; and
- 3. For such other and further relief as the Court may deem proper.

Dated: March 7, 2019

PROSKAUER ROSE LLP  
LARY ALAN RAPPAPORT  
COURTNEY M. BOWMAN

By:   
Lary Alan Rappaport

Attorneys for Defendant PVH RETAIL STORES LLC

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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I declare that: I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 2029 Century Park East, Suite 2400, Los Angeles, California 90067-3010.

On March 7, 2019, I served the foregoing document described as:

**DEFENDANT PVH RETAIL STORES LLC'S ANSWER TO COMPLAINT**

on the interested parties in this action:

by placing  the original  a true copy thereof enclosed in a sealed envelope addressed as follows:

**SEE ATTACHED SERVICE LIST**

(By Mail) I am "readily familiar" with the Firm's practice of collection and processing correspondence for mailing. Under that practice, the envelope would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

(By Overnight Courier) By causing such envelope to be delivered the next business day to the office of the addressee via Federal Express or other similar overnight delivery service.

(By Fax) By transmitting a true and correct copy thereof via facsimile transmission to:

(By Email) By transmitting a true and correct copy thereof via electronic transmission to:

(By Personal Service)

By personally delivering such envelope to the office of the addressee.

By causing such envelope to be delivered by messenger to the office of the addressee.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 7, 2019, at Los Angeles, California.



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Patty J. Hays

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