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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

WENDY CHOWNING and
LOURDES CASAS, individually
and on behalf of all others similarly
situated,

Plaintiffs,

vs.

KOHL'S DEPARTMENT STORES,
INC., a Delaware Corporation;
KOHL'S CORPORATION; and
DOES 1 through 20, inclusive,

Defendants.

Case No. '15CV1624 JAH WVG

CLASS ACTION COMPLAINT FOR:

- 1. VIOLATIONS OF FALSE
ADVERTISING LAW**
- 2. VIOLATIONS OF
CONSUMERS LEGAL
REMEDIES ACT**
- 3. UNFAIR COMPETITION**

JURY TRIAL DEMANDED

1 Plaintiffs Wendy Chowning and Lourdes Casas, by their attorneys,
 2 individually and on behalf of themselves and others similarly situated, allege upon
 3 personal knowledge as to themselves and their acts stated herein and, as to all other
 4 matters, upon information and belief as follows:

5 **SUMMARY AND PRELIMINARY STATEMENT**

6 1. Plaintiffs WENDY CHOWNING and LOURDES CASAS, individually and
 7 on behalf of others similarly situated, bring this action against KOHL'S
 8 DEPARTMENT STORES, INC. and KOHL'S CORPORATION (collectively,
 9 "KOHL'S" or "Defendants"), for unlawful, misleading and false advertising
 10 practices. KOHL'S, at a time it was aware of the psychological and emotional
 11 impacts of a "sale" or marked-down price has on consumers, utilized misleading,
 12 deceptive and false advertisements in, among other communications, print
 13 advertisements, internet marketing and sales, and in-store advertisements which
 14 claimed significant and substantial sales and discounts based upon alleged – but
 15 fictitious – "original," "regular," or former prices of the products it advertised (the
 16 "price-comparison advertising scheme"). KOHL'S controlled the price of its
 17 private and exclusive label products, such as Sonoma Life + Style, Apt. 9, Croft &
 18 Barrow, Daisy Fuentes, Elle, MUDD, Jennifer Lopez, and Simply Vera Vera
 19 Wang. The advertisements of these and other products induced Plaintiffs to make
 20 purchases that they otherwise would not have made. Plaintiffs were misled as to
 21 the value of the products they received, in direct violation of California law.

22 2. California's Fair Advertising Law (Business and Professions Code section
 23 17501) provides that "[n]o price shall be advertised as a former price of any
 24 advertised thing, unless the alleged former price was the prevailing market price
 25 . . . within three months next immediately preceding the publication of the
 26 advertisement or unless the date when the alleged former price did prevail is
 27 clearly, exactly and conspicuously stated in the advertisement."

28 3. The California Consumer Legal Remedies Act (California Civil Code,

1 section 1780, subdivision (a)) further prohibits “false or misleading statements of
2 fact concerning reasons for, existence of, or amounts of price reductions.”

3 4. California Business and Professions Code section 17200 prohibits any
4 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue
5 or misleading advertising and any violation of the Fair Advertising Law.

6 5. As alleged herein, Plaintiffs and members of the proposed Class (as defined
7 below) were exposed to Defendants’ advertising under the price-comparison
8 advertising scheme and, as a result of the misleading, false and/or fraudulent
9 advertising, Plaintiffs and others purchased private and/or exclusive branded items
10 from KOHL’S that they would not have purchased absent KOHL’S
11 advertisements. As a result, Plaintiffs and members of the proposed Class (as
12 defined below) received items of lesser value and quality than they expected and
13 KOHL’S unlawfully, inequitable, and otherwise improperly was thereby unjustly
14 enriched and benefited.

15 PARTIES

16 6. Plaintiff WENDY CHOWNING is and was, at all relevant times herein, a
17 natural person and a resident of City of Vista, County of San Diego, State of
18 California.

19 7. Plaintiff LOURDES CASAS is and was, at all relevant times herein, a
20 natural person and a resident of City of Chula Vista, County of San Diego, State of
21 California.

22 8. Defendant KOHL’S DEPARTMENT STORES, INC. is and was, at all
23 relevant times herein, a Delaware Corporation with its headquarters/principal place
24 of business located at N56 W17000 Ridgewood Drive, Menomonee Falls, State of
25 Wisconsin. Plaintiffs are informed and believe and thereon allege that Defendant
26 is licensed to do business and is doing business in the State of California.

27 9. Defendant KOHL’S CORPORATION is and was, at all relevant times
28 herein, a Wisconsin Corporation with its headquarters/principal place of business

1 located at N56 W17000 Ridgewood Drive, Menomonee Falls, State of Wisconsin.
2 Plaintiffs are informed and believe and thereon allege that Defendant is licensed
3 to do business and is doing business in the State of California.

4 10. At all relevant times herein mentioned, Defendants and Defendants
5 DOES 1 through 20, and each of them, were an agent or joint venturer of each of
6 the other Defendants and DOES 1 through 20, and in doing the acts alleged herein,
7 were acting within the course and scope of such relationship. Each Defendant and
8 DOES 1 through 20 had actual and/or constructive knowledge of the acts of the
9 other Defendants, and ratified, approved, joined in, acquiesced and/or authorized
10 the wrongful acts of each co-defendant, and/or retained the benefits of said
11 wrongful acts.

12 11. Defendants and DOES 1 through 20, and each of them, aided and
13 abetted, encouraged and rendered substantial assistance to the other Defendants in
14 breaching their obligations to Plaintiffs and the Class, as alleged herein. In taking
15 action, as particularized herein, to aid and abet and substantially assist the
16 commissions of these wrongful acts and other wrongdoings complained of, each of
17 the Defendants and DOES 1 through 20 acted with an awareness of the
18 wrongdoing and realized that the conduct would substantially assist the
19 accomplishment of the wrongful conduct, wrongful goals, and wrongdoing.

20 12. Plaintiffs are unaware of the true names and capacities of the
21 defendants sued herein as DOES 1 through 20 and therefore sues these defendants
22 by such fictitious names. Plaintiffs allege on information and belief that at all
23 relevant times each of the DOE defendants was responsible, in some manner, for
24 the acts, omissions, and occurrences herein alleged and Plaintiffs' damages were
25 proximately caused thereby. Plaintiffs will amend this Complaint to allege the true
26 names and capacities of the DOE defendants after they have been ascertained.

27 13. Plaintiffs are informed and believe and thereupon allege that at all
28 relevant times herein, each defendant was the agent, employee, representative,

1 partner, parent company, subsidiary or affiliate of the other defendants and was
2 acting, or acted for, within the authority of such agency, employment,
3 representation, partnership, or affiliation while doing or omitting to do the acts
4 alleged herein and with the permission, approval, consent, and/or ratification of all
5 other defendants. The allegations against each named defendant incorporate by
6 reference the allegations against each DOE defendant.

7 14. There exists, and at all times herein mentioned existed, a unity of
8 interest and ownership between all of the defendants, including any individual,
9 partnership and/or corporate defendants, and their principals, including all DOE
10 defendants, such that all individuality and separation ceased and defendants
11 became the alter egos of the other defendants and their principals. Whenever in
12 this complaint a reference is made to any act or omission of a particular defendant,
13 such allegation shall be deemed to mean that said defendant, and its officers,
14 directors, agents, representatives, and employees did authorize such act while
15 actively engaged in the management, direction or control of that defendant, and
16 while acting within the course and scope of their employment or agency.

17 **JURISDICTION AND VENUE**

18 15. Plaintiffs and/or other putative class members have different
19 citizenship from Defendants.

20 16. The aggregate amount of damages incurred by Plaintiffs and the Class
21 (as defined below) exceeds \$5,000,0000.

22 17. Accordingly, this Court has subject matter jurisdiction under 28
23 U.S.C. section 1332, subdivision (d).

24 18. As set forth herein, each Defendant has sufficient contact and
25 presence within the State of California to confer this Court with personal
26 jurisdiction over each defendant.

27 19. Venue is proper in this Court under 28 U.S.C. section 1391 because
28 Defendants transact business in this judicial district in the County of San Diego,

1 State of California, and the claims of Plaintiffs and other putative class members
2 arose in this judicial district. Plaintiffs WENDY CHOWNING and LOURDES
3 CASAS reside in this judicial district, viewed Defendants' false and misleading
4 advertisements in this judicial district, and purchased items in reliance upon said
5 advertisements at Defendants' stores situated in this judicial district.

6 **GENERAL ALLEGATIONS**

7 20. KOHL'S owns, operates, licenses and otherwise controls over 100
8 retail stores in the State of California selling, among other consumer goods,
9 clothing, footwear, home products, and accessories.

10 21. The majority of KOHL'S sales have historically derived from
11 KOHL'S exclusive and private label products. These products are sold solely at
12 the stores owned, operated, licensed or otherwise controlled by KOHL'S and
13 bearing the KOHL'S name. As such, KOHL'S defines, sets, and controls all prices
14 for these products.

15 22. KOHL'S private and exclusive brand products include Sonoma Life +
16 Style, Apt. 9, Croft & Barrow, Daisy Fuentes, Elle, MUDD, Jennifer Lopez, and
17 Simply Vera Vera Wang.

18 23. KOHL'S routinely advertises (in its stores, on-line, and in print
19 advertisements) that its exclusive and private label products are on sale at
20 significantly marked-down or sales prices as compared to KOHL'S advertised
21 "regular" or "original" price.

22 24. Upon information and belief, the purported sales are fictitious and
23 inflated as the "regular" or "original" prices do not reflect a price at which the
24 products are routinely, or in some cases ever, offered for sale at KOHL'S.
25 Furthermore, said prices do not represent the prevailing market price during the
26 three months preceding the publication of the advertisement.

27 25. KOHL'S knew or should have known that said advertisements
28 conveyed false information to consumers, including Plaintiffs, about the goods.

1 Plaintiffs were led to believe that the products had a higher value and were sold at
2 substantially higher prices at KOHL'S stores in the past and/or in the prevailing
3 market. KOHL'S therefore intentionally and/or negligently concealed and/or
4 failed to disclose information concerning the prevailing market prices for said
5 products in the 90 day period prior to the advertisements. In publishing,
6 displaying, and otherwise communicating and disseminating the alleged "regular"
7 or "original" prices and the advertised "sale" prices and in concealing the true data,
8 KOHL'S intended to induce Plaintiffs and members of the Class to purchase its
9 private and exclusive brand products.

10 26. At all relevant times herein, KOHL'S was aware that consumers are
11 motivated by information concerning a product's worth and the prestige that
12 ownership of that product conveys. KOHL'S further knew that, as discount size
13 increases, consumers' perceptions of value and their willingness to buy the product
14 increases, while their intention to search for a lower price decreases. Accordingly,
15 information concerning a product's "normal" or "regular" price is a material term
16 which impacted Plaintiffs, acting as reasonably prudent consumers, in making
17 decisions as to whether to purchase particular items advertised and sold by
18 KOHL'S.

19 27. Plaintiffs and members of the Class saw and/or were informed of
20 KOHL'S advertised "sales" based on the alleged "regular" or "original" prices of
21 KOHL'S exclusive and private brand products under the price-comparison
22 advertising scheme.

23 28. Relying upon KOHL'S price-comparison advertising scheme,
24 Plaintiffs purchased certain KOHL'S private and exclusive brand products.
25 Plaintiffs were acting as reasonably prudent consumers and justifiably relied upon
26 the price-comparison advertising scheme to make purchases.

27 29. In making said purchases, Plaintiffs were misled as to the value of the
28 products that they purchased, and Plaintiffs relied upon the advertising in deciding

1 to make said purchases. Plaintiffs would not have purchased the items in the
2 absence of KOHL'S price-comparison advertising scheme. Alternatively, if
3 KOHL'S had offered a truthful discount off of the actual prevailing market price of
4 its private and exclusive branded products, Plaintiffs would have paid less than
5 they did pay to purchase the items that they purchased from KOHL'S. As a result,
6 Plaintiffs lost money or property.

7 30. Plaintiffs are informed and believe, and thereupon allege, that
8 KOHL'S practices are wide-spread over the course of many years and hundreds of
9 thousands of consumers have been injured in the State of California.

10 31. For example, on or about September 13, 2014, Plaintiff WENDY
11 CHOWNING shopped at a KOHL'S store located in Oceanside, California.
12 Plaintiff purchased a Jennifer Lopez (a KOHL'S exclusive brand) Dress advertised
13 with a price of \$70.00. The dress was claimed to be "on sale" for \$21.00 – an
14 alleged 70% discount. In making her decision to purchase said item, Plaintiff
15 relied upon and was motivated by KOHL'S advertisements, statements and
16 omissions concerning the value of the Jennifer Lopez product and would not have
17 made said purchase absent the advertisements. Plaintiff WENDY CHOWNING is
18 informed and believes and thereupon alleges that the alleged markdown was
19 untrue, misleading, and false. Plaintiff is further informed and believes that the
20 prevailing retail price for Jennifer Lopez dress during the three months
21 immediately prior to KOHL'S advertisement of such item was materially lower
22 than \$70.00 as advertised. As a result, Plaintiff WENDY CHOWNING lost her
23 money or property and KOHL'S received ill-gotten gains.

24 32. On or about November 21, 2014, Plaintiff WENDY CHOWNING
25 shopped at a KOHL'S store located in Oceanside, California. Plaintiff purchased a
26 Sonoma Life+Style (a KOHL'S private label brand) Robe advertised with an
27 advertised former price of \$46.00 for said Robe. The Sonoma Robe was
28 purportedly "on sale" for \$26.99 – an approximately 40% discount from the

1 alleged former price. In making her decision to purchase said item, Plaintiff relied
2 upon and was motivated by KOHL'S advertisements, statements and omissions
3 concerning the value of the robe and would not have made said purchase absent the
4 advertisements. Plaintiff WENDY CHOWNING is informed and believes and
5 thereupon alleges that the alleged markdown was untrue, misleading, and false.
6 Plaintiff is further informed and believes that the prevailing retail price for Sonoma
7 Robe during the three months immediately prior to KOHL'S advertisement of such
8 item was materially lower than \$46.00 as advertised. As a result, Plaintiff WENDY
9 CHOWNING lost her money or property and KOHL'S received ill-gotten gains.

10 33. On or about June 3, 2015, Plaintiff LOURDES CASAS shopped at a
11 KOHL'S store located in Chula Vista, California. Plaintiff purchased an Apt. 9
12 Men's shirt with an advertised former price of \$46.00. The Apt. 9 shirt was "on
13 sale" for \$18.40 – an approximately 60% discount from the alleged former price.
14 In making her decision to purchase said item, Plaintiff LOURDES CASAS relied
15 upon and was motivated by KOHL'S advertisements, statements and omissions
16 concerning the value of the shirt and would not have made said purchase absent the
17 advertisements. Plaintiff LOURDES CASAS is informed and believes and
18 thereupon alleges that the alleged markdown was untrue, misleading, and false.
19 Plaintiff is further informed and believes that the prevailing retail price for Apt. 9
20 shirt during the three months immediately prior to KOHL'S advertisement of such
21 item was materially lower than \$46.00 as advertised. As a result, Plaintiff lost her
22 money or property and KOHL'S received ill-gotten gains.

23 34. Plaintiffs are informed and believe that similar acts of misleading,
24 untrue, false and deceptive advertising were committed by KOHL'S with respect
25 to Plaintiffs' and Class members' purchases at KOHL'S throughout the years.
26 Plaintiffs will seek leave to amend to allege further and additional false and
27 misleading advertisements that induced purchases.

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1 35. Plaintiffs assert that Defendants continue to employ unfair, deceptive,
2 false, misleading, and untrue advertising practices as alleged herein. Plaintiffs, and
3 on behalf of the putative class, seeks all damages, restitution, injunctive relief,
4 costs, attorneys' fees, and any other relief the court deems proper. The action, if
5 successful, will enforce an important right affecting the public interest and would
6 confer a significant benefit, whether pecuniary or non-pecuniary, on a large class
7 of persons by enjoining and/or discouraging acts the California legislature has
8 specifically prohibited. Private enforcement is necessary and places a
9 disproportionate burden on Plaintiffs in relation to Plaintiffs' stake in the matter.

10 **CLASS DEFINITION**

11 36. The class is defined as follows:

12 "All persons who, while in the state of California and between July 21, 2011
13 and the present, purchased from Kohl's one or more private or exclusive
14 branded item advertised at a discount of 30% or more from a stated "original"
15 or "regular" price and who have not received a refund or credit for their
16 purchase(s)."

17 37. Plaintiffs reserve the right to amend this class definition, including the
18 addition of any subclasses, at any time based upon further investigation and
19 discovery.

20 **CLASS ALLEGATIONS**

21 38. The members of the Class identified above are so numerous that
22 joinder of all members is impracticable. While the exact number of Class
23 members is unknown to Plaintiffs at this time, the individual identities of the
24 individual members of the Class are ascertainable through Defendants' records or
25 by public notice.

26 39. There is a well-defined community of interest in the questions of fact
27 and law involved affecting the members of the Class. The questions of law and
28 fact common to the members of the Class predominate over questions affecting

1 only individual class members, and include, but are not limited to, the following:

- 2 a. Whether KOHL'S price-comparison advertising scheme regarding
- 3 its private and exclusive branded products was misleading under
- 4 the Unfair Competition Law, False Advertising Law, and
- 5 Consumer Legal Remedies Act;
- 6 b. Whether KOHL'S made false or misleading statements in its
- 7 advertising;
- 8 c. Whether KOHL'S advertisements were likely to deceive a
- 9 reasonable consumer;
- 10 d. Whether KOHL'S statements regarding its pricing were material to
- 11 Plaintiffs' and consumers' purchasing decisions;
- 12 e. Whether the regular price equaled the prevailing market price for
- 13 the preceding 90 days in KOHL'S price-comparison advertising
- 14 scheme;
- 15 f. Whether KOHL'S had a bona-fide intent of selling a reasonable
- 16 quantity of its private and exclusive branded items at the regular
- 17 price;
- 18 g. Whether Plaintiffs and putative Class members have suffered
- 19 damages as a result of KOHL'S conduct;
- 20 h. Whether the members of the Class are entitled to restitution and
- 21 the amount thereof;
- 22 i. Whether the members of the Class are entitled to injunctive relief;
- 23 j. Whether the members of the Class are entitled to prejudgment and
- 24 post judgment interest; and
- 25 k. Whether the members of the Class are entitled to an award of
- 26 reasonable attorneys' fees and costs.

27 40. Plaintiffs' claims are typical of the claims of the other members of the
28 Class which all arise from the same operative facts involving KOHL'S false price-

1 comparison advertising scheme and are entitled to compensatory damages and
2 restitution of the same character.

3 41. Plaintiffs will fairly and adequately protect the interests of the Class
4 and have no known conflicts of interest. Plaintiffs have retained counsel
5 experienced in handling consumer class actions under the California Business and
6 Professions Code.

7 42. Prosecution of separate actions by individual members of the Class
8 would create a risk of inconsistent or varying adjudications with respect to
9 individual class members and would lead to repetitious trials of the numerous
10 common questions of fact and law in the State of California; and could lead to the
11 establish of incompatible standards of conduct for Defendants. Such individual
12 adjudications would be, as a practical matter, dispositive of the interests of, or
13 would substantially impair or impede the interests of, the other class members.
14 Plaintiffs are not aware of any difficulty that would be encountered in the
15 management of this litigation that would preclude its maintenance as a class action.

16 43. Defendants have acted or have refused to act on grounds that
17 generally apply to the Class and final injunctive relief is appropriate as to the Class
18 as a whole. Specifically, Defendants have advertised misleading and untrue
19 “regular” or “original” prices of their private and exclusive brand items without
20 complying with California law, and injunctive relief is necessary to avoid ongoing
21 violations in the future.

22 44. The common questions of law and fact predominate over any
23 questions affecting only individual members. Furthermore, a class action is a
24 superior method for fair and efficient adjudication of this controversy. Class-wide
25 damages are essential to induce Defendants to comply with applicable law. The
26 interest of class members in individually controlling the prosecution of separate
27 claims against Defendants is small relative to the cost of maintaining an action.

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1 45. Proper and sufficient notice of this action may be provided to the
2 Class members through methods best designed to provide adequate notice,
3 including potentially a combination of electronic mail and/or postal mail, internet
4 web site, and/or publication.

5 46. Furthermore, the Class members' individual damages are insufficient
6 to justify the cost of litigation, so that in the absence of class treatment,
7 Defendants' violations of law inflicting substantial damages in the aggregate
8 would go unremedied without certification of the Class. Absent certification of
9 this action as a class action, Plaintiffs and the members of the class will continue to
10 be damaged, thereby allowing Defendants to retain the proceeds of their ill-gotten
11 gain.

12 47. Plaintiffs request certification of the Class combining the elements of
13 monetary damages and equitable relief.

14 48. Plaintiffs allege that, as a direct result of Plaintiffs bringing the
15 allegations herein to Defendants' attention, Plaintiffs have or will make substantial
16 and important changes to Defendants' advertising practices. Thus, Plaintiffs have
17 or will enforce an important public right affecting the public interest, conferring a
18 significant benefit, whether pecuniary or nonpecuniary, on the general public or a
19 large class of persons. Plaintiffs further allege that private enforcement of the
20 laws-in-question is both necessary and financially burdensome for Plaintiffs.

21 **FIRST CAUSE OF ACTION**

22 **Violations of False Advertising Law (California Business and Professions**
23 **Code Section 17500 et seq.)**

24 **(Against KOHL'S DEPARTMENT STORES, INC., KOHL'S**
25 **CORPORATION, and DOES 1 through 20)**

26 49. Plaintiffs incorporate and realleges each and every preceding
27 paragraph as though fully set forth herein.

28 50. The California False Advertising Law (FAL) prohibits unfair,

1 deceptive, untrue, or misleading advertising, including, but not limited to, false
2 statements as to worth, value and former price. It is further unlawful for any
3 person to make or disseminate an advertisement which is untrue or misleading, and
4 which is known, or which by the exercise of reasonable care should be known, to
5 be untrue or misleading. (California Business and Professions Code Section
6 17500.) Section 17501 of the FAL specifically prohibits false and misleading
7 former price advertisement: "No price shall be advertised as a former price of any
8 advertised thing, unless the alleged former price was the prevailing market price as
9 above defined within three months next immediately preceding the publication of
10 the advertisement or unless the date when the alleged former price did prevail is
11 clearly, exactly and conspicuously stated in the advertisement." Under the FAL,
12 the value of an advertised product is the prevailing market price at the time of
13 publication of such advertisement in the locality wherein the advertisement is
14 published (Section 17501.)

15 51. As alleged herein, KOHL'S price-comparison advertising scheme
16 violates the FAL. KOHL'S private and exclusive branded products were
17 advertised with "regular" or "original" prices that were not the prevailing market
18 prices within the three months immediately preceding the publication. The actual
19 prevailing market price was materially less than the advertised price of the
20 products. KOHL'S deceived consumers, including Plaintiff, by leading them to
21 believe that the products were of a higher value and quality than each product's
22 actual value and quality.

23 52. KOHL'S has unlawfully and/or inequitable received the money and
24 property of Plaintiffs and members of the Class, and continues to improperly
25 obtain money from the general public. Plaintiffs and members of the Class
26 demand that KOHL'S restore said money and property to Plaintiffs and all Class
27 members. Based on the foregoing, Plaintiffs and members of the Class are entitled
28 to, and below herein do pray for restitution and disgorgement of KOHL'S ill-

1 gotten gains.

2 53. In addition, Plaintiffs and the putative class seek and are entitled to a
3 permanent injunction restraining Defendants from continuing to violate California
4 law through its price-comparison advertising scheme.

5 54. Plaintiffs and the Class are entitled to recovery of their attorneys' fees.

6 **SECOND CAUSE OF ACTION**

7 **Violations of Consumer Legal Remedies Act (California Civil Code Section**
8 **1750 et seq.)**

9 **(Against KOHL'S DEPARTMENT STORES, INC., KOHL'S**
10 **CORPORATION, and DOES 1 through 20)**

11 55. Plaintiffs incorporates and reallege each and every preceding
12 paragraph as though fully set forth herein.

13 56. California Civil Code Sections 1750, et seq., known as the Consumer
14 Legal Remedies Act (CLRA), prohibits "false or misleading statements of fact
15 concerning reasons for, existence of, or amounts of price reductions" and
16 "[a]dvertising goods or services with intent not to sell them as advertised."

17 57. KOHL'S, in publishing, displaying, communicating, and otherwise
18 disseminating and executing its price-comparison advertising scheme, acted to
19 deceive Plaintiffs and the general public, including members of the Class, as to the
20 amount of the price reductions and/or KOHL'S advertised the prices without intent
21 to sell them as advertised.

22 58. Plaintiffs, reasonably and justifiably relying upon KOHL'S statements
23 and omissions, were deceived, misled and motivated by KOHL'S advertisements.

24 59. Plaintiffs and members of the Class were thereby harmed and
25 deprived of money and property as KOHL'S statements and omissions were a
26 substantial factor in inducing Plaintiffs and members of the Class to purchase
27 KOHL'S exclusive and private branded items.

28 60. Plaintiffs and all putative Class members are consumers under the Act

1 who have been injured, as alleged herein, as a result of KOHL'S use and/or
2 employment of advertising practices declared unlawful under the act, as alleged
3 herein, and therefore have standing pursuant to Civil Code section 1780,
4 subdivision (a). Kohl's sale of private and exclusive branded items to Plaintiffs
5 and members of the Class constitute "transactions" of "goods" under Civil Code §
6 1761 (a), (e).

7 61. As described herein, KOHL'S advertised its private and exclusive
8 branded products with the intent not to sell them as advertised in violation of Cal.
9 Civ. Code § 1770(a)(9); and KOHL'S made false or misleading statements of fact
10 concerning the reasons for, existence of, or amounts of price reductions in
11 violation of Cal. Civ. Code § 1770(a)(13).

12 62. Plaintiffs relied on Kohl's false representations in deciding to
13 purchase private branded and exclusive branded apparel and accessories, and
14 Plaintiffs would not have purchased such items absent KOHL'S unlawful conduct.

15 63. Plaintiffs, through counsel, will submit demands pursuant to Section
16 1782, subdivision (a) of the CLRA requesting KOHL'S remedy its violations. If
17 KOHL'S fails to comply with the demands within thirty (30) days from the date of
18 the demands, Plaintiffs will seek leave to amend request pursuant to section 1782,
19 subdivision (d), and pursuant to sections 1780 and 1782 of the CLRA, actual
20 damages, attorneys' fees, costs and any other relief the Court deems proper.

21 64. Pursuant to California Civil Code § 1780(a)(2), Plaintiffs, on behalf of
22 themselves and the Class, requests that this Court enjoin KOHL'S from continuing
23 to engage in the unlawful and deceptive methods, acts and practices alleged above.
24 Unless KOHL'S is permanently enjoined from continuing to engage in such
25 violations of the CLRA, future consumers will be damaged by its acts and
26 practices in the same way as have Plaintiffs and the members of the proposed
27 Class.

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THIRD CAUSE OF ACTION

**Unfair Competition in Violation of California Business and Professions Code
Section 17200 seq.**

**(Against KOHL'S DEPARTMENT STORES, INC., KOHL'S
CORPORATION, and DOES 1 through 20)**

65. Plaintiffs incorporates and reallege each and every preceding paragraph as though fully set forth herein.

66. In addition to the laws alleged above, the Federal Trade Commission Act prohibits "unfair or deceptive acts of practices in or affecting commerce." (15 U.S.C. § 45(a)(1)) and false advertising (15 U.S.C. § 52(a)). Regulations thereunder by the Federal Trade Commission with respect to "former price comparisons" proscribe "artificial price[s], inflated price[s] . . . for the purpose of enabling the subsequent offer of a large reduction" as "the 'bargain' being advertised is a false one; the purchaser is not receiving the unusual value he [or she] expects." (16 C.F.R. § 233.1(a).)

67. By committing the acts, omissions, practices and wrongs alleged herein, KOHL'S engaged in unfair competition and said conduct and wrongs constitute unlawful, unfair and/or fraudulent business acts or practices and unfair, deceptive, untrue and/or misleading advertising within the meaning of the Unfair Competition Law (UCL) in California Business and Professions Code section 17200, et seq.

68. A business act or practice is "unfair" when the utility of the conduct is outweighed by the gravity of the harm to the alleged victims. KOHL'S price-comparison advertising scheme offends underlying constitutional, statutory and/or regulatory provision and/or is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers. KOHL'S falsely represented to Plaintiff, members of the putative class and the general public that consumers are receiving a price discount from a fictitious, misleading, and untrue price. In doing so,

1 KOHL'S prays upon the consumers' emotions and said practices are likely
2 to cause consumers to falsely believe that KOHL'S offered goods of a higher value
3 than that of what it in fact offered and advertised. The harm to consumers
4 outweighs the utility, if any, of KOHL'S practices alleged herein.

5 69. The UCL further proscribes any act or practice, committed pursuant to
6 business activity, that is forbidden by any other law or regulation. As set forth
7 above, KOHL's price-comparison advertising scheme violates the FLA, CLRA,
8 and federal advertising laws and regulations.

9 70. A fraudulent business act or practice is one in which members of the
10 public are likely to be deceived. KOHL'S price-comparison advertising scheme
11 regularly contains material misstatements and omissions as to the true regular or
12 original price of items and is likely to deceive consumers concerning the value and
13 quality of the items. As such KOHL'S acts and practices alleged herein are and
14 were likely to deceive the public, consumers, Plaintiffs and members of the
15 proposed Class.

16 71. By committing the acts, practices, advertisements, communications
17 and other conduct alleged herein, KOHL'S has employed and continues to employ
18 unfair business practices under the UCL.

19 72. As a result of KOHL'S acts and practices alleged herein, Plaintiffs
20 and members of the proposed Class were likely to be misled, deceived, and
21 confused as to, among other things, the value and quality of the advertised items as
22 they reasonably and justifiably relied upon KOHL'S representations,
23 communications, and advertisements. Plaintiffs and members of the proposed
24 Class were thereby induced and justifiably and reasonably purchased items and
25 products from KOHL'S that they otherwise would not have purchased.

26 73. Pursuant to California Business and Professions Code sections 17200
27 et seq., Plaintiffs and members of the Class request all remedies available,
28 including, but not limited to, disgorgement and restitution of any and all monies

1 received by KOHL'S as a result of unfair business practices and an accounting to
2 trace the distribution and determine the present disposition of such monies.

3 74. As a result of Defendants' conduct, Plaintiffs and members of the
4 Class have suffered an injury in fact by, among other things, each has expended
5 and transferred to KOHL'S money and property that they would not have
6 otherwise expended or transferred to KOHL'S. KOHL'S has thereby been
7 unjustly and improperly enriched as KOHL'S has benefited and gained by
8 receiving the money and property of Plaintiffs and members of the proposed Class.

9 75. Plaintiffs and members of the proposed Class demand and request that
10 KOHL'S restore the money and property to Plaintiffs and members of the
11 proposed Class.

12 76. In addition, Plaintiffs and members of the proposed Class seek a court
13 order (1) restraining KOHL'S from engaging in the unfair business practices
14 and/or (2) instructing Defendants to discontinue the unlawful and inequitable
15 price-comparison advertising scheme. KOHL'S practices impacted Plaintiffs and
16 other consumers to their detriment and KOHL'S conduct has no public utility as
17 compared to lawful advertising. Defendants' unlawful, unfair, and/or fraudulent
18 business practices, as described above, present a continuing threat to Plaintiffs and
19 members of the Class since Defendants continue to engage in the unlawful and
20 inequitable price-comparison advertising scheme. Plaintiffs and members of the
21 Class have no other adequate remedy of law in that absent equitable relief from the
22 Court, Defendants are likely to continue to injure residents of California, and thus
23 engendering a multiplicity of judicial proceedings.

24 77. Plaintiffs and members of the Class also seek the recovery of
25 attorneys' fees and costs in prosecuting this action against Defendants under Code
26 of Civil Procedure section 1021.5 and other applicable law.

27 ///

28 ///

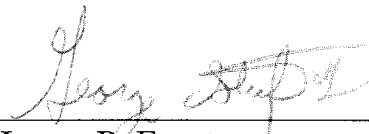
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and members of the putative Class pray for judgment against all Defendants as follows:

1. For an order that this action be certified as a class action on behalf of the proposed Class and Plaintiffs be appointed as representative of the Class; and
2. For an order and judgment preliminary and permanently enjoining Defendants from employing, utilizing or otherwise publishing false, untrue, and misleading “regular” or “original” prices;
3. For an order compelling Defendants to institute policies and procedures which will educate Defendants’ employees as to California advertising laws and assure that such employees follow the law;
4. For such orders or judgments as the Court may consider necessary to prevent the use or employment of Defendants of any practices which violate the FAL, CLRA, and UCL;
5. For restitution and/or other equitable relief, including disgorgement of ill-gotten gains and unjust enrichment obtained by Defendants;
6. For prejudgment interest;
7. For post-judgment interest;
8. For attorneys’ fees and costs of suit pursuant to Code of Civil Procedure Section 1021.5 and any other provision of law;
9. For such other and further relief as the court may deem proper.

Dated: July 21, 2015

FRANTZ LAW GROUP, APLC



James P. Frantz
William P. Harris III
George T. Stiefel III
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs and the Class hereby demand a jury trial on all causes of action and claims with respect to which they have a right to jury trial.

Dated: July 21, 2015

FRANTZ LAW GROUP, APLC



James P. Frantz
William P. Harris III
George T. Stiefel III
Attorneys for Plaintiffs

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

WENDY CHOWNING, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

James P. Frantz, Esq., Frantz Law Group, APLC, 402 W. Broadway, Ste. 860, San Diego, CA 92101. T: (619) 233-5945.

DEFENDANTS

KOHL'S DEPARTMENT STORES, INC., a Delaware Corporation;

County of Residence of First Listed Defendant Waukesha County, WI
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|-----------------------------------------|---------------------------------------|----------------------------|---------------------------------------------------------------|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
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- ☒ 1 Original Proceeding
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- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332 (d).

Brief description of cause:
False advertising and unfair competition.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

07/20/2015

SIGNATURE OF ATTORNEY OF RECORD

James P. Frantz

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

JS 44 (Rev. 12/12)

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(EXCEPT IN U.S. PLAINTIFF CASES)

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James P. Frantz, Esq., Frantz Law Group, APLC, 402 W. Broadway, Ste. 860, San Diego, CA 92101. T:(619) 233-5945.

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(IN U.S. PLAINTIFF CASES ONLY)

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Attorneys (If Known)

'15CV1624 JAH WVG

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