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15
16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

18
19 GIANNI VERSACE S.R.L.,
20 Plaintiff,
21 v.
22 FASHION NOVA, INC.,
23 Defendant.

Case No. 2:19-cv-10074

COMPLAINT

JURY TRIAL DEMAND

1 Plaintiff Gianni Versace S.r.l. (“Versace”), by its attorneys Kendall Brill
 2 & Kelly LLP and Paul, Weiss, Rifkind, Wharton & Garrison LLP, for its complaint
 3 against Fashion Nova, Inc. (“Fashion Nova”), upon knowledge as to itself and its own
 4 acts, and upon information and belief as to all other matters, alleges as follows.

5 Nature of the Action

6 1. This is an action for injunctive relief and damages to redress the
 7 flagrant infringement of legendary fashion designer Versace’s iconic apparel—long
 8 protected by copyright, trademark and trade dress—by Fashion Nova, a retailer and
 9 serial infringer specializing in “fast-fashion” knock-offs.

10 2. Founded by Italian designer Gianni Versace in 1978, Versace is
 11 one of the most recognized and influential fashion brands in the world. Versace
 12 designs, manufactures, markets, distributes and sells a wide variety of luxury
 13 products, including Haute Couture and ready-to-wear apparel, which are renowned
 14 for their high quality and style, and are identified and recognized by the use of
 15 copyrighted designs, and distinctive trademarks and trade dress (the “Versace
 16 Apparel”). Examples of the Versace Apparel are depicted below:



3. The Versace Apparel has become enormously popular, driven by the brand's arduous quality standards, innovative design, widespread marketing and large international following. For example, the green "Jungle Pattern" dress depicted above, which famously was worn by Jennifer Lopez at the 42nd Annual Grammy Awards, was identified as one of the "most iconic dresses of all time" in a 2008 poll of consumers. Similarly, the black and gold "Barocco - 57" design depicted above is among the most well-known designs in the fashion world, and instantly recognizable by consumers as signature Versace.

4. Without Versace's license or consent, and indeed with full knowledge and willful disregard of Versace's rights, Fashion Nova has manufactured, marketed and sold apparel using the same or substantially similar copyrighted designs and confusingly similar trademarks and trade dress (the "Infringing Apparel"). Fashion Nova's Infringing Apparel is plainly a deliberate effort to exploit the popularity and renown of Versace's signature designs, and to trade on Versace's valuable goodwill and business reputation in order to drive profits and sales to line Fashion Nova's pockets. Examples of the Infringing Apparel are depicted below:



1 5. The Infringing Apparel deliberately copies and imitates
 2 Versace's most famous and recognizable designs, marks, symbols and other
 3 protected elements in violation of Versace's exclusive registered copyrights, and in
 4 a manner that is likely to cause maximum consumer confusion and deceive the
 5 public regarding the Infringing Apparel's source, sponsorship or affiliation. Fashion
 6 Nova's unlawful acts are irreparably harming Versace's brand and its extremely
 7 valuable goodwill among consumers.

8 6. Nor is this Fashion Nova's first foray into infringements of
 9 fashion designs. Since its launch in 2013, it has been sued at least eight times by
 10 other designers (such as Adidas) for the same type of copyright and trademark
 11 infringement as Versace asserts here. With this lawsuit, Versace seeks to bring an
 12 end to Fashion Nova's latest brazen attempt at copying the work of yet another
 13 famous and world-renowned designer.

14 7. Versace therefore brings this action for copyright infringement,
 15 trademark infringement and trade dress infringement, among other claims, to
 16 immediately halt Fashion Nova's unlawful conduct and redress Versace's rights.

17 **Jurisdiction and Venue**

18 8. This action arises under the Copyright Act, 17 U.S.C. §§ 101 *et*
 19 *seq.*, and the Lanham Act, 15 U.S.C. §§ 1051 *et seq.* This Court's jurisdiction is
 20 based upon 17 U.S.C. §§ 101 *et seq.* and 28 U.S.C. §§ 1121, 1331 and 1338.

21 9. This Court has subject matter jurisdiction over the common and
 22 state law claims under 28 U.S.C. § 1332 because a complete diversity of citizenship
 23 exists between the parties, citizens of California and Italy, and the amount in
 24 controversy exceeds \$75,000. This Court also has subject matter jurisdiction over
 25 the common and state law claims under 28 U.S.C. § 1367 because they are so closely
 26 related to the Copyright Act and Lanham Act claims that they form part of the same
 27 case of controversy under Article III of the United States Constitution.

10. This Court has personal jurisdiction over Fashion Nova because a substantial part of the unlawful acts giving rise to the claims occurred and continues to occur in this District, and because defendant Fashion Nova can be found in this District.

11. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1400(a) because a substantial part of the unlawful acts giving rise to the claims occurred and continues to occur in this District, and because defendant Fashion Nova can be found in this District.

The Parties

12. Plaintiff Versace is a company organized and existing under the laws of Italy, with its principal place of business at Piazza Einaudi No. 4 – 20124 Milan, Italy. Versace Apparel is distributed and sold to consumers throughout the United States through Versace boutiques and luxury-brand retailers, including through Versace’s own retail stores in this District, and authorized retailers in this District such as Nordstrom, Bloomingdale’s and Saks Fifth Avenue, and through the [versace.com](https://www.versace.com) website.

13. Defendant Fashion Nova is a corporation organized and existing under the laws of California, with its principal place of business at 2801 East 46th Street, Vernon, California 90058. Upon information and belief, Fashion Nova markets, distributes, offers for sale and sells its Infringing Apparel throughout the United States, through its fashionnova.com website, including in this District, as well as through retail stores in this District.

The Facts

Versace's Iconic Copyrights, Trademarks and Trade Dress

14. Versace was founded by Italian fashion designer Gianni Versace in 1978, and expanded under the creative leadership of Donatella Versace beginning

1 in 1997, to become one of the most recognizable and sought-after fashion brands in
2 the world.

3 15. Versace Apparel has been worn by royalty, including Princess
4 Diana of Wales and Princess Caroline of Monaco, famous musicians, including
5 Elton John and Lady Gaga, and the biggest stars in Hollywood, including Jennifer
6 Lopez and Elizabeth Hurley. Versace Apparel also is the subject of a 2017 hit song
7 and music video by Bruno Mars entitled “Versace on the Floor” (*see*
8 https://en.wikipedia.org/wiki/Versace_on_the_Floor).

9 16. Versace is renowned for blending art and fashion, including
10 through its creation of bold and colorful prints and decorative design elements,
11 which consumers immediately recognize and associate with Versace. As a result of
12 Versace’s creative vision and artistry, Versace Apparel has been exhibited in
13 prestigious museums around the world, including the Metropolitan Museum of Art
14 in New York, the Victoria & Albert Museum in London, and the Musée de la Mode
15 in Paris.

16 Versace’s Copyrighted Designs

17 17. Many of the most iconic decorative and artistic designs presented
18 on Versace Apparel are original works protected under the United States Copyright
19 Act (collectively, the “Versace Copyrights”).

20 18. For example, Versace owns a valid copyright registered with the
21 Copyright Office for its “Barocco - 57” design, with Registration No. VA 2-176-201
22 (Exhibit A), which is depicted below, along with an example of Versace Apparel
23 bearing the Barocco - 57 copyrighted design:



19. Versace also owns a valid copyright registered with the Copyright Office for its “Pop Hearts” design, with Registration No. VA 2-173-519 (Exhibit B), which is depicted below, along with an example of Versace Apparel bearing the Pop Hearts copyrighted design:



20. Versace also owns a valid copyright registered with the Copyright Office for its “Jungle Print” design, with Registration No. VA 2-175-854 (Exhibit C), which is depicted below, along with an example of Versace Apparel bearing the Jungle Print copyrighted design:







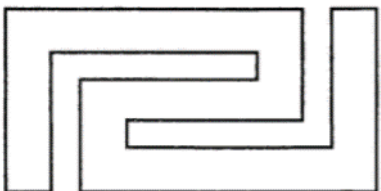
21. At all times relevant, Versace has been the owner of all right, title and interest in and to the “Barocco - 57,” “Pop Hearts” and “Jungle Print” copyrighted works used on Versace Apparel, and such copyrights are valid and in full force and effect. As the owner of the above copyrighted works, Versace has the sole and exclusive right to reproduce and distribute them, in whole or in part, and to create derivative works using them.

Versace’s Distinctive Trademarks

22. Versace also owns numerous distinctive trademarks that have come to symbolize the high quality of Versace Apparel in the minds of consumers, including the VERSACE and GIANNI VERSACE word marks (together, the “Versace Word Marks”), which Versace has continuously used in connection with the sale of Versace Apparel in the United States since at least as early as 1994. In addition to the Versace Word Marks, for many years, Versace has used several distinctive and well-known classical design marks, including “Medusa Head” designs and “Greca” designs (collectively, the “Versace Design Marks,” and together with the Versace Word Marks, the “Versace Trademarks”). Versace

1 Apparel typically includes one or more of the Versace Trademarks to signify to
2 consumers that Versace is the source of the Versace Apparel.

3 23. Many of the Versace Trademarks are registered with the United
4 States Patent and Trademark Office. A non-exclusive list of the registered Versace
5 Trademarks is included below:

<u>Registration Number</u>	<u>Trademark</u>	
4,398,385	VERSACE	(word mark)
4,626,622		
1,875,093		(Medusa Head & Greca Design)
2,980,455		(Medusa Head Design)
3,194,501		(Greca Design)
3,199,127		(Greca Circle Design)
3,453,992		(Greca Element Design)

24. The above U.S. registrations for the Versace Trademarks are valid, subsisting, in full force and effect, and many are incontestable pursuant to 15

1 U.S.C. § 1065. The registrations for the Versace Trademarks constitute *prima facie*
 2 evidence of their validity and of Versace's exclusive right to use the Versace
 3 Trademark. True and correct copies of the United States Registration Certificates
 4 for the above-listed Versace Trademarks are attached as Exhibit D.

5 25. In addition to the U.S. registered trademarks depicted above, the
 6 Versace Trademarks also include foreign registered trademarks and U.S. common law
 7 trademark rights with respect to certain word marks and design marks, including:

8 Jurisdiction

9 Registration Number

10 Trademark

11 European Union

12 11,566,825



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 15 26. The Versace Trademarks signify to consumers that the apparel
 16 bearing them was designed by Versace and is manufactured to Versace's high
 17 quality standards. Whether Versace manufactures the apparel itself or contracts
 18 with others to do so, Versace exercises strict quality control to ensure that all
 19 apparel bearing the Versace Trademarks is manufactured to the highest quality
 20 standards.

21 27. The Versace Trademarks are famous marks, as that term is used
 22 in 15 U.S.C. § 1125(c)(1) and California Business and Professions Code § 14247,
 23 and have been continuously used and never abandoned. The innovative marketing
 24 and product designs of Versace Apparel have enabled the Versace brand to achieve
 25 widespread recognition and fame. In addition, Versace has expended substantial
 26 time, money and other resources in advertising and promoting the Versace
 27 Trademarks, and Versace Apparel has been the subject of extensive unsolicited
 28 publicity resulting from their high-quality, innovative designs, including news

1 stories touting the Versace Apparel as iconic. As a result, apparel bearing the
2 Versace Trademarks is exclusively associated by consumers, the public, and the
3 trade as being high-quality apparel sourced from Versace. Versace Apparel has
4 become among the most popular of its kind in the U.S. and the world, and the
5 Versace Trademarks have achieved tremendous fame and recognition with its
6 consumers. As such, the goodwill associated with the Versace Trademarks is of
7 incalculable and inestimable value to Versace.

8 Versace's Distinctive Trade Dress

9 28. Versace also is the owner of a variety of unique and distinctive
10 trade dresses consisting of a combination of one or more features, including shapes,
11 colors, designs, fabrics and other non-functional elements comprising the overall
12 look and feel that are original and unique to Versace Apparel (the "Versace Trade
13 Dresses").

14 29. One of the most famous examples of the Versace Trade Dresses
15 is the iconic green Versace dress worn by Jennifer Lopez to the 2000 Grammy
16 Awards, which has been recognized as one of the most iconic dresses of all-time,
17 and is the subject of its own Wikipedia entry ([https://en.wikipedia.org/wiki/](https://en.wikipedia.org/wiki/Green_Versace_dress_of_Jennifer_Lopez)
18 [Green_Versace_dress_of_Jennifer_Lopez](https://en.wikipedia.org/wiki/Green_Versace_dress_of_Jennifer_Lopez)). This iconic dress, which is often
19 referred to as the "Jungle Dress," is depicted below:
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30. The Jungle Dress consists of a distinctive combination of elements that together constitute Versace's protectable trade dress, including its green tropical leaf and bamboo pattern, its plunging neckline extending to the navel, its high cut leg slit, a circular brooch at the waist where the plunging neckline and high cut leg slit meet, and long, flowing sleeves (the "Jungle Trade Dress").

31. Another famous example of the Versace Trade Dresses is the iconic Versace baroque-style print, consisting of bold, classical motifs inspired by Italian frescos, including curling floral imagery, gold chains, Medusa heads and leopard skins, typically printed in black and gold on shiny silk (the "Baroque Trade Dress"). The Baroque Trade Dress has been described as "the essence" of the classic Versace look. *See* <https://www.thefader.com/2011/10/20/anatomy-of-a-trend-versaces-baroque-print>. An example of the Baroque Trade Dress is depicted below:



32. For many years, the Versace Trade Dresses have been extensively marketed throughout the United States online, on television, and in print, and Versace has spent millions of dollars in advertising and promoting the Versace Trade Dresses using the Versace brand name.

33. As a result, consumers immediately identify Versace as the single source of high quality apparel bearing the Versace Trade Dresses, including the Jungle Trade Dress and the Baroque Trade Dress.

Fashion Nova's Acts of Infringement

34. Fashion Nova was founded in 2006 as a chain of stores in Los Angeles-area malls selling low-price "clubwear." In 2013, Fashion Nova launched an e-commerce site (fashionnova.com) to sell so-called "fast-fashion"—inexpensive clothing produced rapidly by mass-market retailers in response to the latest original fashion trends. Fashion Nova's ability to churn out new clothing so quickly is due in large part to its willingness to copy the copyrighted designs, trademarks and trade dress elements of well-known designers such as Versace, and trade on their creative efforts in order to bolster Fashion Nova's bottom line.

1 35. To that end, in blatant disregard of Versace's rights, Fashion
2 Nova is designing, manufacturing, producing, marketing, distributing, promoting,
3 offering for sale and selling in interstate commerce apparel bearing designs that are
4 the same or substantially similar to the Versace Copyrights, and apparel that
5 includes the Versace Trademarks or words, symbols, designs and other elements
6 that are confusingly similar to the Versace Trademarks and Trade Dress.











7 36. Examples of Fashion Nova's Infringing Apparel are depicted on
8 the following pages, which Infringing Apparel is substantially and confusingly
9 similar to the Versace Copyrights, Trademarks and Trade Dresses. Additional
10 examples (by way of illustration and not limitation) of Fashion Nova's Infringing
11 Apparel are attached as Exhibit E.



Fashion Nova Dress	Versace Dress
	
Infringing Designs	Versace IP Infringed
 	 <p data-bbox="922 1031 1360 1150">Barocco - 57 Copyright U.S. Reg. No. VA 2-176-201 (detail)</p>
 	 <p data-bbox="922 1325 1360 1476">Barocco - 57 Copyright U.S. Reg. No. VA 2-176-201 (detail)</p>
	 <p data-bbox="954 1598 1336 1671">Greca Design Trademark U.S. Reg. No. 3,194,501</p>

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Fashion Nova Dress	Versace Dress
	
Infringing Design	Versace IP Infringed
	 Greca Design Trademark U.S. Reg. No. 3,194,501
	 Greca Circle Design Trademark U.S. Reg. No. 3,199,127

Fashion Nova Dress	Versace Dress
	
Infringing Design	Versace IP Infringed
	 <p>Pop Hearts Copyright U.S. Reg. No. VA 2-173-519 (detail)</p>

Fashion Nova Dresses		Versace Dress
		
		
Infringing Designs		Versace IP Infringed
		 <p>Jungle Print Copyright U.S. Reg. No. VA 2-175-854</p>
		

Infringing Fashion Nova Dress	Original Versace Jungle Dress
	
Infringing Design Elements	Versace Trade Dress Elements Infringed
<ul style="list-style-type: none"> • Green tropical leaf and bamboo pattern • Plunging neckline extending to the navel • High-cut leg slit • Circular brooch where the plunging neckline meets the high-cut leg slit • Long, flowing sleeves 	<ul style="list-style-type: none"> • Green tropical leaf and bamboo pattern • Plunging neckline extending to the navel • High-cut leg slit • Circular brooch where the plunging neckline meets the high-cut leg slit • Long, flowing sleeves

1 37. The Infringing Apparel designed, manufactured, produced,
2 distributed, marketed, promoted, offered for sale and sold by Fashion Nova is not
3 manufactured by Versace.

4 38. Nor is Fashion Nova associated, affiliated or connected with
5 Versace, or licensed, authorized, sponsored, endorsed or approved by Versace in
6 any way.

7 39. Versace created and used the Versace Copyrights, Trademarks
8 and Trade Dresses extensively and continuously in connection with Versace Apparel
9 long before Fashion Nova began distributing, marketing, promoting, offering for
10 sale or selling the Infringing Apparel.

11 40. Fashion Nova's use of designs that are substantially similar to
12 the Versace Copyrights violates Versace's exclusive registered copyrights.

13 41. Fashion Nova's use of words, symbols, designs and other
14 elements that are confusingly similar to the Versace Trademarks and Trade Dress
15 violates Versace's registered trademarks and trade dress.

16 42. Telling of the willfulness of Fashion Nova's infringing conduct,
17 Fashion Nova also deceives unknowing consumers by using the Versace
18 Trademarks without authorization within the content, text and/or meta tags of its
19 website in order to attract various search engines crawling the Internet looking for
20 websites relevant to consumer searches for Versace Apparel. Moreover, Fashion
21 Nova uses other unauthorized search engine optimization tactics and/or social media
22 spamming so that Fashion Nova webpages show up at or near the top of relevant
23 search results and misdirect consumers searching for Versace Apparel.

24 43. Fashion Nova's use of identical and/or confusingly similar
25 imitations of the Versace Trademarks and Trade Dress is likely to deceive, confuse
26 and mislead actual and prospective purchasers before, during and after purchase into
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1 believing that the Infringing Apparel is manufactured or authorized by, or in some
2 manner associated with, Versace, which it is not.

3 44. The likelihood of confusion, mistake and deception engendered
4 by Fashion Nova's misappropriation of the Versace Trademarks and Trade Dress is
5 causing irreparable harm to the goodwill symbolized by the Versace Trademarks
6 and Trade Dress and the reputation for quality that they embody.

7 45. Fashion Nova has engaged in the above-described infringing
8 activities knowingly and intentionally, or with reckless disregard or willful
9 blindness to Versace's rights, or with bad faith, for the purpose of trading on the
10 goodwill and reputation of the Versace Trademarks and Trade Dresses.

11 46. Versace objected to Fashion Nova's infringing activities on
12 multiple occasions before filing this lawsuit, including on or about July 26, 2019,
13 September 20, 2019, October 1, 2019 and November 13, 2019.

14 47. Notwithstanding Versace's objections, Fashion Nova continues
15 to use designs that are substantially similar to the Versace Copyrights, and
16 confusingly similar to the Versace Trademarks and Trade Dresses, in violation of
17 Versace's exclusive registered copyrights, registered trademarks, common law
18 trademarks, and distinctive trade dresses.

19 ***Versace's Injury***

20 48. As a direct and proximate result of Fashion Nova's infringing
21 conduct, Versace has been substantially damaged in, among other ways, the
22 infringement of the Versace Copyrights and the deprivation of Versace's exclusive
23 right to control the manner of use of its Versace Copyrights.

24 49. As a result of Fashion Nova's misuse of the Versace Copyrights,
25 Fashion Nova has caused, and will continue to cause, irreparable injury to Versace
26 and has damaged the value of the Versace Copyrights.

50. In addition, Fashion Nova has enriched itself at Versace's expense by its commercial exploitation of the Versace Copyrights without Versace's consent and without any compensation to Versace.

51. Further, as a direct and proximate result of Fashion Nova's misuse of the Versace Trademarks and Trade Dresses, consumers are likely to be confused and deceived into believing that a connection or association exists between Versace and Fashion Nova, when there is none, causing additional injury to Versace, and the reputation and goodwill of the Versace Trademarks and Trade Dress.

52. Fashion Nova's misuse of the Versace Trademarks and Trade Dresses also dilutes the distinctiveness of the Versace Trademarks and Trade Dresses by eroding the public's exclusive identification of these famous trademarks and trade dresses with Versace, tarnishing and degrading the positive associations and prestigious connotations of these famous trademarks and trade dresses, and otherwise lessening the capacity of the Versace Trademarks and Trade Dresses to identify and distinguish Versace Apparel.

53. In addition, Fashion Nova has enriched itself at Versace's expense by its commercial exploitation of the Versace Trademarks and Trade Dresses without Versace's consent and without any compensation to Versace.

FIRST CLAIM

(Copyright Infringement Under the Copyright Act, 17 U.S.C. § 501)

54. Versace repeats and realleges the allegations in paragraphs 1 through 52.

55. As set forth above, the Versace Copyrights are valid and owned by Versace, and have been registered with the U.S. Copyright Office.

56. Fashion Nova, without the permission or consent of Versace, has designed, manufactured, produced, distributed, marketed, promoted, offered for sale

1 and sold the Infringing Apparel, which is substantially similar to the Versace
2 Copyrights.

3 57. By reason of the foregoing, Fashion Nova has infringed, and
4 continues to infringe, the Versace Copyrights in violation of, without limitation, the
5 exclusive rights of reproduction and distribution and the exclusive right to prepare
6 derivative works under section 106 of the Copyright Act, and section 501 of the
7 Copyright Act.

8 58. Fashion Nova's infringement of the Versace Copyrights has been
9 and continues to be intentional, willful and with full knowledge of Versace's rights.

10 59. As a direct and proximate result of its infringing conduct,
11 Fashion Nova has made and will continue to make substantial profits and gains to
12 which it is not entitled.

13 60. As a direct and proximate result of Fashion Nova's conduct,
14 Versace has suffered and will continue to suffer irreparable harm, for which it has
15 no adequate remedy at law.

16 61. As a direct and proximate result of Fashion Nova's conduct,
17 Versace is entitled to actual damages and Fashion Nova's profits pursuant to 17
18 U.S.C. § 504(b) attributable to Fashion Nova's infringement.

19 62. Alternatively, Versace is entitled to the maximum statutory
20 damages, pursuant to 17 U.S.C. § 504(c), and such other amounts as may be proper
21 under 17 U.S.C. § 504(c).

22 63. Versace is further entitled to its attorneys' fees and full costs
23 pursuant to 17 U.S.C. § 505.

SECOND CLAIM

(Trademark Infringement Under

Section 32 of the Lanham Act, 15 U.S.C. § 1114(1))

64. Versace repeats and realleges the allegations in paragraphs 1 through 62.

65. The Versace Trademarks are owned by Versace, and are valid and subsisting.

66. Upon information and belief, Fashion Nova has used, is using, and/or imminently intends to use the Versace Trademarks, or words and symbols that are confusingly similar to the Versace Trademarks, in interstate commerce, without the consent of Versace, in connection with the sale of goods and/or in connection with the advertising and promotion of such goods.

67. Fashion Nova's conduct as alleged above constitutes the unauthorized use in interstate commerce in the United States of the Versace Trademarks in connection with the sale, offering for sale, distribution, or advertising of its products, and has caused and/or is likely to cause confusion or mistake or deception of the public as to (i) the affiliation, connection, and/or association of Versace with Fashion Nova and the Infringing Apparel; (ii) the origin of the Infringing Apparel; and/or (iii) the sponsorship, endorsement, or approval of the Infringing Apparel by Versace, in each case a violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114(1).

68. Upon information and belief, Fashion Nova's actions were deliberate, willful, and in conscious disregard of Versace's superior rights in its registered Versace Trademarks.

69. As a result of Fashion Nova's conduct, Versace has suffered irreparable harm to its Versace Trademarks, reputation and goodwill, for which it

1 has no adequate remedy at law, and will continue to suffer irreparable injury unless
2 and until Fashion Nova's infringing acts are enjoined by this Court.

3 70. Pursuant to 15 U.S.C. §§ 1116-1117, Versace is entitled to
4 injunctive relief, actual damages in an amount to be determined at trial, to have such
5 damages trebled, to Fashion Nova's profits, and to the costs of this action and to
6 attorneys' fees.

7 **THIRD CLAIM**

8 **(Trade Dress Infringement Under**

9 **Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a))**

10 71. Versace repeats and realleges the allegations in paragraphs 1
11 through 69.

12 72. The Versace Trade Dresses are nonfunctional and their
13 inherently distinctive quality has achieved a high degree of consumer recognition
14 and serves to identify Versace as the source of high quality goods.

15 73. Upon information and belief, Fashion Nova has used, is using,
16 and/or imminently intends to use shapes, colors, designs, fabrics and other non-
17 functional elements that are identical and/or confusingly similar to the Versace
18 Trade Dresses without the consent of Versace, on Fashion Nova's products or in
19 connection with the advertising and promotion of such goods.

20 74. Upon information and belief, Fashion Nova's actions were
21 deliberate, willful, and in conscious disregard of Versace's superior rights in its
22 Versace Trade Dresses.

23 75. Fashion Nova's conduct as alleged above constitutes the
24 unauthorized use in commerce of the Versace Trade Dresses in connection with the
25 Infringing Apparel and has caused and/or is likely to cause confusion, mistake, or
26 deception of the public as to (i) the affiliation, connection, and/or association of
27 Versace with Fashion Nova and the Infringing Apparel; (ii) the origin of the
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1 Infringing Apparel; and/or (iii) the sponsorship, endorsement, or approval of the
 2 Infringing Apparel by Versace, in each case in violation of Section 43(a) of the
 3 Lanham Act, 15 U.S.C. § 1125(a).

4 76. As a result of Fashion Nova's conduct, Versace has suffered
 5 irreparable harm to its Versace Trade Dresses, reputation and goodwill, for which it
 6 has no adequate remedy at law, and will continue to suffer irreparable injury unless
 7 and until Fashion Nova's infringing acts are enjoined by this Court.

8 77. Pursuant to 15 U.S.C. §§ 1116-1117, Versace is entitled to
 9 injunctive relief, actual damages in an amount to be determined at trial, to have such
 10 damages trebled, to Fashion Nova's profits, and to the costs of this action and to
 11 attorneys' fees.

12 **FOURTH CLAIM**

13 **(Unfair Competition and False Designation of Origin**

14 **Under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a))**

15 78. Versace repeats and realleges the allegations in paragraphs 1
 16 through 76.

17 79. In addition to the registered Versace Trademarks, Versace owns
 18 valuable common law trademark rights in the Versace Trademarks, which, by virtue
 19 of their use by Versace, in connection with the promotion and sale of goods and
 20 services, has gained widespread consumer recognition, and has developed valuable
 21 goodwill associated therewith.

22 80. Upon information and belief, Fashion Nova has used, is using,
 23 and/or imminently intends to use the Versace Trademarks in interstate commerce,
 24 without the consent of Versace, to identify Fashion Nova's goods and/or in
 25 connection with the advertising and promotion of such goods.

26 81. Fashion Nova's conduct as alleged above constitutes the
 27 unauthorized use in commerce of the Versace Trademarks in connection with the
 28

Infringing Apparel and has caused and/or is likely to cause confusion, mistake, or deception of the public as to (i) the affiliation, connection, and/or association of Versace with Fashion Nova and the Infringing Apparel; (ii) the origin of the Infringing Apparel; and/or (iii) the sponsorship, endorsement, or approval of the Infringing Apparel by Versace, in each case in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

82. Upon information and belief, Fashion Nova's actions were deliberate, willful, and in conscious disregard of Versace's rights.

83. Fashion Nova's conduct as alleged above has caused and/or will cause Versace to suffer injury, for which it has no adequate remedy at law.

84. Pursuant to 15 U.S.C. §§ 1116-1117, Versace is entitled to injunctive relief, actual damages in an amount to be determined at trial, to have such damages trebled, to Fashion Nova's profits, and to the costs of this action and to attorneys' fees.

FIFTH CLAIM

(Dilution Under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c))

85. Versace repeats and realleges the allegations in paragraphs 1 through 83.

86. The Versace Trade Dresses and Versace Trademarks are famous and distinctive within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), and Versace has built up valuable goodwill in the Versace Trade Dresses and Versace Trademarks. The Versace Trade Dresses and Versace Trademarks have enjoyed such distinction and fame since long before Fashion Nova commenced unauthorized use of the Versace Trade Dresses and Versace Trademarks.

87. Upon information and belief, Fashion Nova has used, is using, and/or intends to use the Versace Trade Dresses and Versace Trademarks in

1 interstate commerce in connection with the advertising and promotion of goods and
2 services sold or offered by Fashion Nova.

3 88. Fashion Nova's use of the Versace Trade Dresses and Versace
4 Trademarks has caused actual harm and is likely to cause harm to Versace by
5 diluting and weakening the unique and distinctive significance and quality of the
6 Versace Trade Dresses and Versace Trademarks to identify Versace's goods and
7 services and by tarnishing the Versace Trade Dresses and Versace Trademarks in
8 the minds of consumers.

9 89. By reason of the foregoing, Fashion Nova has violated Section
10 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

11 90. Upon information and belief, Fashion Nova's actions were
12 deliberate, willful, and in conscious disregard of Versace's rights.

13 91. Fashion Nova's conduct as alleged above has caused and/or will
14 cause Versace to suffer injury, for which it has no adequate remedy at law.

15 92. Pursuant to 15 U.S.C. §§ 1116-1117, Versace is entitled to
16 injunctive relief, actual damages in an amount to be determined at trial, to have such
17 damages trebled, to Fashion Nova's profits, to the costs of this action, and to
18 attorneys' fees.

19 **SIXTH CLAIM**

20 **(Common Law Trademark Infringement)**

21 93. Versace repeats and realleges the allegations in paragraphs 1
22 through 91.

23 94. Fashion Nova's conduct as alleged above constitutes
24 infringement and misappropriation of the Versace Trademarks in violation of
25 Versace's rights under common law and in equity.

26 95. Upon information and belief, Fashion Nova's actions were
27 deliberate, willful, and in conscious disregard of Versace's rights.

96. Fashion Nova's conduct as alleged above has caused and/or will cause Versace to suffer injury, for which it has no adequate remedy at law.

97. Versace is entitled to injunctive relief, actual damages in an amount to be determined at trial, to have such damages trebled, to Fashion Nova's profits, to the costs of this action, and to attorneys' fees.

SEVENTH CLAIM

(Common Law Unfair Competition)

98. Versace repeats and realleges the allegations in paragraphs 1 through 96.

99. Upon information and belief, by using the Versace Trade Dresses and Versace Trademarks in commerce without authorization by Versace, Fashion Nova knowingly and willfully is confusing consumers by creating the false and misleading impression that Fashion Nova and its Infringing Apparel are related to, affiliated with, or connected with Versace.

100. Upon information and belief, Fashion Nova's deliberate use of the Versace Trade Dresses and Versace Trademarks in connection with the marketing, advertising, promotion, and/or distribution of its Infringing Apparel was done in bad faith with the intent to unfairly benefit from the expense, time, effort and labor expended by Versace in developing and promoting the Versace Trade Dresses and Versace Trademarks.

101. By reason of the foregoing, Fashion Nova's conduct constitutes willful and deliberate false designation of origin, false description and representation, and unfair competition, in violation of Versace's rights under common law and in equity.

102. Upon information and belief, Fashion Nova's actions were deliberate, willful, and in conscious disregard of Versace's rights.

103. Fashion Nova's conduct as alleged above has caused and/or will cause Versace to suffer injury, for which it has no adequate remedy at law. Versace is entitled to injunctive relief, actual damages in an amount to be determined at trial, and to Fashion Nova's profits attributable to its unlawful conduct.

EIGHTH CLAIM

(Dilution in Violation of Cal. & Bus. Prof. Code § 14247)

104. Versace repeats and realleges the allegations in paragraphs 1 through 102.

105. The Versace Trademarks and Trade Dresses are famous and distinctive in the State of California, and Versace has built up valuable goodwill in the Versace Trademarks and Trade Dresses. The Versace Trademarks and Trade Dresses have enjoyed widespread publicity and recognition in the State of California since long before Fashion Nova commenced use of the Versace Trademarks and Trade Dresses.

106. Upon information and belief, Defendants have used, are using, and/or intend to use the Versace Trademarks and Trade Dresses in commerce in connection with the advertising and promotion of goods and services sold or offered for sale by Fashion Nova in the State of California.

107. Fashion Nova's use of the Versace Trademarks and Trade Dresses has caused actual harm and is likely to cause harm to Versace by diluting and weakening the unique and distinctive significance and quality of the Versace Trademarks and Trade Dresses to identify the Versace Apparel and by tarnishing Versace's name, and the Versace Trademarks and Trade Dresses, in the minds of consumers in the State of California.

108. By reason of the foregoing, Versace is being damaged by the unauthorized and illegal use of the Versace Trademarks and Trade Dresses in the manner set forth above, and will continue to be damaged unless Fashion Nova is

1 immediately enjoined under Section 14247 of the California Business and
 2 Professions Code from using any of the Versace Trademarks or Trade Dress.

3 **NINTH CLAIM**

4 **(Unfair Competition Under California Unfair Business Practices Act,** 5 **Cal. & Bus. Prof. Code §§ 17200 *et seq.*)**

6 109. Versace repeats and realleges the allegations in paragraphs 1
 7 through 107.

8 110. Upon information and belief, by using the Versace Trademarks
 9 and Trade Dresses in commerce without authorization by Versace, Fashion Nova
 10 knowingly and willfully is confusing consumers by creating the false and
 11 misleading impression that Fashion Nova and its Infringing Apparel are related to,
 12 affiliated with, or connected with Versace.

13 111. Fashion Nova's deliberate use of the Versace Trademarks and
 14 Trade Dresses in connection with the marketing, advertising, promotion, and/or
 15 distribution of its Infringing Apparel was done in bad faith with the intent to unfairly
 16 benefit from the expense, time, effort and labor expended by Versace in developing
 17 and promoting the Versace Trademarks and Trade Dresses.

18 112. By reason of the foregoing, Fashion Nova's conduct constitutes a
 19 violation of the California Unfair Business Practices Act, Cal. Bus. & Prof. Code,
 20 §§ 17200 *et seq.*

21 113. Fashion Nova's actions were deliberate, willful, and in conscious
 22 disregard of Versace's rights.

23 114. Fashion Nova's conduct as alleged above has caused and/or will
 24 cause Versace to suffer injury, for which it has no adequate remedy at law. Versace
 25 is entitled to all available relief provided for in California Unfair Business Practices
 26 Act, Cal. Bus. & Prof. Code, §§ 17200, *et seq.*, including permanent injunctive
 27 relief.
 28

1 WHEREFORE, Versace respectfully requests that this Court enter
2 judgment against Fashion Nova as follows:

3 A. Adjudging that Fashion Nova: (i) violated § 501 of the Copyright
4 Act of 1976, 17 U.S.C. § 501, with respect to the Versace Copyrights; (ii) violated
5 § 32 of the Lanham Act, 15 U.S.C. § 1114, with respect to the Versace Trademarks;
6 and (iii) violated § 43(a) of the Lanham Act, 15 U.S.C. § 1125, with respect to the
7 Versace Trade Dress;

8 B. Granting an injunction, pursuant to Rule 65 of the Federal Rules
9 of Civil Procedure, 17 U.S.C. § 502 and 15 U.S.C. § 1116, preliminarily and
10 permanently restraining and enjoining Fashion Nova, its officers, agents, employees
11 and attorneys, and all those persons or entities in active concert or participation with
12 them from designing, manufacturing, importing, advertising, marketing, promoting,
13 supplying, distributing, offering for sale and/or selling any products that bear the
14 Versace Copyrights, the Versace Trademarks and/or the Versace Trade Dresses,
15 and/or any other design, mark, symbol or other elements substantially similar or
16 confusingly similar thereto, including, without limitation, the Infringing Apparel, and
17 engaging in any other activity constituting an infringement of any of Versace's rights
18 in the Versace Copyrights, the Versace Trademarks and/or the Versace Trade Dresses;

19 C. Requiring Fashion Nova to recall from any distributors and
20 retailers, and to deliver to Versace for destruction or other disposition all remaining
21 inventory of all Infringing Apparel, including all advertisements, promotional and
22 marketing materials therefor, as well as the means of making same;

23 D. Requiring Fashion Nova to file with this Court and to serve on
24 Versace within thirty (30) days after entry of the injunction a report in writing under
25 oath setting forth in detail the manner and form in which Fashion Nova has complied
26 with the injunction;

27 E. Directing such other and further relief as the Court may deem
28

1 appropriate to prevent consumers, the public and/or the trade from deriving any
2 erroneous impression that any product at issue in this action that has been
3 manufactured, imported, advertised, marketed, promoted, supplied, distributed,
4 offered for sale and/or sold by Fashion Nova has been authorized by Versace, or is
5 related in any way with Versace and/or its products;

6 F. Awarding Versace statutory damages or, alternatively, its actual
7 damages suffered as a result of the copyright infringement and any profits of Fashion
8 Nova not taken into account in computing the actual damages, pursuant to 17 U.S.C.
9 § 504;

10 G. Ordering Fashion Nova to account to and pay to Versace all profits
11 realized by its wrongful acts, awarding Versace its actual damages, and directing that
12 such profits or actual damages be trebled in accordance with § 35 of the Lanham Act,
13 15 U.S.C. § 1117;

14 H. Awarding Versace punitive damages to which it is entitled under
15 applicable law;

16 I. Awarding Versace its attorneys' fees, together with the costs and
17 disbursements of this action;

18 J. Awarding Versace pre-judgment interest on any monetary award
19 made part of the judgment against Fashion Nova; and

20 K. Granting Versace such other and further relief as the Court deems
21 just and proper.

22 **JURY DEMAND**

23 Plaintiff hereby demands a trial by jury of all issues so triable.
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27
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1 DATED: November 25, 2019

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2
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