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 SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF LOS ANGELES

AUG 07 2014

Sherril R. Carter, Executive Officer/Clerk  
 By: Amber Hayes, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

BC554133

LINDA RUBENSTEIN, on behalf of herself  
 and all others similarly situated,

Plaintiffs,

v.

THE NEIMAN MARCUS GROUP LLC, a  
 Delaware Limited Liability Company, and  
 DOES 1-50, inclusive,

Defendants.

) Case No.

) CLASS ACTION  
 ) COMPLAINT FOR:

) 1. Violation of California's False Advertising  
 ) Laws ("FAL"); Bus. & Prof. Code § 17500 et  
 ) seq.;

) 2. Violation of California's Unfair  
 ) Competition Laws ("UCL"); Bus. & Prof.  
 ) Code § 17200 et seq.;

) 3. Violation of California's Consumer Legal  
 ) Remedies Act ("CLRA"); Civ. Code § 1750  
 ) et seq.

) JURY TRIAL DEMANDED

99003-00001 164210.01

CLASS ACTION COMPLAINT

1 Plaintiff Linda Rubenstein (also referred to as the "Plaintiff"), on behalf of herself and all  
 2 others similarly situated, alleges as follows. Plaintiff's allegations are based on the investigation  
 3 of counsel, and thus on information and belief, except as to the individual actions of Plaintiff, as to  
 4 which Plaintiff has personal knowledge.

### 5 THE PARTIES

- 6 1. Plaintiff Linda Rubenstein is a citizen and resident of Los Angeles County, California who  
 7 purchased clothing from the Neiman Marcus Last Call Store (also referred to as the "Last  
 8 Call Store" or "Last Call") in Camarillo, California that was purportedly sold for markedly  
 9 lower than the "Compared to" price that a consumer would pay at traditional Neiman  
 10 Marcus retail stores.
- 11 2. Plaintiff is informed and believes, and upon such information and belief alleges, that The  
 12 Neiman Marcus Group LLC (also referred to as "Defendant") is a Delaware limited  
 13 liability company, with its principle place of business in Irving, Texas, that markets,  
 14 distributes, and/or sells men's and women's clothing and accessories. Defendant sells its  
 15 clothing and accessories to consumers in California and throughout the nation.
- 16 3. Plaintiff does not know the true names or capacities of the persons or entities sued herein  
 17 as DOES 1-50, inclusive, and therefore sues such Defendants by such fictitious names.  
 18 Plaintiff is informed and believes, and upon such information and belief alleges, that each  
 19 of the DOE Defendants is in some manner legally responsible for the damages suffered by  
 20 Plaintiff and the members of the Class as alleged herein. Plaintiff will amend this  
 21 Complaint to set forth the true names and capacities of these Defendants when they have  
 22 been ascertained, along with appropriate charging allegations, as may be necessary.
- 23 4. At all times herein mentioned, Defendants, and each of them, were the agents, principals,  
 24 servants, employees, and subsidiaries of each of the remaining Defendants, and were at all  
 25 times acting within the purpose and scope of such agency, service, and employment, and  
 26 directed, consented, ratified, permitted, encouraged, and approved the acts of each  
 27 remaining Defendant.

28 //

**JURISDICTION AND VENUE**

5. This Court has jurisdiction over all causes of action asserted herein under the California Constitution.

6. Venue is proper in this County pursuant to California Civil Code § 1780(d) because Defendant does business here.

7. Venue is proper in this District pursuant to Los Angeles County Superior Court Rule 2.3(a)(1)(A) because this is a class action.

8. Out-of-state participants can be brought before this Court pursuant to California's "long-arm" jurisdictional statute.

**FACTUAL ALLEGATIONS**

9. Neiman Marcus offers upscale assortments of apparel, accessories, jewelry, beauty and decorative home products to the affluent consumer. Neiman Marcus operates 41 stores across the United States. These store operations total more than 6.5 million gross square feet with over \$400 million in sale revenues in 2013.

10. Defendant also operates thirty six Last Call clearance stores. These Last Call Stores are an alternative way for large retail companies to capture a larger pool of consumers because they offer clothing and accessories at discounted prices from in-demand retail stores.

11. Outlet stores are a popular avenue for sale-seeking consumers because in-demand retail stores, such as Neiman Marcus, will often sell clothes that are "after season" or clothing that had very little popularity and did not sell. To mitigate any more losses on the clothing, the retail stores will sell this clothing at various outlet malls for a discount.

12. Contagion among large retail stores operating outlet stores have spread throughout outlet-specific malls and shoppers have become accustomed to seeing products that once were sold at the traditional retail store. This popularity has been noted, for example, apparel sales at factory outlets rose 17.8% in 2011, according to estimates by market research firm NPD Group. Meanwhile, apparel sales industry-wide rose a meager 1.4%.<sup>1</sup>

<sup>1</sup><http://articles.latimes.com/2011/aug/07/business/la-fi-0807-cover-outlet-malls-20110807>

- 1 13. Furthermore, the chief industry analyst at NPD Group states, "What outlets have been able  
2 to do is touch the core of the American consumer. There's no question that what we're  
3 witnessing is the transformation of how and where consumers are shopping. The recession  
4 really kicked it into high gear for outlet centers."
- 5 14. It is, therefore, no surprise that Defendant has immersed themselves into this lucrative  
6 industry to continue to grow their robust billion dollar business. Plaintiff and other Outlet  
7 Store shoppers (also referred to as the "Class") were also looking to obtain benefits from  
8 Defendant's discounted stores, which included buying the alleged same exact clothing after  
9 season and/or excess clothing that Defendant's traditional stores once carried, but for a  
10 discounted price.
- 11 15. Defendant labels its Last Call clothing with a tag that shows a markedly lower price from  
12 the "Compared to" price which corresponds to the price that appears to be used in  
13 traditional Neiman Marcus retail stores. Plaintiff was lured in by this price difference and  
14 as a result purchased multiple items of clothing from Defendant's Last Call Store in July of  
15 2014.
- 16 16. Defendant's marketing techniques purposely suggests that the "Compared to" price  
17 corresponds to the exact same article of clothing when sold at the traditional Neiman  
18 Marcus retail store, but at a substantial discount, when in fact it is not.
- 19 17. Defendant's Last Call clothing is actually not intended for the sale at the traditional  
20 Neiman Marcus stores as the "Compared to" pricing strategy suggests but rather strictly for  
21 the Last Call Store. Therefore, Defendant's price tags on the Last Call clothing are labeled  
22 with arbitrary inflated "Compared to" prices that are purely imaginative because it was  
23 never sold at the traditional Neiman Marcus store and therefore can't be compared to any  
24 price. Thus the insinuated discount is false and misleading.
- 25 18. The Federal Trade Commission has also heard complaints by many members of Congress  
26 that see this practice occurring throughout large retail stores. Specifically, the  
27 Congressional members state, "it is a common practice at outlet stores to advertise a retail  
28 price alongside the outlet store price - even on made-for-outlet merchandise that does not

1 sell at regular retail locations. Since the item was never sold in the regular retail store or at  
 2 the retail price, the retail price is impossible to substantiate. We believe this practice may  
 3 be a violation of the FTC's Guides Against Deceptive Pricing (16 CFR 233)."<sup>2</sup>

4 19. The FTC guidelines are as follows:

5 i. "Many members of the purchasing public believe that a manufacturer's list  
 6 price, or suggested retail price, is the price at which an article is generally  
 7 sold. Therefore, if a reduction from this price is advertised, many people will  
 8 believe that they are being offered a genuine bargain. To the extent that list  
 9 or suggested retail prices do not in fact correspond to prices at which a  
 10 substantial number of sales of the article in question are made, the  
 11 advertisement of a reduction may mislead the consumer. A former price is  
 12 not necessarily fictitious merely because no sales at the advertised price were  
 13 made. The advertiser should be especially careful, however, in such a case,  
 14 that the price is one at which the product was openly and actively offered for  
 15 sale, for a reasonably substantial period of time, in recent, regular course of  
 16 her business, honestly and in good faith - and, of course, not for the  
 17 purpose of establishing a fictitious higher price on which a deceptive  
 18 comparison might be based." (Emphasis added).

19 ii. "It bears repeating that the manufacturer, distributor or retailer must in  
 20 every case act honestly and in good faith in advertising a list price, and not  
 21 with the intention of establishing a basis, or creating an instrumentality, for  
 22 a deceptive comparison in any local or other trade area. For instance, a  
 23 manufacturer may not affix price tickets containing inflated prices as an  
 24 accommodation to particular retailers who intend to use such prices as the  
 25 basis for advertising fictitious price reductions."

26  
 27  
 28 <sup>2</sup><http://www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-stores-may-be-misleading-consumers>

1 16 C.F.R. § 233.3.

2 20. Furthermore, due to Plaintiff's reasonable belief that the Last Call Store was an "outlet"  
3 store she believed the clothing was authentic and once sold at a traditional Neiman Marcus  
4 retail store since this is how outlet stores market themselves. She subsequently was under  
5 the impression that Last Call clothing was made with the same quality as all Neiman  
6 Marcus clothing, which is not true. The Last Call clothing does not have the same qualities  
7 as the traditional Neiman Marcus clothing.

8 21. Defendant's misleading pricing techniques led Plaintiff and the Class to believe the Last  
9 Call clothing was authentic Neiman Marcus clothing, and in reliance thereon, decided to  
10 purchase the clothing from Defendant's Last Call Store. As a result, Plaintiff was damaged  
11 in purchasing the Last Call clothing because she paid for clothing based on Defendant's  
12 representations and perceived discounts, but she did not experience any of Defendant's  
13 promised benefits shopping at the Last Call Store.

14 22. Defendant's misrepresentations regarding the Last Call clothing and the purported origin of  
15 the clothing were designed to, and did, lead Plaintiff and the putative Class to believe that  
16 the Last Call clothing was of equal quality and sold at the traditional Neiman Marcus retail  
17 store before it became an item for sale at the Last Call Store. Further, Plaintiff and  
18 members of the Class relied on Defendant's misrepresentations and would not have paid as  
19 much, if at all, for the clothing but for Defendant's misleading advertising and  
20 representations.

21 23. Plaintiff brings this lawsuit to enjoin the ongoing deception of thousands of California  
22 consumers by Defendant, and to recover the monetary gains taken by this unlawful  
23 practice.

#### 24 CLASS DEFINITIONS AND CLASS ALLEGATIONS

25 24. Plaintiff brings this action on behalf of herself and on behalf of all others similarly situated  
26 and, as members of the Class or subclasses (collectively referred to hereafter as the  
27 "Class") defined as follows:

28 (1) California Class: The Class that Plaintiff seeks to represent ("the California

Class”) consists of all persons who purchased Last Call clothing in California labeled to make consumers believe it was originally sold at the traditional Neiman Marcus store but instead was intended only for the sale at the Last Call Store at a lesser quality within the four years prior to the filing of the initial complaint. Excluded from the Class are Defendant, any parent, subsidiary, affiliate or controlled person of Defendant, as well as the officers and directors of Defendant, and the immediate family member of any such person. Also excluded is any judge who may preside over this case.

25. **Numerosity:** The proposed Class is so numerous that individual joinder of all its members is impracticable. Due to the nature of the trade and commerce involved, Plaintiff believes that the total number of Class members is at least in the thousands and that members of the Class are numerous and geographically dispersed across California and the United States. While the exact number and identities of the Class members are unknown at this time, such information can be ascertained through appropriate investigation and discovery. The disposition of the claims of the Class members in a single class action will provide substantial benefits to all parties and to the Court.

26. **Common Questions of Law and Fact Predominate:** There are many questions of law and fact common to the representative Plaintiff and the Class, and those questions substantially predominate over any questions that may affect individual Class members.

The common questions of fact and law include, but are not limited to, the following:

- i. Whether Defendant’s advertising was and is misleading;
- ii. Whether Defendant’s representations were likely to mislead and did in fact mislead Plaintiff and Class members;
- iii. Whether Defendant was willful, deceptive, and oppressive in its conduct; and
- iv. Whether Defendant engaged in unlawful, unfair, or fraudulent business practices;
- v. Whether Defendant misrepresented and/or failed to disclose material facts about its product pricing and discounts;



vi. Whether Defendant has made false or misleading statements of fact

concerning the reasons for, existence of, or amounts of its price reductions.

27. These common questions of law and fact predominate over questions that may affect individual Class members in that the claims of all Class members for each of the claims herein can be established with common proof. Additionally, a class action would be “superior to other available methods for the fair and efficient adjudication of the controversy” because: (1) Class members have little interest in individually controlling the prosecution of separate actions because the individual damages claims of each Class member are not substantial enough to warrant individual filings; (2) Plaintiff is not aware of other lawsuits against Defendant commenced by or on behalf of members of the Class; and (3) because the disputed advertisements are common to all Class members and because resolution of the claims of Plaintiff will resolve the claims of the remaining Class, certification does not pose any manageability problems.

28. **Typicality:** Plaintiff’s claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class have been similarly affected by Defendant’s conduct since they all relied on Defendant’s representations concerning the true authentically and purported discounts of the clothing and purchased the clothing based on those representations.

29. **Adequacy of Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained counsel with substantial experience in handling complex class action litigation. Plaintiff and her counsel are committed to prosecuting this action vigorously on behalf of the Class and have the financial resources to do so.

30. **Superiority of Class Action:** Plaintiff and the members of the Class suffered and will continue to suffer harm as a result of Defendant’s unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy. Class members have little interest in individually controlling the prosecution of separate actions because the individual damages claims of each Class member are not substantial enough to warrant individual filings. In sum, for many, if not



1 most, Class members, a class action is the only feasible mechanism that will allow them an  
2 opportunity for legal redress and justice.

3 31. Adjudication of individual Class members' claims with respect to Defendant would, as a  
4 practical matter, be dispositive of the interests of other members not parties to the  
5 adjudication, and could substantially impair or impede the ability of other Class members  
6 to protect their interests.

7 **FIRST CAUSE OF ACTION**

8 **Business and Professions Code § 17500**

9 **(Violation of the False Advertising Law)**

10 **(By Plaintiff and the Class Against Defendant)**

11 32. Plaintiff hereby incorporates paragraphs 1-31 above as if set forth in full.

12 33. California *Business and Professions Code* § 17500 provides that "[i]t is unlawful for any ...  
13 corporation ... with intent ... to dispose of ... personal property ... to induce the public to  
14 enter into any obligation relating thereto, to make or disseminate or cause to be made or  
15 disseminated ... from this state before the public in any state, in any newspaper or other  
16 publication, or any advertising device, or by public outcry or proclamation, or in any other  
17 manner or means whatever, including over the Internet, any statement ... which is untrue or  
18 misleading, and which is known, or which by the exercise of reasonable care should be  
19 known, to be untrue or misleading...."

20 34. Similarly, this section provides, "[N]o price shall be advertised as a former price of any  
21 advertised thing, unless the alleged former price was the prevailing market price as above  
22 defined within three months next immediately preceding the publication of the  
23 advertisement or unless the date when the alleged former price did prevail is clearly,  
24 exactly and conspicuously stated in the advertisement."

25 35. Defendant misled consumers by making untrue statements and failing to disclose what is  
26 required as stated in the Code, as alleged above.

27 36. As a direct and proximate result of Defendant's misleading and false advertising, Plaintiff  
28 and the members of the Class have suffered injury in fact and have lost money.

37. The misleading and false advertising described herein presents a continuing threat to Plaintiff and the Class in that Defendant persists and continues to engage in these practices, and will not cease doing so unless and until forced to do so by this Court. Defendant's conduct will continue to cause irreparable injury to consumers unless enjoined or restrained.

## **SECOND CAUSE OF ACTION**

### **Business and Professions Code § 17200 et seq.**

#### **(Violation of the Unfair Competition Law)**

#### **(By Plaintiff and the Class Against Defendant)**

38. Plaintiff hereby incorporates paragraphs 1-37 above as if set forth in full.

39. California *Business and Professions Code* § 17200 *et seq.* (hereafter referred to as the "Unfair Competition Law" or "UCL") authorizes private lawsuits to enjoin acts of "unfair competition," which include any unlawful, unfair, or fraudulent business practice.

40. The UCL imposes strict liability. Plaintiff need not prove that Defendant intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices—but only that such practices occurred.

41. The material misrepresentations, concealment, and non-disclosures by Defendant as part of its marketing and advertising of the Last Call Store clothing are unlawful, unfair, and fraudulent business practices prohibited by the UCL.

42. In carrying out such marketing, Defendant has violated the Consumer Legal Remedies Act, the False Advertising Law, and various other laws, regulations, statutes, and/or common law duties. Defendant's business practices alleged herein, therefore, are unlawful within the meaning of the UCL.

43. The harm to Plaintiff and members of the public outweighs the utility of Defendant's practices and, consequently, Defendant's practices, as set forth fully above, constitute an unfair business act or practice within the meaning of the UCL.

44. Defendant's practices are additionally unfair because they have caused Plaintiff and the Class substantial injury, which is not outweighed by any countervailing benefits to

1 consumers or to competition, and which is not an injury the consumers themselves could  
2 have reasonably avoided.

3 45. Defendant's practices, as set forth above, have misled the general public in the past and  
4 will mislead the general public in the future. Consequently, Defendant's practices  
5 constitute an unlawful and unfair business practice within the meaning of the UCL.

6 46. Pursuant to *Business and Professions Code* § 17204, an action for unfair competition may  
7 be brought by any "person . . . who has suffered injury in fact and has lost money or  
8 property as a result of such unfair competition." Defendant's wrongful misrepresentations  
9 and omissions have directly and seriously injured Plaintiff and the putative Class by  
10 causing them to purchase the discounted clothing based upon false and misleading  
11 labeling.

12 47. The unlawful, unfair, and fraudulent business practices of Defendant are ongoing and  
13 present a continuing threat that members of the public will be misled into purchasing the  
14 clothing from the Last Call Store and that upon learning that the Last Call Store clothing  
15 was never sold at the traditional Neiman Marcus stores and the "Compared to" price is  
16 arbitrary and inflated to entice consumers, like Plaintiff, they will be damaged financially.

17 48. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent injunctive relief  
18 ordering Defendant to cease this unfair competition, as well as disgorgement and  
19 restitution to Plaintiff and the Class of all of Defendant's revenues associated with its  
20 unfair competition, or such portion of those revenues as the Court may find equitable.

### 21 THIRD CAUSE OF ACTION

#### 22 *Civil Code* § 1750 et seq.

#### 23 (Violation of the Consumer Legal Remedies Act)

#### 24 (By Plaintiff and the Class Against Defendant)

25 49. Plaintiff hereby incorporates paragraphs 1-48 above as if set forth in full.

26 50. The Consumer Legal Remedies Act (hereafter referred to as the "CLRA") creates a non-  
27 exclusive statutory remedy for unfair methods of competition and unfair or deceptive acts  
28 or business practices. *See Reveles v. Toyota by the Bay*, 57 Cal. App. 4th 1139, 1164

(1997). Its self-declared purpose is to protect consumers against these unfair and deceptive business practices, and to provide efficient and economical procedures to secure such protection. Cal. Civ. Code § 1760. The CLRA was designed to be liberally construed and applied in favor of consumers to promote its underlying purposes. *Id.*

51. More specifically, Plaintiff alleges that Defendant has violated paragraphs 5, 7, 9 and 13 of Civil Code Section 1770(a) by engaging in the unfair and/or deceptive acts and practices set forth herein. Defendant's unfair and deceptive business practices in carrying out the marketing program described herein were and are intended to and did and do result in the purchase of Defendant's Last Call Store clothing by consumers, including Plaintiff, in violation of the CLRA. Cal. Civ. Code § 1770 *et seq.*

52. As a result of Defendant's unfair and/or deceptive business practices, Plaintiff and all purchasers of the Last Call Store clothing have suffered damage and lost money in that they paid for goods that does not have the qualities as represented. Plaintiff seeks and is entitled to an order enjoining Defendant from continuing to engage in the unfair and deceptive business practices alleged herein.

53. Pursuant to Section 1782 of the CLRA, Plaintiff intends to notify Defendant in writing of the particular violations of Section 1770 of the CLRA (the "Notice Letter"). If Defendant fails to comply with Plaintiff's demands within thirty days of receipt of the Notice Letter, pursuant to Section 1782 of the CLRA, Plaintiff will amend this Complaint to further request damages under the CLRA.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for relief and judgment as follows:


1. For preliminary and permanent injunctive relief enjoining Defendant, its agents, servants and employees, and all persons acting in concert with it, from engaging in, and continuing to engage in, the unfair, unlawful and/or fraudulent business practices alleged above and that may yet be discovered in the prosecution of this action;
2. For certification of the putative class;

3. For restitution and disgorgement of all money or property wrongfully obtained by Defendant by means of its herein-alleged unlawful, unfair, and fraudulent business practices;
4. For an accounting by Defendant for any and all profits derived by Defendant from its herein-alleged unlawful, unfair and/or fraudulent conduct and business practices;
5. An award of statutory damages according to proof, except that no damages are currently sought on Plaintiff's Cause of Action regarding the Consumer Legal Remedies Act at this time;
6. An award of general damages according to proof, except that no damages are currently sought on Plaintiff's Cause of Action regarding the Consumer Legal Remedies Act at this time;
7. An award of special damages according to proof, except that no damages are currently sought on Plaintiff's Cause of Action regarding the Consumer Legal Remedies Act at this time;
8. Exemplary damages, except that no damages are currently sought on Plaintiff's Cause of Action regarding the Consumer Legal Remedies Act at this time;
9. For attorneys' fees and expenses pursuant to all applicable laws, including, without limitation, the CLRA and the common law private attorney general doctrine;
10. For costs of suit; and
11. For such other and further relief as the Court deems just and proper.

DATED: August 4, 2014

KIRTLAND & PACKARD LLP

By:



MICHAEL LOUIS KELLY  
BEHRAM V. PAREKH  
HEATHER M. BAKER

*Counsel for Plaintiff and all  
others similarly situated*

**JURY TRIAL DEMANDED**

Plaintiff demands a jury trial on all issues so triable.

DATED: August 4, 2014

KIRTLAND & PACKARD LLP

By:



MICHAEL LOUIS KELLY  
BEHRAM V. PAREKH  
HEATHER M. BAKER

*Counsel for Plaintiff and all  
others similarly situated*

LAW OFFICES  
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