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6 Attorneys for Plaintiff FASHIONPASS, INC.

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 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 COUNTY OF LOS ANGELES
 10 STANLEY MOSK COURTHOUSE

11 FASHIONPASS, INC.,
 12 Plaintiff,
 13 vs.
 14 RENT THE RUNWAY, INC.; and DOES 1
 15 through 100, inclusive,
 16 Defendants.

CASE NO.

COMPLAINT FOR:

- 17 (1) **VIOLATIONS OF THE**
CARTWRIGHT ACT;
- 18 (2) **UNFAIR COMPETITION;**
- 19 (3) **INTENTIONAL INTERFERENCE**
WITH CONTRACT; and
- 20 (4) **INTENTIONAL INTERFERENCE**
WITH PROSPECTIVE ECONOMIC
ADVANTAGE

21 Plaintiff FASHIONPASS, INC. (FashionPass) alleges:

INTRODUCTORY AND GENERAL ALLEGATIONS

22 **A. Summary of the Action**

23 1. FashionPass, a relatively new and vibrantly growing company in the fashion rental
 24 business, brings this action to redress the intentional, anti-competitive and monopolistic conduct of
 25 Defendant Rent the Runway, which is currently the dominant player in the expanding fashion rental
 26 business. Since its founding in 2016, FashionPass has achieved strong and steady growth and has
 27 become a showcase retailer in the fashion rental business, as a result of its substantial and strategic
 28

GEORGE C. RUDOLPH, A PROFESSIONAL CORPORATION
ATTORNEYS & COUNSELORS AT LAW

1 investment of capital, its fashion, design, and marketing acumen, and its technological capabilities.
2 Confronted with the considerable growth and success of FashionPass, Rent the Runway embarked
3 upon a wrongful, anti-competitive scheme and conspiracy to eliminate competition from
4 FashionPass, rather than fairly competing against FashionPass in the marketplace based upon
5 matters important and beneficial to consumers. Specifically, Rent the Runway is exerting its
6 superior market power and financial capabilities to coerce FashionPass's top suppliers to refuse to
7 sell merchandise to FashionPass, and is thereby attempting to eliminate competition from
8 FashionPass.

9 2. As is alleged herein, FashionPass has suffered, and will continue to suffer, damages
10 as a result of Rent the Runway's monopolistic and anti-competitive conduct. As important,
11 consumers in the fashion rental business are damaged by Rent the Runway's illegal practices, which
12 limit the consumers' choices regarding accessibility, price, selection, service, and subscription
13 terms. Thus, through this action, FashionPass requests the Court to issue relief to curtail and prevent
14 Rent the Runway's monopolistic and anti-competitive practices, which harm both FashionPass and
15 consumers. FashionPass further requests the Court to award it compensatory and punitive damages
16 for the harm that FashionPass has suffered as a consequence of Rent the Runway's illegal conduct.

17 **B. The Parties**

18 3. FashionPass is, and at all material times was, a corporation duly formed and existing
19 pursuant to, and in accordance with, the laws of the State of California, having its principal place of
20 business in Los Angeles County, California.

21 4. Defendant RENT THE RUNWAY, INC. (RTR) is, and at all material times was, a
22 Delaware corporation, having its principal place of business in New York, New York, and its
23 primary place of business in California located in Woodland Hills, Los Angeles County, California.

24 5. RTR registered and qualified to conduct business in California, on November 22,
25 2016; and RTR has continuously conducted business in California since no later than that date.
26 Currently, RTR has permanent physical places of business in California at Woodland Hills and San
27 Francisco. Further, RTR purchases products for its business in California, and conducts extensive
28 e-commerce with customers throughout California.

1 6. The true names and capacities of the Defendants named herein as DOES 1 through
2 100, inclusive, are unknown to FashionPass, which therefore sues said Defendants by such fictitious
3 names. FashionPass will amend this Complaint to show the true names and capacities of each of
4 said Defendants, when the same have been ascertained.

5 7. FashionPass is informed and believes, and upon such information and belief alleges,
6 that at all times material, each of DOES 1 through 100, inclusive, was the co-conspirator and/or
7 agent of RTR; and, in connection with the acts herein alleged, each of DOES 1 through 100 was
8 acting within the scope of such conspiracy and/or agency, and with the knowledge, authorization
9 and consent of RTR, which thereafter ratified each and every act, omission, and wrongdoing
10 committed by each of DOES 1 through 100. In each instance alleged in this Complaint, Does 1
11 through 100, and each of them, acted in pursuit of the trust alleged herein below, and aided, and
12 assisted in carrying out the purposes of that trust.

13 **C. The Fashion Rental Business**

14 8. FashionPass and RTR are both engaged in business, in the segment of the fashion
15 industry that provides women's clothing and accessory rentals (the Fashion Rental Business). Both
16 FashionPass and RTR are involved in extensive e-commerce, providing the majority of their
17 clothing and accessory rentals through on-line, Internet sites.

18 9. Merchants in the Fashion Rental Business (collectively Fashion Rental Companies,
19 and each a Fashion Rental Company), like FashionPass and RTR, allow customers to rent clothing
20 and accessories for special events, work, and casual, through subscriptions that allow the customer
21 to rent designer and sought-after brand clothing, and to then return the items to the Fashion Rental
22 Company, which professionally cleans the items and make them available for others to rent.

23 10. For customers, who represent end consumers, the fashion rental service empowers
24 them to wear a variety of fashions from sought-after brands assembled by fashion and style experts,
25 through a time-efficient mechanism that permits customers to expedite the selection of items,
26 without the expense of purchasing a new wardrobe with each new season, and without concern about
27 size changes. Subscribers in the Fashion Rental Business are able to always wear fashion that
28 reflects current trends from their favorite brands and designers, at a fraction of the cost of buying

1 the clothing and with relatively minimal time expended shopping.

2 11. There are few barriers to enter the Fashion Rental Business. Those barriers that exist
3 include (a) fashion and design acumen, and knowledge of the fashion industry; (b) capital sufficient
4 to acquire merchandise and the infrastructure required to stock, display, and ship inventory; and
5 (c) technological sophistication of website design and function. Importantly, in the absence of the
6 kind of wrongful, anti-competitive conduct committed by the RTR and DOES 1 through 100
7 (collectively, Defendants), as alleged herein, manufacturers supplying garments at wholesale to
8 retail merchants in the fashion industry do not distinguish between Fashion Rental Companies and
9 traditional retail sellers, and place no restrictions upon purchases by Fashion Rental Companies.

10 12. Generally, Fashion Rental Companies are distinguished among one another in the
11 marketplace by the kinds of fashion offered, the brands they carry, the terms of rental, exchange and
12 return of items, and cost. Further, while some Fashion Rental Companies offer just clothing or just
13 accessories, others offer both clothing and accessories. In the absence of anti-competitive conduct,
14 the Fashion Rental Business benefits consumers through competition among a variety of Fashion
15 Rental Companies that compete based upon the terms of subscription and the types of merchandise
16 offered.

17 13. FashionPass conducts its business exclusively through its online site,
18 “thefashionpass.com.” FashionPass offers clothing and accessories that particularly concentrate on
19 styles designed for women in their 20s and 30s, who wish to wear clothing and accessories that
20 reflect current trends from sought-after brands. FashionPass carries a selection of brands primarily
21 focused on casual everyday apparel, wedding guest dresses, vacation wear, and work attire.

22 14. RTR conducts its business through its online site, “renttherunway.com,” and through
23 physical stores in 5 different locations, including its 2 stores located in California. RTR offers
24 clothing and accessories that generally appeal to a broader range of customers than FashionPass, but
25 which include FashionPass’s target customers; and RTR has historically emphasized high-end,
26 event-based attire, such as dresses for galas and formal events.

27 15. FashionPass and RTR are direct competitors in the Fashion Rental Business with
28 regard to the clothing and accessories that appeal to women in their 20s and 30s.

1 16. FashionPass and RTR, like other Fashion Rental Companies, purchase merchandise
2 at wholesale from clothing and accessory manufacturers, publicize the availability of the
3 merchandise on their websites, hold those items in inventory for rental, and supply the items to
4 customers in accordance with the customers' selection of items from the website, or in the case of
5 RTR, also from its stores.

6 17. FashionPass was founded in 2016, as a self-funded start-up. FashionPass has
7 achieved exposure and growth by virtue of the trend-setting styles and popular brands selected and
8 purchased by its buyers, which are reflected on FashionPass's website. In fact, until the wrongdoing
9 committed by RTR and Does 1 through 100, as alleged below, FashionPass experienced exceptional
10 growth because of, among other things, its ability to identify, select, and showcase on its web site
11 clothing and accessories from the brands most popular with its target clientele.

12 18. The exposure and growth experienced by FashionPass prior to Defendants' anti-
13 competitive conduct, was achieved through substantial capital investment by FashionPass in, among
14 other things, (a) developing the infrastructure required to stock, display, and ship inventory;
15 (b) developing and designing its website and the functionality of that website; (c) technological
16 sophistication of website design and function; (d) acquiring personnel having fashion and design
17 acumen, and knowledge of the fashion industry; and (e) developing relationships with manufacturers
18 and their agents, such as each of the manufacturers identified in Paragraph 25, below.

19 19. RTR, which advertises that it began business in 2009, was a pioneer in the Fashion
20 Rental Business. RTR is significantly larger, better financed, and better recognized than
21 FashionPass. By reason of its size and financial capabilities, RTR buys and stocks more
22 merchandise than FashionPass for each fashion season, and has the ability to wield anti-competitive
23 clout by virtue of its size and financial capabilities.

24 20. Fashion Rental Companies, including FashionPass and RTR, like standard women's
25 clothing retailers, purchase merchandise from the manufacturers of those goods, many of whom sell
26 merchandise to Fashion Rental Companies and retail sellers through agents (representatives), who
27 are located in fashion hubs like Los Angeles, New York, and Dallas.

28 // //

1 RTR’s demand to various manufacturers that unless the manufacturers grant “an exclusive right to
2 buy” to RTR, and refuse to sell merchandise to FashionPass, RTR would not purchase any
3 merchandise from those manufacturers. The manufacturers to which RTR’s coercive threat and
4 demand was communicated include (among others), each and all of the following:

- 5 (a) The Jetset Diaries;
- 6 (b) Show Me Your Mumu;
- 7 (c) Saylor;
- 8 (d) Blank NYC;
- 9 (e) Flynn Skye;
- 10 (f) ASTR the Label;
- 11 (g) Dress the Population;
- 12 (h) Elliatt;
- 13 (i) Finders Keepers;
- 14 (j) Yumi Kim;
- 15 (k) AGOLDE;
- 16 (l) Citizens of Humanity;
- 17 (m) Keepsake;
- 18 (n) C/MEO;
- 19 (o) Fifth Label;
- 20 (p) Cleobella;
- 21 (q) Sanctuary Clothing;
- 22 (r) LIKELY;
- 23 (s) Amanda Uprichard; and
- 24 (t) Fame and Partners.

25 26. FashionPass is informed and believes, and upon such information and belief alleges,
26 that Defendants communicated RTR’s coercive demands and threats to each of the manufacturers
27 listed in the preceding Paragraph 25, in Los Angeles County, California. Each of those
28 manufacturers are either located in Los Angeles, California, or have showrooms and representatives

1 in Los Angeles County, California. Furthermore, FashionPass at all times dealt with each of said
2 manufacturers, either directly or through their representatives, in Los Angeles County, California.

3 27. The Jetset Diaries, Show Me Your Mumu, Saylor, Blank NYC, Flynn Skye, ASTR
4 the Label, Dress the Population, Elliatt, Finders Keepers, Yumi Kim, AGOLDE, Citizens of
5 Humanity, Keepsake, C/MEO, Fifth Label, Cleobella, Sanctuary Clothing, LIKELY, Amanda
6 Uprichard, and Fame and Partners each acceded to RTR’s coercive threats, and agreed (a) to
7 designate RTR as their “exclusive” customer in the Fashion Rental Business, and (b) to refuse to
8 sell merchandise to FashionPass.

9 28. By reason of the agreements RTR entered into with each of The Jetset Diaries, Show
10 Me Your Mumu, Saylor, Blank NYC, Flynn Skye, ASTR the Label, Dress the Population, Elliatt,
11 Finders Keepers, Yumi Kim, AGOLDE, Citizens of Humanity, Keepsake, C/MEO, Fifth Label,
12 Cleobella, Sanctuary Clothing, LIKELY, Amanda Uprichard, and Fame and Partners a trust was
13 created, within the meaning of *Business & Professions Code* section 16720 to prevent competition,
14 which also constitutes a conspiracy against trade within the meaning of *Business & Professions*
15 *Code* section 16755, subdivision (a). In fact, this trust and conspiracy against trade prevents
16 competition and substantially undermines consumer’s access to a competitive market, as is plainly
17 evidenced by the impact of the trust and conspiracy upon FashionPass’s ability to purchase
18 merchandise, as alleged below.

19 29. Prior to 2019, FashionPass had been regularly buying from Yumi Kim, since no later
20 than August 2016; from The Jetset Diaries, since no later than September 2016; from ASTR the
21 Label, since no later than October 2016; from LIKELY, since no later than May 2017; from Show
22 Me Your Mumu and Saylor, since no later than June 2017; from Amanda Uprichard, since no later
23 than August 2017; from Dress the Population, since no later than October 2017; from Flynn Skye,
24 since no later than February 2018; from Sanctuary Clothing, since no later than April 2018; from
25 Blank NYC and Finders Keepers, since no later than August 2018; and from Elliatt, since no later
26 than September 2018. Rental income generated by FashionPass since August 2016 is substantially
27 comprised of revenues generated from the rental of merchandise purchased from said manufacturers.
28 In fact, this group includes 3 of FashionPass’s top 5 revenue generating brands.

1 meaning and scope of *Business and Professions Code* section 17200.

2 36. As a direct result of Defendants' violations of *Business and Professions Code*
3 sections 16720, 16722, and 16726, and their conduct in furtherance of those violations, FashionPass
4 has lost revenue and profits, and has thereby suffered injury in fact. Accordingly, FashionPass is
5 authorized and entitled to maintain this action, pursuant to *Business & Professions Code* section
6 17204.

7 37. FashionPass is informed and believes, and upon such information and belief alleges,
8 that in the absence of injunctive relief against RTR and Does 1 through 100, and each of them,
9 pursuant to *Business & Professions Code* section 17203, RTR and Does 1 through 100, and each of
10 them, will continue their unlawful and unfair business practices.

11 38. Pursuant to *Business & Professions Code* section 17203, FashionPass is entitled to
12 such judgment and orders of this Court as are necessary and appropriate to restore to FashionPass
13 the profits it lost by reason of Defendants' wrongdoing, together with prejudgment interest thereon,
14 at the legal rate of 10% per annum, according to proof.

15 **THIRD CAUSE OF ACTION**

16 **FOR INTENTIONAL INTERFERENCE WITH CONTRACT**

17 **(Against All Defendants)**

18 39. FashionPass refers to and realleges Paragraphs 1 through 22, inclusive, of the
19 Introductory and General Allegations; and Paragraphs 24 through 29, inclusive, of the First Cause
20 of Action, as if the same were each here set forth in full.

21 40. On or about August 9, 2018, FashionPass entered into a contract with Blank NYC to
22 purchase merchandise from Blank NYC. This contract is memorialized by Purchase Order
23 No. 5754066, which was placed with Blank NYC in Los Angeles County, California, and was
24 accepted by Blank NYC in Los Angeles County, California.

25 41. On or about September 27, 2018, FashionPass entered into two contracts with Elliatt
26 to purchase merchandise from Elliatt. These two contracts are memorialized by Purchase Orders
27 No. 35030668-2 and 35030668-3, which were placed with Elliatt in Los Angeles County, California,
28 and were accepted by Elliatt in Los Angeles County, California.

1 42. On or about October 10, 2018, FashionPass entered into two contracts with Flynn
2 Skye to purchase merchandise from Flynn Skye. These two contracts are memorialized by Purchase
3 Orders No. 6096082 and 6096083, which were placed with Flynn Skye in Los Angeles County,
4 California, and were accepted by Flynn Skye in Los Angeles County, California.

5 43. On or about October 19, 2018, FashionPass entered into two contracts with ASTR
6 the Label to purchase merchandise from ASTR the Label. These two contracts are memorialized
7 by Purchase Orders No. 35582032-1 and 35582032-2, which were placed with ASTR the Label in
8 Los Angeles County, California, and were accepted by ASTR the Label in Los Angeles County,
9 California.

10 44. On or about October 30, 2018, FashionPass entered into two contracts with Yumi
11 Kim to purchase merchandise from Yumi Kim. These two contracts are memorialized by Purchase
12 Orders No. 36037478-1 and 36037478-2, which were placed with Yumi Kim in Los Angeles
13 County, California, and were accepted by Yumi Kim in Los Angeles County, California.

14 45. FashionPass is informed and believes, and upon such information and belief alleges,
15 that RTR and Does 1 through 100, and each of them, had actual knowledge of each of the contracts
16 alleged in the preceding Paragraphs 40 through 44, inclusive.

17 46. FashionPass is informed and believes, and upon such information and belief alleges,
18 that RTR and Does 1 through 100, and each of them, intended to cause the manufacturer to breach
19 and cancel each of said contracts by and through RTR's insistence that each of Blank NYC, Elliatt,
20 Flynn Skye, ASTR the Label, and Yumi Kim refuse to sell merchandise to FashionPass.

21 47. As a result of the demands of RTR and Does 1 through 100, and in conformance with
22 their scheme and conspiracy to prevent FashionPass from effectively competing in the market
23 against RTR, Blank NYC, Elliatt, Flynn Skye, ASTR the Label, and Yumi Kim breached and
24 cancelled each of the contracts identified in Paragraphs 40 through 44, above.

25 48. As a direct and proximate result of the breach and cancellation of said contracts,
26 which was induced by RTR and Does 1 through 100, and each of them, FashionPass has suffered
27 injury and damages, and will continue to suffer such injury and damages, in amounts that are not
28 yet fully ascertainable, but which FashionPass is informed and believes to be in excess of

1 \$200,000.00.

2 49. In committing the above alleged wrongdoing, RTR and Does 1 through 100, and
3 each of them, acted intentionally, willfully, maliciously, oppressively, fraudulently, and in
4 conscious and despicable disregard of FashionPass's known rights. By reason thereof, FashionPass
5 is entitled to recover from RTR and Does 1 through 100 punitive and exemplary damages, pursuant
6 to *Civil Code* section 3294.

7 **FOURTH CAUSE OF ACTION**
8 **FOR INTENTIONAL INTERFERENCE WITH**
9 **PROSPECTIVE ECONOMIC ADVANTAGE**
10 **(Against All Defendants)**

11 50. FashionPass refers to and realleges Paragraphs 1 through 22, inclusive, of the
12 Introductory and General Allegations; and Paragraphs 24 through 30, inclusive, of the First Cause
13 of Action, as if the same were each here set forth in full.

14 51. FashionPass and each of The Jetset Diaries, Show Me Your Mumu, Saylor, Blank
15 NYC, Flynn Skye, ASTR the Label, Dress the Population, Elliatt, Finders Keepers, Yumi Kim,
16 Sanctuary Clothing, LIKELY, Amanda Uprichard, and Fame and Partners were in an economic
17 relationship that would have resulted in a significant economic benefit to FashionPass but for the
18 wrongdoing of RTR and Does 1 through 100, as alleged herein.

19 52. RTR and Does 1 through 100, and each of them, had full and actual knowledge of
20 the economic relationship between FashionPass and each of The Jetset Diaries, Show Me Your
21 Mumu, Saylor, Blank NYC, Flynn Skye, ASTR the Label, Dress the Population, Elliatt, Finders
22 Keepers, Yumi Kim, Sanctuary Clothing, LIKELY, Amanda Uprichard, and Fame and Partners.

23 53. RTR and Does 1 through 100, and each of them, intentionally interfered with the
24 economic relationship between FashionPass and each of The Jetset Diaries, Show Me Your Mumu,
25 Saylor, Blank NYC, Flynn Skye, ASTR the Label, Dress the Population, Elliatt, Finders Keepers,
26 Yumi Kim, Sanctuary Clothing, LIKELY, Amanda Uprichard, and Fame and Partners, as is more
27 particularly alleged in Paragraphs 25 through 27, above.

28 54. In committing the wrongful conduct, as alleged above, RTR and Does 1 through 100,

1 and each of them, intended to interfere with and disrupt the relationships between FashionPass and
2 each of The Jetset Diaries, Show Me Your Mumu, Saylor, Blank NYC, Flynn Skye, ASTR the
3 Label, Dress the Population, Elliatt, Finders Keepers, Yumi Kim, Sanctuary Clothing, LIKELY,
4 Amanda Uprichard, and Fame and Partners; and RTR and Does 1 through 100, and each of them,
5 further intended to thereby cause injury and damage to FashionPass.

6 55. As a direct and proximate result of the wrongful conduct of RTR and Does 1 through
7 100, the relationships between FashionPass and each of The Jetset Diaries, Show Me Your Mumu,
8 Saylor, Blank NYC, Flynn Skye, ASTR the Label, Dress the Population, Elliatt, Finders Keepers,
9 Yumi Kim, Sanctuary Clothing, LIKELY, Amanda Uprichard, and Fame and Partners were
10 disrupted, each of said manufacturers refused to sell merchandise to FashionPass, and FashionPass
11 has suffered, and will continue to suffer, monetary damages in amounts that are not yet fully
12 ascertainable, but which FashionPass is informed and believes to be in excess of \$3 million,
13 representing the profits FashionPass would have gained from its relationships with these
14 manufacturers, but for the wrongdoing of RTR and Does 1 through 100, and each of them.

15 56. In committing the above alleged wrongdoing, RTR and Does 1 through 100, and
16 each of them, acted intentionally, willfully, maliciously, oppressively, fraudulently, and in
17 conscious and despicable disregard of FashionPass's known rights. By reason thereof, FashionPass
18 is entitled to recover from RTR and Does 1 through 100 punitive and exemplary damages, pursuant
19 to *Civil Code* section 3294.

20 **WHEREFORE**, FashionPass prays for judgment, as follows:

21 1. **On the First Cause of Action**, against all Defendants, for relief under
22 *Business & Professions Code* section 16750, including (without limitation),

23 (a) For treble damages, according to proof; and

24 (b) For FashionPass's reasonable attorney fees, according to proof.

25 2. **On the Second Cause of Action**, against all Defendants, for relief under
26 *Business & Professions Code* section 17203, including (without limitation),

27 (a) Injunctive relief; and


28 (b) Restitution and recovery of all profits lost by FashionPass by reason

1 of Defendants' unfair competition, together with interest thereon, at the legal rate of 10% per annum,
2 according to proof.

- 3 3. **On the Third Cause of Action**, against all Defendants,
 - 4 (a) For compensatory damages, according to proof; and
 - 5 (b) For punitive and exemplary damages, according to proof.
- 6 4. **On the Fourth Cause of Action**, against all Defendants,
 - 7 (a) For compensatory damages, according to proof; and
 - 8 (b) For punitive and exemplary damages, according to proof.
- 9 5. **On All Causes of Action**, for
 - 10 (a) FashionPass's costs incurred herein; and
 - 11 (b) Such other and further relief as the Court deems just and proper.

12 Dated: March 26, 2019.

GEORGE C. RUDOLPH
A Professional Corporation

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14 By: 
15 George Cooper Rudolph, Esq.

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