

1 Greg K. Hafif, Esq. (SBN 149515)
Michael G. Dawson, Esq. (SBN 150385)
2 LAW OFFICE OF HERBERT HAFIF
269 W. Bonita Avenue
3 Claremont, California 91711
(909) 624-1671 - phone; (909) 625-7772 - fax
4 Email: ghafif@hafif.com

5 Douglas Caiafa, Esq. (SBN 107747)
DOUGLAS CAIAFA, A Professional Law Corp.
11845 West Olympic Boulevard, Suite 1245
6 Los Angeles, California 90064
(310) 444-5240 - phone; (310) 312-8260 – fax
7 Email: dcaiafa@caiafalaw.com

8 Christopher J. Morosoff, Esq. (SBN 200465)
LAW OFFICE OF CHRISTOPHER J. MOROSOFF
9 77-760 Country Club Drive, Suite G
Palm Desert, California 92211
10 (760) 469-5986 - phone; (760) 345-1581 - fax
Email: cjmorosoff@morosofflaw.com

11 Attorneys for Plaintiffs STACI CHESTER, *et al.*

12
13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 EASTERN DIVISION

16 IN RE THE TJX COMPANIES, INC.) CASE NO.: 5:15-cv-01437-DDP-DTB
17)
18) CONSOLIDATED AMENDED CLASS
19) ACTION COMPLAINT
20) 1. UNFAIR BUSINESS PRACTICES;
21) 2. FRAUDULENT BUSINESS
22) PRACTICES;
23) 3. UNLAWFUL BUSINESS
24) PRACTICES;
25) 4. FALSE ADVERTISING; and,
26) 5. VIOLATION OF CALIFORNIA
27) CONSUMER LEGAL REMEDIES
28) ACT

1 STACI CHESTER and DANIEL)
2 FRIEDMAN, individually and on behalf)
of all others similarly situated,)

3)
4 Plaintiffs,)

5 vs.)

6 THE TJX COMPANIES, INC., a)
7 Delaware corp.; T.J. MAXX OF CA,)
8 LLC, a Delaware LLC; and DOES 1)
through 100, inclusive,)

9 Defendants.)

10 _____)
11 ROBIN BERKOFF, individually and on)
12 behalf of all others similarly situated,)

13 Plaintiff,)

14 vs.)

15 THE TJX COMPANIES, INC., a)
16 Delaware corp.; MARSHALLS OF CA,)
17 LLC, a Delaware LLC; and DOES 1)
through 100, inclusive,)

18 Defendant.)

19 _____)
20 THERESA METOYER and ROBIN)
21 BERKOFF, individually and on behalf)
of all others similarly situated,)

22 Plaintiffs,)

23 vs.)

24 THE TJX COMPANIES, INC., a)
25 Delaware corp.; HOMEGOODS, INC.,)
26 a Delaware corp.; and DOES 1 through)
100, inclusive,)

27 Defendants.)

1 This Consolidated Amended Class Action Complaint (“Complaint”) is
2 brought by individual consumers in California against three (3) separate but related
3 retailers – TJ Maxx, Marshalls, and Home Goods – for using false, deceptive, or
4 misleading comparative reference prices on the price tags of the products sold in
5 their California stores. Unless otherwise indicated, each allegation in this
6 Complaint is made against, and in relation to, each defendant named herein.

7 Plaintiffs STACI CHESTER (“CHESTER”), DANIEL FRIEDMAN
8 (“FRIEDMAN”), THERESA METOYER (“METOYER”) and ROBIN BERKOFF
9 (“BERKOFF”) (collectively referred to herein as “Plaintiffs”), individually and on
10 behalf of all others similarly situated (collectively referred to as “Class Members”
11 or “Subclass Members”), bring this consolidated action against all Defendants
12 pursuant to agreement of the parties and order of the Court, and for causes of
13 action against Defendants and each of them, based upon personal knowledge,
14 information and belief, and investigation of their counsel, allege as follows:

15 **JURISDICTION AND VENUE**

16 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332(d)
17 (the Class Action Fairness Act of 2005 (“CAFA”)) because the amount in
18 controversy with respect to each subclass proposed herein exceeds the value
19 of \$5,000,000, exclusive of interest and costs, because each subclass consists
20 of 100 or more putative Subclass Members, and because at least one putative
21 Subclass Member in each subclass is diverse from each Defendant herein:
22 THE TJX COMPANIES, INC. (“TJX”), a Delaware corporation with its
23 principal place of business in Framingham, Massachusetts; T.J. MAXX OF
24 CA, LLC (“MAXX”), a Delaware limited liability company with its
25 principal place of business in Framingham, Massachusetts; MARSHALLS
26 OF CA, LLC (“MARSHALLS”), a Delaware limited liability company with
27 its principal place of business in Framingham, Massachusetts; and,
28 HOMEGOODS, INC. (“HOMEGOODS”), a Delaware corporation with its

1 principal place of business in Framingham, Massachusetts. (TJX, MAXX,
2 MARSHALLS, and HOME GOODS are collectively referred to herein as
3 “Defendants.”).

4 2. This is a civil action brought under and pursuant to California Business &
5 Professions Code §17200, *et seq.* (the Unfair Competition Law or “UCL”),
6 California Business & Professions Code §17500, *et seq.* (the False
7 Advertising Law or “FAL”), and California Civil Code §1750, *et seq.* (the
8 California Consumer Legal Remedies Act or “CLRA”).

9 3. Venue is proper in the Eastern Division of the Central District of California
10 because Defendants transact a substantial amount of business in this District,
11 Plaintiffs CHESTER, BERKOFF, and METOYER reside in Riverside
12 County, California, and the transactions which form the basis of Plaintiffs’
13 claims against Defendants occurred in Riverside County, California.

14 4. The Central District of California has personal jurisdiction over the
15 Defendants named in this action because Defendants are corporate business
16 entities authorized to do business in the State of California, and licensed by
17 the California Secretary of State to do business in the State of California.
18 Each Defendant has sufficient minimum contacts in California. Defendants
19 have otherwise intentionally availed themselves of the California market
20 through the ownership and operation of over 300 retail stores within the
21 State of California, such that the exercise of jurisdiction over Defendants by
22 the California courts is consistent with traditional notions of fair play and
23 substantial justice.

24 5. Defendants transact business within the county of Riverside, and elsewhere
25 throughout the State of California. The violations of law alleged herein have
26 been carried out within the County of Riverside and throughout the State of
27 California.

28 ///

INTRODUCTION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6. A product’s regular price, the price at which a product generally sells for in the marketplace, matters to consumers. The price that a product generally sells for in the marketplace provides important information to consumers about the product’s worth and the prestige that ownership of that product conveys. Many retailers these days use comparative reference prices to assure their customers that their sale prices are lower than the prices their products regularly sell for in the marketplace.

7. This is a case about one of the nation’s largest retailers, TJX, using deceptive comparative prices at each of its wholly-owned retail department stores to trick its customers into mistakenly believing that the sale prices of products at TJ Maxx, Marshalls, and HomeGoods stores in California are significantly lower than the regular prices of those products at other retailers in California. Plaintiffs are typical reasonable American consumers who, like all reasonable consumers, are motivated by the promise of a good deal. MAXX, MARSHALLS and HOME GOODS are wholly owned subsidiaries of TJX, and are each large national retailers that make enormous profits by promising consumers a good deal. Defendants own and operate a chain of so called “off-price” department stores in California known respectively as TJ Maxx, Marshalls, and HomeGoods stores. Plaintiffs occasionally shop at Defendants’ stores because of Defendants’ promise that they can get name brand products for significant discounts off department store prices. Defendants support that promise with price tags on each item in each store which feature Defendants’ selling prices alongside much higher supposedly comparative prices. The comparative prices assure consumers like Plaintiffs that they are receiving an exceptionally good deal and saving a specific dollar amount equal to the difference between the two prices. Defendants’ price tags, identical in all material respects at each store irrespective of the

1 name of the store, deceptively instruct customers to “compare” the sale
2 prices of Defendants’ products to these higher comparative reference prices.
3 The comparative prices, however, are deceptive. They are not true, bona
4 fide, or properly substantiated comparative prices. They are not what
5 typical, reasonable consumers, like Plaintiffs, think they are. According to
6 Defendants, the comparative reference prices on their price tags are merely
7 “estimates” of what Defendants believe “comparable” products “may” sell
8 for at other retailers. This unintuitive description of what a “Compare At”
9 price is, however, is not adequately disclosed to Defendants’ customers at or
10 anywhere near the comparative price representations. Plaintiffs, having been
11 duped by Defendants’ deceptive pricing practices like all other TJ Maxx,
12 Marshalls and HomeGoods customers, bring this action against Defendants
13 for false, deceptive and misleading advertising on behalf of themselves and
14 all other consumers who have purchased items at TJ Maxx, Marshalls and
15 HomeGoods stores in California throughout the period from July 17, 2011,
16 to the present (the “Class Period”).

17 **PARTIES**

- 18 8. **TJ Maxx customer** and Plaintiff CHESTER is, and at all times relevant
19 hereto has been, an individual and a resident of Riverside County,
20 California. On at least 2 occasions throughout the Class Period, CHESTER
21 purchased products from the Palm Desert, California, TJ Maxx store which
22 were falsely, deceptively, and/or misleadingly labeled with false, deceptive,
23 and/or misleading, comparative prices. The marked “Compare At” prices
24 for the products which CHESTER purchased from Defendants were not
25 actual prices at which substantial and significant sales of those products
26 were made at other principal retail outlets in California. CHESTER
27 purchased products from Defendants throughout the Class Period in reliance
28 on Defendants’ false, deceptive and misleading advertising, marketing and

1 pricing schemes, which she would not otherwise have purchased absent
2 Defendants' deceptive advertising and pricing scheme, and CHESTER has
3 lost money and/or property, and has been damaged as a result. CHESTER is
4 a reasonable consumer.

5 9. **TJ Maxx customer** and Plaintiff FRIEDMAN is, and at all times relevant
6 hereto has been, an individual and a resident of Los Angeles County,
7 California. On over 10 occasions throughout the Class Period, FRIEDMAN
8 purchased products from the Westlake Village, California, TJ Maxx store
9 which were falsely, deceptively, and/or misleadingly labeled with false,
10 deceptive, and/or misleading, comparative prices. The marked "Compare
11 At" prices for the products which FRIEDMAN purchased from Defendants
12 were not actual prices at which substantial and significant sales of those
13 products were made at other principal retail outlets in California.
14 FRIEDMAN purchased products from Defendants throughout the Class
15 Period in reliance on Defendants' false, deceptive and misleading
16 advertising, marketing and pricing schemes, which he would not otherwise
17 have purchased absent Defendants' deceptive advertising and pricing
18 scheme, and FRIEDMAN has lost money and/or property, and has been
19 damaged as a result. FRIEDMAN is a reasonable consumer.

20 10. **Marshalls and HomeGoods customer** and Plaintiff BERKOFF is, and at
21 all times relevant hereto has been, an individual and a resident of Riverside
22 County, California. On over 5 occasions throughout the Class Period,
23 BERKOFF purchased products from the Palm Desert and La Quinta,
24 California, Marshalls stores which were falsely, deceptively, and/or
25 misleadingly labeled with false, deceptive, and/or misleading, comparative
26 prices. In addition, on over 10 occasions throughout the Class Period,
27 BERKOFF purchased products from the Palm Desert and Bermuda Dunes,
28 California, HomeGoods stores which were falsely, deceptively, and/or

1 misleadingly labeled with false, deceptive, and/or misleading, comparative
2 prices. The marked “Compare At” prices for the products which BERKOFF
3 purchased, both at Marshalls and HomeGoods, were not actual prices at
4 which substantial and significant sales of those products were made at other
5 principal retail outlets in California. BERKOFF purchased products from
6 Defendants throughout the Class Period in reliance on Defendants’ false,
7 deceptive and misleading advertising, marketing and pricing schemes, which
8 she would not otherwise have purchased absent Defendants’ deceptive
9 advertising and pricing scheme, and BERKOFF has lost money and/or
10 property, and has been damaged as a result. BERKOFF is a reasonable
11 consumer.

- 12 11. **HomeGoods customer** and Plaintiff METOYER is, and at all times relevant
13 hereto has been, an individual and a resident of Riverside County,
14 California. On over 10 occasions throughout the Class Period, METOYER
15 purchased products from the Mira Loma, California, HomeGoods store
16 which were falsely, deceptively, and/or misleadingly labeled with false,
17 deceptive, and/or misleading, comparative prices. The marked “Compare
18 At” prices for the products which METOYER purchased from HomeGoods
19 were not actual prices at which substantial and significant sales of those
20 products were made at other principal retail outlets in California.
21 METOYER purchased products from Defendants throughout the Class
22 Period in reliance on Defendants’ false, deceptive and misleading
23 advertising, marketing and pricing schemes, which she would not otherwise
24 have purchased absent Defendants’ deceptive advertising and pricing
25 scheme, and METOYER has lost money and/or property, and has been
26 damaged as a result. METOYER is a reasonable consumer.
- 27 12. Defendant TJX is a Delaware corporation, organized under the laws of the
28 state of Delaware, which conducts substantial business on a regular and

1 continuous basis in the state of California. TJX's principal place of business
2 is in Framingham, Massachusetts.

3 13. Defendant MAXX is a Delaware limited liability company, organized under
4 the laws of the state of Delaware, which conducts substantial business on a
5 regular and continuous basis in the state of California. MAXX's principal
6 place of business is in Framingham, Massachusetts.

7 14. Defendant MARSHALLS is a Delaware limited liability company,
8 organized under the laws of the state of Delaware, which conducts
9 substantial business on a regular and continuous basis in the state of
10 California. MARSHALLS's principal place of business is in Framingham,
11 Massachusetts.

12 15. Defendant HOMEGOODS is a Delaware corporation, organized under the
13 laws of the state of Delaware, which conducts substantial business on a
14 regular and continuous basis in the state of California. HOMEGOODS's
15 principal place of business is in Framingham, Massachusetts.

16 16. The true names and capacities of the Defendants named herein as DOES 1
17 through 100, inclusive, whether individual, corporate, associate or otherwise,
18 are unknown to Plaintiffs who therefore sue such Defendants under fictitious
19 names. Plaintiffs are informed and believe, and on that basis allege, that
20 these Defendants, DOES 1 through 100, are in some manner or capacity, and
21 to some degree, legally responsible and liable for the damages of which
22 Plaintiffs complain. Plaintiffs will seek leave of Court to amend this
23 Complaint to set forth the true names and capacities of all fictitiously-named
24 Defendants within a reasonable time after they become known.

25 **FACTUAL ALLEGATIONS**

26 17. During the Class Period, CHESTER bought 2 handbags from the TJ Maxx
27 store in Palm Desert, California.

28

1 18. During the Class Period, FRIEDMAN bought apparel and household items
2 from the TJ Maxx store in Westlake Village, California.

3 19. During the Class Period, BERKOFF bought tee shirts and other items from
4 the Marshalls stores in Palm Desert and La Quinta, California.

5 20. During the Class Period, BERKOFF also bought numerous items from the
6 HomeGoods stores in Palm Desert and Bermuda Dunes, California,
7 including, without limitation, home decorations, storage items, candles, and
8 other items.

9 21. During the Class Period, METOYER bought numerous items from the
10 HomeGoods store in Mira Loma, California, including, without limitation,
11 bath rugs, lamps, dinnerware, and other items.

12 22. Plaintiffs were each lured into Defendants' stores with the promise of
13 significant savings on name brand merchandise such as, without limitation,
14 apparel, handbags, shoes, and bed, bath and home items.

15 **I. Defendants Label Their Products With "Compare At" Reference**
16 **Prices:**

17 23. Each item offered for sale at TJ Maxx, Marshalls, and HomeGoods is
18 displayed with a comparative price tag which provides 2 prices: the TJ
19 Maxx, Marshalls, or HomeGoods sale price, and another significantly higher
20 price described simply as the "Compare At" price.

21 24. The price tags used by Defendants at TJ Maxx, Marshalls and HomeGoods
22 stores are identical in all material respects. They each have a sale price (i.e.,
23 a price at which the retailer is selling the item for), and a higher comparative
24 reference price listed above the sale price accompanied by the phrase
25 "Compare At."

26 25. Consumers are not told exactly what the phrase "Compare At" means, or
27 given any information about the comparative price other than the dollar
28 amount and the phrase, "Compare At." Nor are they told where Defendants

1 came up with the “Compare At” price. They are simply presented with the 2
2 prices (the sale price, and the higher “Compare At” reference price), left to
3 guess what the “Compare At” price is, and are led to believe that they are
4 actually saving the difference between the 2 prices.

5 26. In addition to Defendants’ standard “Compare At” price tags, Defendants
6 also label many of their products with a second price tag that purports to be
7 the original price tag and which lists a manufacturer’s suggested retail price,
8 or “MSRP.”

9 **II. Comparative Reference Prices Are Material to Consumers:**

10 27. Defendants compare the prices of their products with higher reference prices
11 which consumers are led to believe are the prices supposedly charged by
12 other merchants for the same products. Defendants label those higher
13 comparative prices as the “Compare At” prices for those products.

14 28. This type of comparison pricing, where the retailer contrasts its selling price
15 for a product with a generally much higher reference price, has become
16 increasingly common in the retail marketplace.

17 29. Retailers, like Defendants, present these reference prices (commonly
18 referred to as “advertised reference prices” or “ARPs”) to consumers with
19 short tag-line phrases such as “former price,” “regular price,” “list price,”
20 “MSRP,” or “compare at.” These marketing phrases are commonly referred
21 to as “semantic cues.”

22 30. Over 30 years of marketing research unanimously concludes that semantic
23 cues presented with comparative reference prices are material to consumers.
24 That is, they influence consumers’ purchasing decisions.

25 31. For example, a well-respected and oft-cited study by Dhruv Grewal & Larry
26 D. Compeau, *Comparative Price Advertising: Informative or Deceptive?*, 11
27 J. of Pub. Pol’y & Mktg. 52, 55 (Spring 1992), concludes that “[b]y creating
28 an impression of savings, the presence of a higher reference price enhances

1 [consumers’] perceived value and willingness to buy [a] product.” In other
2 words, comparative reference prices lead consumers to believe they are
3 saving money, and increase their willingness to buy products.

4 32. Numerous other consumer and marketing research studies arrive at similar
5 conclusions. For example, Compeau & Grewal, in *Comparative Price*
6 *Advertising: Believe It Or Not*, J. of Consumer Affairs, Vol. 36, No. 2, at
7 287 (Winter 2002), conclude that “decades of research support the
8 conclusion that advertised reference prices do indeed enhance consumers’
9 perceptions of the value of the deal.” They also conclude that “[c]onsumers
10 are influenced by comparison prices even when the stated reference prices
11 are implausibly high.” *Id.*

12 33. Joan Lindsey-Mullikin & Ross D. Petty, *Marketing Tactics Discouraging*
13 *Price Search: Deception and Competition*, 64 J. of Bus. Research 67
14 (January 2011), conclude that “[r]eference price ads strongly influence
15 consumer perceptions of value. . . . Consumers often make purchases not
16 based on price but because a retailer assures them that a deal is a good
17 bargain. This occurs when . . . the retailer highlights the relative savings
18 compared with the prices of competitors . . . [T]hese bargain assurances
19 (BAs) change consumers’ purchasing behavior and may deceive
20 consumers.”

21 34. Praveen K. Kopalle & Joan Lindsey-Mullikin, *The Impact of External*
22 *Reference Price On Consumer Price Expectations*, 79 J. of Retailing 225
23 (2003), similarly conclude that “research has shown that retailer-supplied
24 reference prices clearly enhance buyers’ perceptions of value” and “have a
25 significant impact on consumer purchasing decisions.”

26 35. The results of a study by Dr. Jerry B. Gotlieb & Dr. Cyndy Thomas
27 Fitzgerald, *An Investigation Into the Effects of Advertised Reference Prices*
28 *On the Price Consumers Are Willing To Pay For the Product*, 6 J. of App’d

1 Bus. Res. 1 (1990), conclude that “reference prices are important cues
2 consumers use when making the decision concerning how much they are
3 willing to pay for the product.” This study further concludes that
4 “consumers are likely to be misled into a willingness to pay a higher price
5 for a product simply because the product has a higher reference price.”

6 36. The indisputable conclusion of decades of scholarly research concerning
7 comparative reference prices, such as the “Compare At” reference prices
8 used by Defendants, is that they matter – they are material to consumers.

9 **III. Defendants Have a Duty to Verify Their “Compare At” Prices:**

10 37. The FTC requires that “[a]dvertisers must have evidence to back up their
11 claims (“substantiation”). . . . Before disseminating an ad, advertisers must
12 have appropriate support for all express and implied objective claims that the
13 ad conveys to reasonable consumers. When an ad lends itself to more than
14 one reasonable interpretation, there must be substantiation for each
15 interpretation. The type of evidence needed to substantiate a claim may
16 depend on the product, the claims, and what experts in the relevant field
17 believe is necessary.”

18 38. Defendants do not have sufficient evidence to substantiate the validity of
19 their “Compare At” reference prices.

20 39. The FTC Pricing Guides, 16 C.F.R. §233.2, provide rules for merchants
21 such as Defendants that claim “to offer goods at prices lower than those
22 being charged by others for the same merchandise in the advertiser’s trade
23 area.”

24 40. The FTC Pricing Guides require that when merchants such as Defendants
25 use advertising that compares their prices to higher comparative prices for
26 the same merchandise, “the advertised higher price must be based on fact,
27 and not be fictitious or misleading.” The FTC Pricing Guides further
28 provide:

1 “Whenever an advertiser represents that he is selling below the prices
2 being charged in his area for a particular article, he should be
3 reasonably certain that the higher price he advertises does not
4 appreciably exceed the price at which *substantial sales* of the article
5 are being made in the area - that is, *a sufficient number of sales* so
6 that a consumer would consider a reduction from the price to
7 represent a genuine bargain or saving.” (Emphasis added).

8 41. Defendants thus have, and have had, a duty to provide “appropriate support”
9 for, and “evidence to back up,” their “Compare At” reference prices.

10 42. Defendants have, and have had, a duty to verify that their “Compare At”
11 reference prices do not “appreciably exceed the price at which substantial
12 sales” of their products have been made in California.

13 43. Defendants do not have such evidence, and have not in fact verified that
14 their “Compare At” reference prices do not “appreciably exceed the price at
15 which substantial sales” of their products have been made in California.

16 44. Where the advertiser’s comparison price is purportedly based on prices
17 being charged for similar or “comparable” products, the FTC Pricing Guides
18 require that the advertiser make “clear to the consumer that a comparison is
19 being made with other merchandise and the other merchandise is, in fact, of
20 essentially similar quality and obtainable in the area.” In such a case:

21 “The advertiser should, however, be reasonably certain, just as in the
22 case of comparisons involving the same merchandise, that the price
23 advertised as being the price of comparable merchandise does not
24 exceed the price at which such merchandise is being offered by
25 representative retail outlets in the area.”

26 45. Where the advertiser’s comparison price is purportedly based on a
27 manufacturer’s suggested retail price (“MSRP”), the FTC Pricing Guides
28 provide as follows:

“Many members of the purchasing public believe that a
manufacturer’s list price, or suggested retail price, is the price at
which an article is generally sold. Therefore, if a reduction from this
price is advertised, many people will believe that they are being
offered a genuine bargain. To the extent that list or suggested retail
prices do not in fact correspond to prices at which *a substantial*

1 *number of sales* of the article in question are made, the advertisement
2 of a reduction may mislead the consumer.” (Emphasis added).

3 . . .

4 “[t]he widespread failure to observe manufacturer’s suggested or list
5 prices, and the advent of retail discounting on a wide scale, have
6 seriously undermined the dependability of list prices as indicators of
7 the exact prices at which articles are in fact generally sold at retail. . . .
8 Today, only in the rare case are all sales of an article at the
9 manufacturer’s suggested retail or list price.”

10 46. According to the FTC Pricing Guides, an advertised MSRP:

11 “[w]ill not be deemed fictitious if it is the price at which *substantial*
12 (*that is, not isolated or insignificant*) sales are made in the
13 advertiser’s trade area (the area in which he does business).
14 Conversely, if the list price is significantly in excess of the highest
15 price at which *substantial sales* in the trade area are made, there is a
16 clear and serious danger of the consumer being misled by an
17 advertised reduction from this price. . . . [B]efore advertising a
18 manufacturer’s list price as a basis for comparison with his own lower
19 price, the retailer should ascertain whether the list price is in fact the
20 price regularly charged by principal outlets in his area.” (Emphasis
21 added.).

22 47. The FTC concludes, in its Pricing Guides, that advertising an MSRP as a
23 comparative reference price is “deceptive” if only “an insubstantial volume
24 of sales” of the product in question have been made at the advertised MSRP
25 in the retailer’s trade area. Use of an MSRP as a comparative reference price
26 is not considered “deceptive” if “[i]n a *substantial number of representative*
27 *communities, the principal retail outlets* are selling the product at this price
28 in the regular course of business and *in substantial volume*.” (Emphasis
added).

48. Defendants thus have, and have had, a duty to verify that their “Compare
At” reference prices are and have been prices at which substantial sales of
their products are and have been made at other principal retail outlets in
California.

IV. **Defendants Do Not Adequately Verify Their “Compare At” Prices:**

49. When Defendants advertised prices as “Compare At” prices on the price tags
of items sold in their respective California TJ Maxx, Marshalls, and

1 HomeGoods stores, Defendants were not reasonably certain that the higher
2 prices they advertised did not appreciably exceed the prices at which
3 *substantial sales* of the items were being made in California.

4 50. The “Compare At” prices on Defendants’ price tags, including those alleged
5 to be MSRPs, were not prices at which *substantial sales* of those products
6 were made in California. Rather, the “Compare At” reference prices
7 advertised by Defendants, including those alleged to be MSRPs, were
8 significantly in excess of the highest prices at which *substantial sales* of
9 those products were made in California.

10 51. Defendants did not ascertain whether the “Compare At” prices on their price
11 tags, including those alleged to be MSRPs, were in fact the prices regularly
12 charged by principal outlets in California, or whether their “Compare At”
13 prices were prices at which *substantial sales* of such “comparable” products
14 were made in California.

15 52. Defendants systematically and routinely used unverified comparative prices,
16 including supposed MSRPs, as comparative reference prices for their
17 products which are not, in fact, prices at which the “principal retail outlets”
18 in California have sold, or are selling, those products in any “substantial
19 volume.” Thus, Defendants’ “Compare At” prices are, and have been
20 throughout the Class Period, deceptive.

21 53. Plaintiffs are informed and believe, and on that basis allege, that often
22 Defendants have not determined or verified the prices other merchants
23 charge for the identical products they sell. Rather, Defendants have used
24 various misleading methods to make up prices which they claim other
25 merchants charge for those products, and then claim that their own prices are
26 significantly lower than those “Compare At” reference prices.

27
28

1 54. Defendants failed to verify that their “Compare At” prices for their products
2 did not exceed the prices at which substantial sales of the products were
3 being made at principal retail outlets in California.

4 55. Defendants were ignorant of the prices at which substantial sales of identical
5 products were sold by other merchants in California, and Defendants did not
6 know whether the “Compare At” prices they advertised accurately reflected
7 the prices at which their products were typically offered in California.

8 56. Defendants’ decision to use unverified reference prices, including supposed
9 MSRPs, was likely to deceive consumers, including Plaintiffs, by, among
10 other things, representing that the marketplace had assigned retail prices to
11 their products, and that Defendants’ discount off those retail prices made
12 Defendants’ prices attractive. Defendants’ misrepresentation of the
13 “Compare At” prices as actual prices at which substantial sales of their
14 products had been made in California was deceptive, misleading, unlawful,
15 unfair, and/or fraudulent.

16 **V. Defendants’ “Compare At” Reference Prices Are Misleading, Deceptive,**
17 **and/or False:**

18 57. The result of Defendants’ ignorance of the accuracy of their “Compare At”
19 prices, and their failure to verify that accuracy, was that consumers,
20 including Plaintiffs, were misled into believing that they were receiving
21 substantial savings on the purchase of Defendants’ products when compared
22 to prices charged for those same products at other retailers. Plaintiffs and
23 other Class Members were misled into paying more for Defendants’
24 products than they would have paid for identical products sold by other
25 merchants.

26 58. Plaintiffs were confronted with ARPs on the items they purchased from
27 Defendants, accompanied by the undefined, unqualified phrase, “Compare
28 At.” Plaintiffs reasonably believed, like all reasonable consumers, that the

1 “Compare At” prices represented the prices that they would expect to pay
2 for those same products at other retailers in their general area. In other
3 words, Plaintiffs reasonably believed that the “Compare At” prices referred
4 to the then prevailing retail prices for those same items - that if they left
5 Defendants’ stores and shopped around for those same products, they would
6 likely find them elsewhere at the higher “Compare At” prices provided by
7 Defendants.

8 59. Defendants, however, had a different definition of what they meant by
9 “Compare At” - a definition undisclosed to consumers anywhere near the
10 actual advertisement and not consistent with the common meaning of the
11 phrase “compare at.”

12 60. Had Plaintiffs been savvy enough, and stopped their shopping to get to a
13 computer, log onto Defendants’ website, navigate to the bottom of the web
14 page, find the “compare at pricing” link in the fine print on the left side of
15 the bottom of the page along with a half-dozen other links (including, among
16 others, site map, privacy, and terms of use), and click on the “compare at
17 pricing” hyperlink, Plaintiffs would have found Defendants’ definition of
18 “Compare At.”

19 61. The following disclosure of what Defendants actually mean by “Compare
20 At” is found deeply imbedded on Defendants’ website, accessible only
21 through a hyperlink near the small print at the bottom of the main page:

22 **What do we mean by "compare at"?**

23 **The "compare at" price is our buying staff's estimate of the**
24 **regular, retail price at which a comparable item in finer**
25 **catalogs, specialty or department stores may have been**
26 **sold. We buy products from thousands of vendors**
27 **worldwide, so the item may not be offered by other**
28 **retailers at the "compare at" price at any particular time or**
location. We encourage you to do your own comparison
shopping as another way to see what great value we

1 offer. We stand for bringing you and your family
2 exceptional value every day – it’s the foundation of our
3 business.

4 **A. Reasonable Consumers Do Not Interpret Defendants’ “Compare At”**
5 **Prices To Be Defendants’ Estimates of the Prices of Comparable**
6 **Products:**

- 6 62. Reasonable consumers, including Plaintiffs, believe the “Compare At”
7 reference price on Defendants’ price tags to be the price at which other
8 merchants supposedly sell the same product.
- 9 63. Reasonable consumers, including Plaintiffs, do not interpret a reference
10 price preceded by the phrase “Compare At” to refer to a retailer’s estimate of
11 what a comparable product may have sold for at other retail outlets.
- 12 64. Defendants’ depiction of prices, as described herein, deceptively represented
13 to consumers, including Plaintiffs, that the “Compare At” price was the price
14 at which the product typically sold in the marketplace, from which
15 Defendants offered a discount.
- 16 65. A reasonable consumer would interpret Defendants’ “Compare At” price as
17 the price at which a substantial number of vendors are selling the identical
18 product.
- 19 66. Nowhere on Defendants’ price tags, or in Defendants’ price advertising, is it
20 made clear to consumers, including Plaintiffs, that the advertised “Compare
21 At” price is merely Defendants’ buying staff’s “estimate” of what a
22 “comparable” item “may have” sold at.
- 23 67. Nowhere on Defendants’ price tags, or in Defendants’ price advertising, is it
24 made clear to consumers, including Plaintiffs, that the advertised “Compare
25 At” price may not even be a price at which any other retailer ever offered the
26 particular item at any time or location.
- 27
28

- 1 68. Nowhere on Defendants’ price tags, or in Defendants’ price advertising, are
2 consumers warned or told that they should do their own comparison
3 shopping before relying on Defendants’ “Compare At” prices.
- 4 69. Consumers should not have to sleuth their way into Defendants’ website just
5 to find Defendants’ misleading, unreasonable, and non-intuitive
6 interpretation of what they mean by the phrase “Compare At.”
- 7 70. Even if a consumer were to find Defendants’ interpretation of the phrase
8 “Compare At” on their respective website before purchasing a product from
9 either TJ Maxx, Marshalls, or HomeGoods, it is still not clear from
10 Defendants’ definition exactly what the “Compare At” price actually is.
- 11 71. Viewed in light of Defendants’ definition, Defendants’ “Compare At” price
12 could be the regular, retail price of the same item at other department stores.
13 Or, it could be the regular, retail price of a “comparable” item. It could
14 simply be an “estimate” of what a comparable item might sell at. Or, it
15 could be none of the above. It may be that the particular item, or even a
16 comparable item, was never offered for sale at the “Compare At” price by
17 any other retailer, at any time, or in any location. And consumers, even if
18 they were to find Defendants’ definition, would still be left to guess what a
19 “comparable” item might be.
- 20 72. The Better Business Bureau (“BBB”) Code of Advertising suggests that if a
21 retailer means to compare its selling price to a higher reference price of
22 supposed identical merchandise, the retailer should use clear language in its
23 advertising such as “selling elsewhere at.”
- 24 73. If the reference price provided by Defendants is meant by them to be the
25 price of a “comparable item,” then the semantic cue (or phrase) placed on
26 the price tag by Defendants should inform the consumer that the reference
27 price is supposedly the “regular, retail price” of a “comparable item.”
- 28

- 1 74. The BBB Code of Advertising suggests that if a retailer means to compare
2 its selling price to a higher reference price of comparable merchandise, the
3 retailer should use clear language in its advertising such as “comparative
4 value,” “compares with merchandise selling at,” or “equal to merchandise
5 selling for.”
- 6 75. Because Defendants’ “Compare At” prices are based on Defendants’
7 “estimate,” they admittedly may not be the “regular” or “retail” price of
8 either the same item or a comparable item.
- 9 76. Confronted with the simple phrase, “Compare At,” a reasonable consumer
10 would believe that the higher reference price represents the price at which
11 the same item currently sells for in the marketplace – the then-prevailing
12 retail or market price.
- 13 77. After reading Defendants’ interpretation of the phrase “Compare At,” a
14 reasonable consumer would not know what the reference price represents. It
15 could be the actual original price of the same item; the actual original price
16 of a comparable item; the regular, retail price of the same item; the regular,
17 retail price of a “comparable” item, assuming there is such a “comparable”
18 item; simply what Defendant “estimates” to be the original price of the same
19 item; what Defendant “estimates” to be the price of a comparable item; or it
20 may not be a price that any retailer ever sold the item, or a similar item, for
21 at any time or in any location.
- 22 78. Plaintiffs and all other Class Members reasonably relied upon Defendants’
23 deceptive, misleading, and/or false representations of comparative prices and
24 false representations of purported savings, discounts and bargains when
25 purchasing merchandise from Defendants’ California stores.
- 26 79. Plaintiffs did not, and reasonable consumers would not, interpret the
27 semantic phrase “Compare At” the way Defendants interpret it.
28

1 80. Therefore, Defendants’ use of the semantic phrase “Compare At” in
2 connection with their ARPs for their products was, and is, false, misleading,
3 and/or deceptive.

4 **B. Defendants’ “Compare At” Price Advertising Omits Necessary**
5 **Information, Including Their Purported Disclosure:**

6 81. At all times relevant herein, Defendants have been under a duty to Plaintiffs
7 and all other Class Members to adequately disclose the truth about their
8 alleged “Compare At” prices.

9 82. Defendants’ “Compare At” reference prices required, and continue to
10 require, a qualifying disclosure because, amongst other things, Defendants
11 define and interpret the term “Compare At” in a way that reasonable
12 consumers do not interpret it. Reasonable consumers do not interpret a
13 “Compare At” reference price to be merely an “estimate” of what a
14 “comparable” product “may” have sold for.

15 83. Defendants have provided a qualifying disclosure, but that disclosure is
16 buried 2 layers deep on their respective websites, and not clearly and
17 conspicuously next to the “Compare At” reference prices, as required by
18 FTC rules.

19 84. Over 30 years of empirical research, including, without limitation, a 2004
20 study in *The Journal of Consumer Affairs* by Larry D. Compeau, Ph.D., *et*
21 *al.*, has concluded that the average reasonable consumer interprets the term
22 “compare at,” when presented in comparison to a lower selling price for an
23 item, to refer to “prices found in a ‘regular price’ department store.” (*The*
24 *Journal of Consumer Affairs*, Vol. 38, No. 1, 2004, at 184). These studies
25 conclude that “about two-thirds” of consumers “may be deceived by the
26 ‘Compare At’ phrase if specific information regarding the comparison is not
27 provided.” *Id.* at 186.

28

- 1 85. Defendants attempt to provide that additional “specific information” by way
2 of a disclosure accessible only through a hyperlink at the bottom of their
3 respective web pages, and in small print on signs in their stores not easily
4 seen by, or made clear or conspicuous to, customers. Defendants’ disclosure
5 is inadequate and violative of FTC rules and guidelines.
- 6 86. Where, as here, the retailer and the consumer do not share the same meaning
7 of the semantic cue (“compare at”), and thus the phrase is open to more than
8 one interpretation, the use of that phrase is misleading and deceptive.
- 9 87. Where, as here, the retailer ascribes a secret, undisclosed meaning to the
10 semantic cue that differs from that which reasonable consumers, including
11 Plaintiffs, would ascribe to it, the use of that phrase is misleading and
12 deceptive.
- 13 88. It is a deceptive marketing act and/or practice for Defendants to define their
14 reference prices as “estimates” of what “comparable” products “may” have
15 sold for, but fail to clearly and conspicuously disclose that definition to
16 consumers. If the reference prices provided by Defendants on the price tags
17 of their products are meant to be “estimates” of what “comparable” products
18 “may” have sold for, those price tags should say so.
- 19 89. Plaintiffs did not, and reasonable consumers would not, interpret the
20 semantic phrase “Compare At” the way Defendants interpret it.
- 21 90. Therefore, Defendants’ use of the semantic phrase “Compare At” in
22 connection with their ARPs for their products was, and is, false, misleading,
23 and/or deceptive.
- 24 91. The facts that Defendants misrepresented and/or failed to disclose are
25 material facts that a reasonable person would have considered material; i.e.,
26 facts that would contribute to a reasonable person’s decision to purchase
27 merchandise offered for sale by Defendants. Defendants’ deceptive
28 comparison reference prices, and/or false representations of discounts from

1 misleading, deceptive, and/or false comparative prices, and false
2 representations of purported savings, discounts and/or bargains, are
3 objectively material to the reasonable consumer.

4 92. Plaintiffs and all other Class Members reasonably and justifiably acted and
5 relied to their detriment on Defendants' failure to disclose, and concealment
6 of, the truth about their deceptive comparative prices, in purchasing
7 merchandise at Defendants' stores throughout California.

8 **C. Defendants' Disclosures Do Not Comply With FTC Guidelines:**

9 93. The FTC provides detailed requirements concerning the use of purported
10 disclosures in their ".com Disclosures" rules.

11 94. Defendants provide a disclosure of their definition or interpretation of their
12 "Compare At" prices on their respective websites, and those disclosures
13 therefore are subject to the FTC's ".com Disclosures" rules.

14 95. The FTC has a "clear and conspicuous requirement" for advertising
15 disclosures made online, which requires any such disclosures to be presented
16 to consumers "clearly and prominently."

17 96. The FTC's "clear and conspicuous requirement" requires that "disclosures
18 must be clear and conspicuous."

19 97. When making a disclosure related to an advertising claim, the FTC's clear
20 and conspicuous requirement requires that "[d]isclosures should be placed as
21 close as possible to the claim they qualify," or the "triggering claim."

22 98. The FTC requires that "[w]hen the disclosure of qualifying information is
23 necessary to prevent an ad from being deceptive, the information should be
24 presented clearly and conspicuously so that consumers can actually notice
25 and understand it. A . . . disclaimer that is easily missed on a website [is] not
26 likely to be effective. Nor can advertisers use fine print to contradict other
27 statements in an ad or to clear up misimpressions that the ad would leave
28 otherwise. . . . To ensure that disclosures are effective, advertisers should use

1 clear and unambiguous language, [and] place any qualifying information
2 close to the claim being qualified.”

3 99. Even if the advertisement is small and space-constrained, the FTC requires
4 that “[i]f a space-constrained ad contains a claim that requires qualification,
5 the advertiser disseminating it is not exempt from disclosure requirements.”

6 100. Defendants’ “Compare At” reference prices require qualification.

7 101. Defendants’ qualifying disclosures are not presented clearly or
8 conspicuously, nor are they presented so that consumers can notice them.

9 102. Defendants’ disclosures of qualifying information (i.e., that Defendants’
10 “Compare At” reference prices refer to “estimates” of what “comparable”
11 products “may” have sold for) are not placed close to the “Compare At”
12 claims. They are placed on a website only accessible by linking to them
13 through a hyperlink, and on signage in Defendants’ stores that is not easily
14 seen by, nor made clear and/or conspicuous to, customers.

15 103. Plaintiffs did not see, and were not aware of, Defendants’ disclosures.

16 104. When using a hyperlink to lead to a disclosure, the FTC requires, among
17 other things, that the advertiser make the link “obvious.”

18 105. Defendants’ hyperlinks to their disclosures are not obvious.

19 106. The FTC’s disclosure rules further provide that “[d]isclosures that are an
20 integral part of a claim or inseparable from it should not be communicated
21 through a hyperlink. Instead, they should be placed on the same page and
22 immediately next to the claim, and be sufficiently prominent so that the
23 claim and the disclosure are read at the same time, without referring the
24 consumer somewhere else to obtain this important information.”

25 107. Defendants’ qualifying disclosures are an “integral part” of their “Compare
26 At” reference price claims. Those disclosures should not be, and should not
27 have been, communicated to consumers through a hyperlink. Those
28

- 1 disclosures should be, and should have been, placed on the price tags of
2 Defendants' products immediately next to the "Compare At" price claims.
- 3 108. The FTC's disclosure rules further provide that "[a]dvertisers are responsible
4 for ensuring that their messages are truthful and not deceptive. Accordingly,
5 disclosures must be communicated effectively so that consumers are likely
6 to notice and understand them in connection with the representations that the
7 disclosures modify. Simply making the disclosure available somewhere in
8 the ad, where some consumers might find it, does not meet the clear and
9 conspicuous standard."
- 10 109. Defendants' disclosure does not meet the FTC's "clear and conspicuous
11 standard."
- 12 110. The FTC's disclosure rules further provide that "[i]t is the advertiser's
13 responsibility to draw attention to the required disclosures."
- 14 111. Defendants do not draw attention to their disclosure.
- 15 112. The FTC's disclosure rules further provide that "[d]isclosures must be
16 effectively communicated to consumers before they make a purchase or
17 incur a financial obligation."
- 18 113. Defendants' disclosures are not communicated to consumers before they
19 make their purchase(s) at TJ Maxx, Marshalls, or HomeGoods stores in
20 California.
- 21 114. The FTC's disclosure rules further provide that "[i]f the disclosure needs to
22 be in the ad itself but it does not fit, the ad should be modified so it does not
23 require such a disclosure or, if that is not possible, that space-constrained ad
24 should not be used. . . . If a disclosure is necessary to prevent an
25 advertisement from being deceptive, unfair, or otherwise violative of a
26 Commission rule, and if it is not possible to make the disclosure clear and
27 conspicuous, then either the claim should be modified so the disclosure is
28 not necessary or the ad should not be disseminated."

1 115. Defendants were required to put their qualifying disclosures on their price
2 tags. Or, if putting their qualifying disclosures on their price tags was not
3 possible, Defendants’ “Compare At” reference prices should not have been,
4 and should not be, used.

5 **D. Defendants’ Use of Reference Prices Does Not Comply With**
6 **Established Legal Requirements:**

7 116. In advertising the “Compare At” price for a product, Defendants did not, and
8 do not, actually present the prevailing market price for that product (i.e. the
9 price at which other merchants were selling the identical product), or the
10 price at which substantial sales of the product were made at principal retail
11 outlets in California. Rather, Defendants used, and continue to use, vague,
12 misleading, and/or subjective measures to inflate the comparative prices, and
13 thus artificially increase the discounts and savings they claimed to be
14 offering consumers.

15 117. Through their deceptive, misleading, and/or false marketing, advertising and
16 pricing scheme, Defendants have violated, and continue to violate,
17 California law which prohibits advertising goods for sale at a discount when
18 compared to unsubstantiated prices at which other merchants purportedly
19 sell the goods, and prohibits misleading statements about the existence and
20 amount of comparative prices. Specifically, Defendants have violated, and
21 continue to violate, the UCL, the FAL, the CLRA, and the Federal Trade
22 Commission Act (“FTCA”), which prohibits “unfair or deceptive acts or
23 practices in or affecting commerce” (15 U.S.C. §45(a)(1)), and specifically
24 prohibits false advertisements (15 U.S.C. §52(a)).

25 118. Under the FTCA, advertising must be truthful and non-deceptive, advertisers
26 such as Defendants must have evidence to back up their claims, and
27 advertisements cannot be unfair. An advertisement is deceptive, according
28 to the FTC, if it contains a misstatement or omits information that is likely to

1 mislead consumers acting reasonably under the circumstances, and the
2 statement or omitted information is material - that is, important to a
3 consumer's decision to buy or use the product.

4 119. The prices which Defendants advertise, and have advertised, as "Compare
5 At" prices are misleading, fictitious, and/or are not based on fact.

6 120. Defendants failed to make clear to their customers, including Plaintiffs, that
7 their "Compare At" reference prices were comparisons to "estimates" of
8 "comparable" products.

9 121. Consumers should not have to sleuth their way into Defendants' websites
10 just to find Defendants' misleading, unreasonable, and non-intuitive
11 disclosures of what they mean by the phrase "Compare At."

12 122. Defendants' "Compare At" reference prices were likely to mislead
13 reasonable consumers into believing that Defendants' prices were
14 significantly lower than the prices offered by other merchants for the
15 identical products, and that consumers would enjoy significant savings by
16 purchasing those products from Defendants instead of from other merchants.

17 123. Defendants' false and/or misleading comparative pricing representations
18 made it more likely that consumers would purchase particular products from
19 Defendants. Defendants' misleading claims of significant discounts were
20 likely to persuade consumers who were not inclined to purchase products at
21 all to buy them from Defendants solely because they were misled into
22 believing that they were getting an unusually good deal.

23 124. Defendants' misrepresentations about their pricing were likely to mislead
24 consumers, and in fact did mislead Plaintiffs, into believing that Defendants'
25 prices would always be significantly lower than the prices offered by other
26 merchants for the identical products.

27 125. Defendants misrepresented the existence, nature and amount of price
28 discounts by purporting to offer specific dollar discounts from expressly

1 referenced comparative prices, which were misrepresented as “Compare At”
2 prices. These purported discounts were false, deceptive, and/or misleading,
3 however, because the referenced comparative prices were not bona fide
4 reference prices and did not represent true comparative prices for identical
5 products sold by other merchants in California.

6 126. Defendants have engaged in a company-wide, pervasive and continuous
7 campaign of deceptively claiming that each of their products sold at a far
8 higher price by other merchants in order to induce Plaintiffs and all Class
9 Members to purchase merchandise at purportedly marked-down sale prices.
10 California law prohibits such practices.

11 127. Defendants’ deceptive and misleading representations, as described herein,
12 accompanied virtually every product sold in California TJ Maxx, Marshalls,
13 and HomeGoods stores each and every day throughout the Class Period, and
14 Defendants are still making such deceptive and misleading comparative
15 price claims for many, if not all, of the products in their California stores.

16 128. Throughout the Class Period Defendants routinely and systematically made
17 untrue, deceptive, and misleading comparative advertising claims about the
18 prices of their products, as described herein.

19 129. Defendants advertised each of their products sold in their respective
20 California TJ Maxx, Marshalls, and HomeGoods stores with a comparative
21 reference price, preceded by the misleading phrase “Compare At.”
22 However, Defendants did not ensure that the “Compare At” reference prices
23 they advertised in comparison to their sale prices in fact corresponded to
24 prices at which a substantial number of sales of each such labeled product
25 were made at other principal retail outlets in California.

26 130. Throughout the Class Period, Defendants’ “Compare At” prices constituted
27 material misstatements, and/or omitted material information about their
28 comparative prices, that were likely to mislead reasonable consumers.

- 1 131. Defendants have intentionally failed to disclose to, and/or fraudulently
2 concealed from, Plaintiffs and all other Class Members the truth about their
3 alleged comparative prices for the purpose of inducing Plaintiffs and other
4 Class Members to purchase merchandise at each of their respective TJ
5 Maxx, Marshalls, and HomeGoods stores throughout California.
- 6 132. Plaintiffs are informed and believe, and on that basis allege, that even if and
7 when a “Compare At” price for a product may have represented an actual
8 “recent documented selling price” of the same product, Defendants chose the
9 highest price at which the product was selling in the marketplace, and
10 presented that price to consumers as the “Compare At” price.
- 11 133. Defendants knew or should have known that their representations
12 concerning their “Compare At” prices, or the sales of other merchants’
13 identical products, were untrue and/or misleading.
- 14 134. Defendants know and have known, should reasonably know, or should have
15 known, that their comparative price advertising is, and has been, deceptive,
16 misleading, false, fraudulent, unfair and/or unlawful.
- 17 135. Defendants knew or should have known that using inflated and/or unverified
18 comparative reference prices without verifying that they were prices at
19 which substantial sales of those products had been made in California,
20 thereby creating either fictitious or inflated “Compare At” prices and either
21 fictitious or inflated discounts or savings, was unlawful.
- 22 136. The use of the phrase “Compare At” by Defendants on the price tags of the
23 products sold in their respective California TJ Maxx, Marshalls, and
24 HomeGoods stores constituted the dissemination of untrue, deceptive and/or
25 misleading statements to consumers about the prices of the products so listed
26 as compared with the prices offered by other merchants for the same
27 products. Defendants knew, or by the exercise of reasonable care should
28 have known, that those statements were untrue, deceptive, and/or

1 misleading. Each such statement constitutes, and has constituted, a separate
2 violation of California Business & Professions Code §17500. Each such
3 statement also violates, and has violated, California Civil Code
4 §1750(a)(13).

5 137. Plaintiffs, individually and on behalf of all others similarly situated, seek
6 restitution and injunctive relief under the UCL, FAL and CLRA to stop
7 Defendants’ pervasive and rampant false and misleading advertising and
8 marketing campaign.

9 **PLAINTIFF’S PURCHASES**

10 138. Plaintiffs purchased numerous products throughout the Class Period from
11 Defendants’ California stores, in reliance on Defendants’ false, deceptive
12 and/or misleading advertising and false, deceptive, and/or misleading price
13 comparisons, which they would not otherwise have purchased but for
14 Defendants’ false, deceptive and/or misleading advertising, and false,
15 deceptive and/or misleading price comparisons as described herein.

16 **Plaintiff CHESTER’s Purchases From TJ Maxx:**

17 139. For example, and without limitation, in June 2015, CHESTER purchased 2
18 Jessica Simpson handbags from Defendants’ Palm Desert, California, TJ
19 Maxx store for \$24.99 each, for a total payment, including sales tax, of
20 \$53.98.

21 140. Each handbag was advertised with a price tag which had two prices
22 advertised on it: a sale price of \$24.99, and a “Compare At” reference price
23 advertised as “\$48.00 +UP.”

24 141. Each handbag also had attached to it a purportedly original price tag which
25 listed a purported original, or “MSRP,” price of “\$68.00.”

26 142. The comparative prices of “\$48.00” and “\$68.00” were not true, bona fide
27 reference prices as discussed herein – i.e., they did not represent the prices at
28

1 which a substantial volume of sales of the Jessica Simpson handbags had
2 sold for at other principal retail outlets in California in or about June 2015.

3 143. When CHESTER shopped at Defendants' Palm Desert, California, TJ Maxx
4 store, she was exposed to, saw, believed, and relied on Defendants'
5 "Compare At" price advertising.

6 144. When CHESTER shopped at Defendants' Palm Desert, California, TJ Maxx
7 store, she was unaware of Defendants' definition or interpretation of the
8 "Compare At" price found on Defendants' website. Defendants failed to
9 disclose their definition or interpretation to CHESTER or any other Class
10 Member.

11 145. The comparison prices on the items purchased by CHESTER at Defendants'
12 Palm Desert, California, TJ Maxx store, and the corresponding price
13 reductions and/or savings, were false, misleading and/or deceptive.

14 146. CHESTER is informed and believes, and on that basis alleges, that the
15 prevailing retail prices for the items that she purchased from Defendants
16 were materially lower than the "Compare At" prices advertised by
17 Defendants. CHESTER reasonably believed that the "Compare At" prices
18 associated with the items that she purchased from Defendants' Palm Desert,
19 California, TJ Maxx store were the then prevailing retail prices for the items
20 at other full-price retailers. She reasonably believed that the "Compare At"
21 prices were the prices she would pay for those items at other retailers in her
22 general area. CHESTER did not interpret the "Compare At" prices provided
23 by Defendants to be "estimates" of the prices of "comparable" items, for any
24 of the items that she purchased. CHESTER would not have purchased any
25 such product from Defendants in the absence of Defendants' false,
26 misleading and/or deceptive advertising, and/or misrepresentations as
27 described more fully herein.

28 ///

1 **Plaintiff FRIEDMAN's Purchases From TJ Maxx:**

2 147. On October 18, 2014, FRIEDMAN purchased, among other things,
3 numerous items of men's clothing from Defendants' Westlake Village,
4 California, TJ Maxx store for prices ranging from \$5.99 to \$49.99. Each
5 item purchased by FRIEDMAN was advertised with a price tag which
6 contained an untrue, deceptive, and/or misleading "Compare At" price
7 representation, as discussed herein – i.e., a higher, yet false, deceptive,
8 and/or misleading "Compare At" reference price. For example, and without
9 limitation, one item of clothing that FRIEDMAN purchased had a price tag
10 which listed a selling price of "\$5.99," and which also stated "Compare At
11 \$10.00."

12 148. The comparative price of "\$10.00" was not a true, bona fide reference price
13 as discussed herein – i.e., it did not represent the prices at which a
14 substantial volume of sales of the item had sold for at other principal retail
15 outlets in California in or about October 2014.

16 149. By way of additional example, and without limitation, on July 3, 2015,
17 FRIEDMAN purchased 13 items from Defendants' Westlake Village,
18 California, TJ Maxx store with prices ranging from \$2.99 to \$10.00. Each
19 item purchased by FRIEDMAN on July 3, 2015, was advertised with a price
20 tag which contained an untrue, deceptive, and/or misleading "Compare At"
21 price representation, as discussed herein – i.e., a higher, yet false, deceptive,
22 and/or misleading "Compare At" reference price. For example, and without
23 limitation, one item of clothing that FRIEDMAN purchased had a price tag
24 which listed a selling price of "\$6.99," and which also stated "Compare At
25 \$14.00."

26 150. The comparative price of "\$14.00" was not a true, bona fide reference price
27 as discussed herein – i.e., it did not represent the prices at which a
28

1 substantial volume of sales of the item had sold for at other principal retail
2 outlets in California in or about July 2015.

3 151. When FRIEDMAN shopped at Defendants' Westlake Village, California, TJ
4 Maxx store, he was exposed to, saw, believed, and relied on Defendants'
5 "Compare At" price advertising.

6 152. When FRIEDMAN shopped at Defendants' Westlake Village, California, TJ
7 Maxx store, he was unaware of Defendants' definition or interpretation of
8 the "Compare At" price found on Defendants' website. Defendants failed to
9 disclose their definition or interpretation to FRIEDMAN or any other Class
10 Member.

11 153. The comparison prices on the items purchased by FRIEDMAN at
12 Defendants' Westlake Village, California, TJ Maxx store, and the
13 corresponding price reductions and/or savings, were false, misleading and/or
14 deceptive.

15 154. FRIEDMAN is informed and believes, and on that basis alleges, that the
16 prevailing retail prices for the items that he purchased from Defendants were
17 materially lower than the "Compare At" prices advertised by Defendants.
18 FRIEDMAN reasonably believed that the "Compare At" prices associated
19 with the items that he purchased from Defendants were the then prevailing
20 retail prices for the items at other full-price retailers. He reasonably believed
21 that the "Compare At" prices were the prices he would pay for those items at
22 other retailers in his general area. FRIEDMAN did not interpret the
23 "Compare At" prices provided by Defendants to be "estimates" of the prices
24 of "comparable" items for any of the items that he purchased. FRIEDMAN
25 would not have purchased any such product from Defendants in the absence
26 of Defendants' false, misleading and/or deceptive advertising, and/or
27 misrepresentations as described more fully herein
28

1 155. In addition to FRIEDMAN's purchases described herein, FRIEDMAN made
2 numerous other purchases of products from Defendant's Westlake Village,
3 California, TJ Maxx store throughout the Class Period. With respect to each
4 such purchase, including the purchases described herein, FRIEDMAN
5 purchased those products from Defendants after viewing and relying on
6 Defendants' advertising which included the false, deceptive, and/or
7 misleading comparison prices discussed herein placed on the price tags of
8 the items which he purchased. The comparison prices, and the
9 corresponding price reductions and/or savings, were false, misleading and/or
10 deceptive. The prevailing retail prices for the items that he purchased from
11 Defendants were materially lower than the "Compare At" prices advertised
12 by Defendants. FRIEDMAN reasonably believed that the "Compare At"
13 prices associated with the items that he purchased from Defendants were the
14 then prevailing retail prices for the items at other full-price retailers. He
15 reasonably believed that the "Compare At" prices were the prices he would
16 pay for those items at other retailers in his general area. FRIEDMAN did
17 not interpret the "Compare At" prices provided by Defendants to be
18 "estimates" of the prices of "comparable" items, for any of the items that he
19 purchased. FRIEDMAN would not have purchased any such product from
20 Defendants in the absence of Defendants' false, misleading and/or deceptive
21 advertising, and/or misrepresentations as described more fully herein.

22 **Plaintiff BERKOFF's Purchases From Marshalls:**

23 156. Plaintiff BERKOFF purchased numerous products throughout the Class
24 Period from Defendants' Marshalls stores in Palm Desert and La Quinta,
25 California, in reliance on Defendants' false advertising and false price
26 comparisons, which she would not otherwise have purchased but for
27 Defendants' false, deceptive and/or misleading advertising, and false,
28 deceptive and/or misleading price comparison scheme as described herein.

- 1 157. For example, and without limitation, on May 28, 2015, BERKOFF
2 purchased a “Missy” tee shirt from Defendants’ La Quinta, California,
3 Marshalls store for \$12.99, for a total payment, including sales tax, of
4 \$14.03. The shirt purchased by BERKOFF was advertised with a price tag
5 which contained an untrue, deceptive, and/or misleading “Compare At”
6 price representation, as discussed herein – i.e., a higher, yet false, deceptive,
7 and/or misleading “Compare At” reference price.
- 8 158. The comparative price listed on the price tag of the “Missy” shirt was not a
9 true, bona fide reference price as discussed herein – i.e., it did not represent
10 the prices at which a substantial volume of sales of Missy tee shirts had sold
11 for at other principal retail outlets in California in or about May 2015.
- 12 159. As another example, and without limitation, on June 25, 2015, BERKOFF
13 purchased another shirt from Defendants’ Palm Desert, California, Marshalls
14 store for \$12.99, for a total payment, including sales tax, of \$14.03. The
15 shirt purchased by BERKOFF at Defendants’ Palm Desert Marshalls store
16 was also advertised with a price tag which contained an untrue, deceptive,
17 and/or misleading “Compare At” price representation, as discussed herein –
18 i.e., a higher, yet false, deceptive, and/or misleading “Compare At”
19 reference price.
- 20 160. The comparative price listed on the price tag of the shirt she purchased at
21 Defendants’ Palm Desert Marshalls store on June 25, 2015, was not a true,
22 bona fide reference price as discussed herein – i.e., it did not represent the
23 prices at which a substantial volume of sales of Missy tee shirts had sold for
24 at other principal retail outlets in California in or about June 2015.
- 25 161. When BERKOFF shopped at Defendants’ La Quinta and Palm Desert,
26 California, Marshalls stores, she was exposed to, saw, believed, and relied
27 on Defendants’ “Compare At” price advertising.
- 28

1 162. When BERKOFF shopped at Defendants’ La Quinta and Palm Desert,
2 California, Marshalls stores, she was unaware of Defendants’ definition or
3 interpretation of the “Compare At” price found on Defendants’ website.
4 Defendants failed to adequately disclose their definition or interpretation to
5 BERKOFF or any other Class Member.

6 163. The comparison prices on the items purchased by BERKOFF at Defendants’
7 La Quinta and Palm Desert, California, Marshalls stores, and the
8 corresponding price reductions and/or savings, were false, misleading and/or
9 deceptive.

10 164. BERKOFF is informed and believes, and on that basis alleges, that the
11 prevailing retail prices for the items that she purchased from Defendants
12 were materially lower than the “Compare At” prices advertised by
13 Defendants. BERKOFF reasonably believed that the “Compare At” prices
14 associated with the items that she purchased from Defendants were the then
15 prevailing retail prices for the items at other full-price retailers. She
16 reasonably believed that the “Compare At” prices were the prices she would
17 pay for those items at other retailers in her general area. BERKOFF did not
18 interpret the “Compare At” prices provided by Defendants to be “estimates”
19 of the prices of “comparable” items for any of the items that she purchased.
20 BERKOFF would not have purchased any such product from Defendants in
21 the absence of Defendants’ false, misleading and/or deceptive advertising,
22 and/or misrepresentations as described more fully herein.

23 165. In addition to BERKOFF’s purchases described herein, BERKOFF made
24 numerous other purchases of products from Defendant’s La Quinta and Palm
25 Desert, California, Marshalls stores throughout the Class Period. With
26 respect to each such purchase, including the purchases described herein,
27 BERKOFF purchased those products from Defendants after viewing and
28 relying on Defendants’ advertising which included the false, deceptive,

1 and/or misleading comparison prices discussed herein placed on the price
2 tags of the items which she purchased. The comparison prices, and the
3 corresponding price reductions and/or savings, were false, misleading and/or
4 deceptive. The prevailing retail prices for the items that BERKOFF
5 purchased from Defendants, and the prices at which a substantial volume of
6 sales of those items had sold for at other principal retail outlets in California,
7 were materially lower than the “Compare At” prices advertised by
8 Defendants. BERKOFF reasonably believed that the “Compare At” prices
9 associated with the items that she purchased from Defendants were the then
10 prevailing retail prices for the items at other full-price retailers. She
11 reasonably believed that the “Compare At” prices were the prices she would
12 pay for those items at other retailers in her general area. BERKOFF did not
13 interpret the “Compare At” prices provided by Defendants to be “estimates”
14 of the prices of “comparable” items for any of the items that she purchased.
15 BERKOFF would not have purchased any such product from Defendants in
16 the absence of Defendants’ false, misleading and/or deceptive advertising,
17 and/or misrepresentations as described more fully herein.

18 **Plaintiff BERKOFF’s Purchases From HomeGoods:**

19 166. Plaintiff BERKOFF purchased numerous products throughout the Class
20 Period from Defendants’ HomeGoods stores in Palm Desert and Bermuda
21 Dunes, California, in reliance on Defendants’ false advertising and false
22 price comparisons, which she would not otherwise have purchased but for
23 Defendants’ false, deceptive and/or misleading advertising, and false,
24 deceptive and/or misleading price comparison scheme as described herein.

25 167. By way of example, and without limitation, on May 3, 2015, BERKOFF
26 purchased candles, storage items, and other housewares from Defendants’
27 Palm Desert, California, HomeGoods store for prices ranging from \$9.99 to
28 \$24.99. Each item purchased by BERKOFF was advertised with a price tag

- 1 which contained an untrue, deceptive, and/or misleading “Compare At”
2 price representation, as discussed herein – i.e., a higher, yet false, deceptive,
3 and/or misleading “Compare At” reference price. For example, and without
4 limitation, one item that BERKOFF purchased had a price tag which listed a
5 selling price of “\$24.99,” and which also stated “Compare At \$40.00.”
- 6 168. The comparative price of “\$40.00,” as well as the other “Compare At” prices
7 on the other items she purchased on May 3, 2015, were not true, bona fide
8 reference prices as discussed herein – i.e., they did not represent the prices at
9 which a substantial volume of sales of the items had sold for at other
10 principal retail outlets in California in or about May 2015.
- 11 169. By way of additional example, and without limitation, on May 9, 2015,
12 BERKOFF purchased 3 items from Defendants’ Bermuda Dunes, California,
13 HomeGoods store with prices ranging from \$6.99 to \$14.99. Each item
14 purchased by BERKOFF on May 9, 2015, was advertised with a price tag
15 which contained an untrue, deceptive, and/or misleading “Compare At”
16 price representation, as discussed herein – i.e., a higher, yet false, deceptive,
17 and/or misleading “Compare At” reference price.
- 18 170. The comparative prices of the items she purchased on May 9, 2015 not true,
19 bona fide reference prices as discussed herein – i.e., they did not represent
20 the prices at which a substantial volume of sales of the items had sold for at
21 other principal retail outlets in California in or about May 2015.
- 22 171. When BERKOFF shopped at Defendants’ Palm Desert and Bermuda Dunes,
23 California, stores, she was exposed to, saw, believed, and relied on
24 Defendants’ “Compare At” price advertising.
- 25 172. When BERKOFF shopped at Defendants’ Palm Desert and Bermuda Dunes,
26 California, stores, she was unaware of Defendants’ definition or
27 interpretation of the “Compare At” price found on Defendants’ website.
- 28

1 Defendants failed to adequately disclose their definition or interpretation to
2 BERKOFF or any other Class Member.

3 173. The comparison prices on the items purchased by BERKOFF at Defendants'
4 Palm Desert and Bermuda Dunes, California, HomeGoods stores, and the
5 corresponding price reductions and/or savings, were false, misleading and/or
6 deceptive.

7 174. The prevailing retail prices for the items that she purchased from
8 Defendants' HomeGoods stores, and the prices at which a substantial
9 volume of sales of those items had sold for at other principal retail outlets in
10 California, were materially lower than the "Compare At" prices advertised
11 by Defendants. BERKOFF reasonably believed that the "Compare At"
12 prices associated with the items that she purchased from Defendants'
13 HomeGoods stores were the then prevailing retail prices for the items at
14 other full-price retailers. She reasonably believed that the "Compare At"
15 prices were the prices she would pay for those items at other retailers in her
16 general area. BERKOFF did not interpret the "Compare At" prices provided
17 by Defendants to be "estimates" of the prices of "comparable" items for any
18 of the items that she purchased. BERKOFF would not have purchased any
19 such product from Defendants in the absence of Defendants' false,
20 misleading and/or deceptive advertising, and/or misrepresentations as
21 described more fully herein.

22 175. In addition to BERKOFF's purchases described herein, BERKOFF made
23 numerous other purchases of products from Defendants' Palm Desert and
24 Bermuda Dunes, California, HomeGoods stores throughout the Class Period.
25 With respect to each such purchase, including the purchases described
26 herein, BERKOFF purchased those products from Defendants after viewing
27 and relying on Defendants' advertising which included the false, deceptive,
28 and/or misleading comparison prices discussed herein placed on the price

1 tags of the items which she purchased. The comparison prices, and the
2 corresponding price reductions and/or savings, were false, misleading and/or
3 deceptive. The prevailing retail prices for the items that she purchased from
4 Defendants' HomeGoods stores, and the prices at which a substantial
5 volume of sales of those items had sold for at other principal retail outlets in
6 California, were materially lower than the "Compare At" prices advertised
7 by Defendants. BERKOFF reasonably believed that the "Compare At"
8 prices associated with the items that she purchased from Defendants were
9 the then prevailing retail prices for the items at other full-price retailers. She
10 reasonably believed that the "Compare At" prices were the prices she would
11 pay for those items at other retailers in her general area. BERKOFF did not
12 interpret the "Compare At" prices provided by Defendants to be "estimates"
13 of the prices of "comparable" items, for any of the items that she purchased.
14 BERKOFF would not have purchased any such product from Defendants in
15 the absence of Defendants' false, misleading and/or deceptive advertising,
16 and/or misrepresentations as described more fully herein.

17 **Plaintiff METOYER's Purchases From HomeGoods:**

18 176. Plaintiff METOYER purchased numerous products throughout the Class
19 Period from Defendants' HomeGoods store in Mira Loma, California, in
20 reliance on Defendants' false advertising and false price comparisons, which
21 she would not otherwise have purchased but for Defendants' false, deceptive
22 and/or misleading advertising, and false, deceptive and/or misleading price
23 comparison scheme as described herein.

24 177. For example, and without limitation, on April 11, 2015, METOYER
25 purchased storage items, bath rugs, dinnerware, and other home décor items
26 from Defendants' Mira Loma, California, HomeGoods store for a total
27 payment, including sales tax, of \$99.33. Each item purchased by
28 METOYER was advertised with a price tag which contained an untrue,

1 deceptive, and/or misleading “Compare At” price representation, as
2 discussed herein – i.e., a higher, yet false, deceptive, and/or misleading
3 “Compare At” reference price. For example, the one home décor item
4 selling for \$29.99 stated “Compare At \$75.00.”

5 178. The comparative prices on the items METOYER purchased on April 11,
6 2015, including, without limitation, the “Compare At” price of “\$75.00,” on
7 the home décor item, were not true, bona fide reference prices as discussed
8 herein – i.e., they did not represent the prices at which a substantial volume
9 of sales of the items had sold for at other principal retail outlets in California
10 in or about April 2015.

11 179. As a further example, and without limitation, on May 30, 2015, METOYER
12 purchased a food product, bath rugs, and a lamp from Defendants’ Mira
13 Loma, California, HomeGoods store for a total payment, including sales tax,
14 of \$85.58. Each item purchased by METOYER was advertised with a price
15 tag which contained an untrue, deceptive, and/or misleading “Compare At”
16 price representation, as discussed herein – i.e., a higher, yet false, deceptive,
17 and/or misleading “Compare At” reference price.

18 180. When METOYER shopped at Defendants’ Mira Loma, California,
19 HomeGoods store, she was exposed to, saw, believed, and relied on
20 Defendants’ “Compare At” price advertising.

21 181. When METOYER shopped at Defendants’ Mira Loma, California,
22 HomeGoods store, she was unaware of Defendants’ definition or
23 interpretation of the “Compare At” price found on Defendants’ website.
24 Defendants failed to adequately disclose their definition or interpretation to
25 METOYER or any other Class Member.

26 182. The comparison prices on the items purchased by METOYER at
27 Defendants’ Mira Loma, California, HomeGoods store, and the
28

1 corresponding price reductions and/or savings, were false, misleading and/or
2 deceptive.

3 183. The prevailing retail prices for the items that she purchased from
4 Defendants, and the prices at which a substantial volume of sales of the
5 items had sold for at other principal retail outlets in California, were
6 materially lower than the “Compare At” prices advertised by Defendants.
7 METOYER reasonably believed that the “Compare At” prices associated
8 with the items that she purchased from Defendants were the then prevailing
9 retail prices for the items at other full-price retailers. She reasonably
10 believed that the “Compare At” prices were the prices she would pay for
11 those items at other retailers in her general area. METOYER did not
12 interpret the “Compare At” prices provided by Defendants to be “estimates”
13 of the prices of “comparable” items for any of the items that she purchased.
14 METOYER would not have purchased any such product from Defendants in
15 the absence of Defendants’ false, misleading and/or deceptive advertising,
16 and/or misrepresentations as described more fully herein.

17 184. In addition to METOYER’s purchases described herein, METOYER made
18 numerous other purchases of products from Defendant’s Mira Loma,
19 California, HomeGoods store throughout the Class Period. With respect to
20 each such purchase, including the purchases described herein, METOYER
21 purchased those products from Defendants after viewing and relying on
22 Defendants’ advertising which included the false, deceptive, and/or
23 misleading comparison prices discussed herein placed on the price tags of
24 the items which she purchased. The comparison prices, and the
25 corresponding price reductions and/or savings, were false, misleading and/or
26 deceptive. The prevailing retail prices for the items that she purchased from
27 Defendants were materially lower than the “Compare At” prices advertised
28 by Defendants. METOYER reasonably believed that the “Compare At”

1 prices associated with the items that she purchased from Defendants were
2 the then prevailing retail prices for the items at other full-price retailers. She
3 reasonably believed that the “Compare At” prices were the prices she would
4 pay for those items at other retailers in her general area. METOYER did not
5 interpret the “Compare At” prices provided by Defendants to be “estimates”
6 of the prices of “comparable” items, for any of the items that she purchased.
7 METOYER would not have purchased any such product from Defendants in
8 the absence of Defendants’ false, misleading and/or deceptive advertising,
9 and/or misrepresentations as described more fully herein.

10 **CLASS ACTION ALLEGATIONS**

11 185. Plaintiffs bring this action on behalf of themselves and on behalf of all other
12 persons similarly situated in 3 Subclasses.

13 **The TJ Maxx Subclass:**

14 186. Plaintiffs CHESTER and FRIEDMAN bring this action on behalf of
15 themselves and on behalf of all other persons similarly situated (the “TJ
16 Maxx Subclass” or “TJ Maxx Subclass Members”) against Defendants TJX
17 and MAXX in the “TJ Maxx Subclass,” namely:

18 All persons who, while in the State of California, and between July
19 17, 2011, and the present (the “Class Period”), purchased from TJ
20 Maxx one or more items at any TJ Maxx store in the State of
21 California with a price tag that contained a “Compare At” price which
22 was higher than the price listed as the TJ Maxx sale price on the price
23 tag, and who have not received a refund or credit for their purchase(s).
Excluded from the Class are Defendants, as well as Defendants’
officers, employees, agents or affiliates, and any judge who presides
over this action, as well as all past and present employees, officers and
directors of any Defendant.

24 187. Plaintiffs CHESTER and FRIEDMAN reserve the right to expand, limit,
25 modify, or amend this class definition, including the addition of one or more
26 subclasses, in connection with their motion for class certification, or at any
27 other time, based upon, among other things, changing circumstances and/or
28 new facts obtained during discovery.

1 **The Marshalls Subclass:**

2 188. Plaintiff BERKOFF brings this action on behalf of herself and on behalf of
3 all other persons similarly situated (the “Marshalls Subclass” or “Marshalls
4 Subclass Members”) against Defendants TJX and MARSHALLS in the
5 “Marshalls Subclass,” namely:

6 All persons who, while in the State of California, and between July
7 17, 2011, and the present (the “Class Period”), purchased from
8 Marshalls one or more items at any Marshalls store in the State of
9 California with a price tag that contained a “Compare At” price which
10 was higher than the price listed as the Marshalls sale price on the price
11 tag, and who have not received a refund or credit for their purchase(s).
Excluded from the Class are Defendants, as well as Defendants’
officers, employees, agents or affiliates, and any judge who presides
over this action, as well as all past and present employees, officers and
directors of any Defendant.

12 189. Plaintiff BERKOFF reserves the right to expand, limit, modify, or amend
13 this class definition, including the addition of one or more subclasses, in
14 connection with her motion for class certification, or at any other time, based
15 upon, among other things, changing circumstances and/or new facts obtained
16 during discovery.

17 **The HomeGoods Subclass:**

18 190. Plaintiffs METOYER and BERKOFF bring this action on behalf of
19 themselves and on behalf of all other persons similarly situated (the
20 “HomeGoods Subclass” or “HomeGoods Subclass Members”) against
21 Defendants TJX and HOMEGOODS in the “HomeGoods Subclass,”
22 namely:

23 All persons who, while in the State of California, and between July
24 17, 2011, and the present (the “Class Period”), purchased from
25 HomeGoods one or more items at any HomeGoods store in the State
26 of California with a price tag that contained a “Compare At” price
27 which was higher than the price listed as the HomeGoods sale price
28 on the price tag, and who have not received a refund or credit for their
purchase(s). Excluded from the Class are Defendants, as well as
Defendants’ officers, employees, agents or affiliates, and any judge
who presides over this action, as well as all past and present
employees, officers and directors of any Defendant.

1 191. Plaintiffs METOYER ad BERKOFF reserve the right to expand, limit,
2 modify, or amend this class definition, including the addition of one or more
3 subclasses, in connection with their motion for class certification, or at any
4 other time, based upon, among other things, changing circumstances and/or
5 new facts obtained during discovery.

6 **Class Action Allegations Common To Each Subclass:**

7 192. Defendants' deceptive, misleading, and/or false comparative price
8 advertising scheme, disseminated to California consumers via
9 representations on the price tags of each of Defendants' items in their
10 California TJ Maxx, Marshalls, and HomeGoods stores, has been rampant
11 throughout California as part of a massive, years-long, pervasive campaign
12 and has been consistent across all of Defendants' merchandise at each of
13 their stores throughout California. For example, Defendants' pricing scheme
14 has throughout the Class Period been prominently displayed directly on the
15 price tag of each item sold, with express references to alleged comparative
16 prices that have never existed and/or do not, and/or did not then, currently
17 constitute the prevailing market retail prices for such merchandise or prices
18 at which a substantial volume of sales of each such product had been made
19 in California.

20 193. Plaintiffs and all other Class Members were each exposed to Defendants'
21 deceptive, misleading, and/or false comparative price advertising as
22 described herein.

23 194. Plaintiffs are informed and believe, and on that basis allege, that hundreds of
24 thousands, of California consumers have been victims of Defendants'
25 deceptive, misleading and unlawful pricing scheme.

26 195. Plaintiffs CHESTER and FRIEDMAN are and have been members of the
27 proposed TJ Maxx Subclass described herein.
28

1 196. Plaintiff BERKOFF is and has been a member of the proposed Marshalls
2 Subclass described herein.

3 197. Plaintiffs BERKOFF and METOYER are and have been members of the
4 proposed HomeGoods Subclass described herein.

5 198. The number of persons in each proposed subclass herein is so numerous that
6 joinder of all such persons would be impracticable. While the exact number
7 and identities of all such persons are unknown to Plaintiffs at this time and
8 can only be obtained through appropriate discovery, Plaintiffs are informed
9 and believe, and on that basis allege, that each proposed Subclass herein
10 includes over 100,000 persons.

11 199. Common questions of law and/or fact exist in this case with respect to each
12 proposed Subclass which predominate over any questions affecting only
13 individual members of the Subclass, which do not vary between members
14 thereof, and which drive the resolution of the claims of Plaintiffs and all
15 other Subclass Members.

16 200. The common questions of law and/or fact include, but are not limited to:
17 a. Whether products at TJ Maxx, Marshalls, and HomeGoods stores in
18 California are advertised with “Compare At” reference prices;
19 b. Whether a reasonable consumer would interpret the phrase “Compare
20 At” as Defendants interpret it;
21 c. How a reasonable consumer interprets the phrase “Compare At” on a
22 price tag;
23 d. Whether a reasonable consumer is likely to be deceived by
24 Defendants’ use of its “Compare At” reference prices;
25 e. Whether the phrase “Compare At” is susceptible to more than one
26 reasonable interpretation;
27 f. Whether the phrase “Compare At” is misleading and/or deceptive;
28

- 1 g. Whether, during the Class Period, Defendants used false and/or
- 2 misleading “Compare At” prices on the price tags of items sold in
- 3 their California stores, and whether Defendants falsely advertised
- 4 comparative price discounts for their merchandise;
- 5 h. Whether, during the Class Period, the “Compare At” prices advertised
- 6 by Defendants were in fact the prevailing market prices for the
- 7 respective identical items sold by other retailers in the marketplace at
- 8 the time of the dissemination and/or publication of the advertised
- 9 “Compare At” prices;
- 10 i. Whether, during the Class Period, the “Compare At” prices advertised
- 11 by Defendants were in fact prices at which substantial sales of those
- 12 products were made at principal retail outlets in California;
- 13 j. Whether Defendants’ disclosures of their interpretation of their
- 14 “Compare At” reference prices comply with established legal
- 15 requirements for online disclosures;
- 16 k. Whether Defendants’ price tags omit necessary information;
- 17 l. Whether Defendants adequately verify that their “Compare At”
- 18 reference prices meet FTC and/or other legal requirements;
- 19 m. Whether Defendants’ price-comparison advertising was false,
- 20 deceptive or misleading within the meaning of the UCL, FAL, CLRA
- 21 and/or FTCA;
- 22 n. Whether Defendants’ comparative pricing on their “Compare At”
- 23 price tags would be material to a reasonable consumer’s purchasing
- 24 decisions;
- 25 o. Whether Defendants engaged in unfair, unlawful and/or fraudulent
- 26 business practices under California law;
- 27 p. Whether Defendants misrepresented and/or failed to disclose material
- 28 facts about their product pricing and purported discounts;

- 1 q. Whether Defendants have made false or misleading statements of fact
2 concerning the reasons for, existence of, or amounts of price
3 reductions;
4 r. Whether Class Members are entitled to damages and/or restitution;
5 and, if so, what the proper measure of restitution is; and,
6 s. Whether Defendants continue to use false, deceptive, misleading
7 and/or unlawful price comparisons such that injunctions are
8 necessary.

9 201. Plaintiffs' claims and those of all other Class Members arise out of a
10 common course of conduct by Defendants.

11 202. All Subclass Members, including the respective proposed Plaintiff Subclass
12 representatives, were exposed to each respective Subclass Defendants'
13 misrepresentations or omissions of material fact claiming that their
14 "Compare At" prices were accurate bona fide comparison prices. Each
15 Subclass Defendants' misrepresentations or omissions of material fact were
16 uniformly made to all respective Subclass Members. In addition, it can be
17 reasonably presumed that all Class Members, including Plaintiffs,
18 affirmatively acted in response to the representations contained in
19 Defendants' false comparative price advertising scheme when purchasing
20 merchandise at each and any of Defendants' stores in California.

21 203. The common questions of law and/or fact in this case are susceptible to
22 common proof.

23 204. Resolution of the common questions of law and/or fact in this case will
24 resolve issues that are central to Plaintiffs' claims and the claims of all other
25 Class Members.

26 205. The claims of Plaintiffs and all Class Members involve the same untrue,
27 deceptive, and/or misleading representations by Defendants conveyed to
28

1 each Class Member by way of representations on the price tags of each
2 product sold to each Class Member.

3 206. Each Class Members' claim, including those of Plaintiffs, alleges that
4 Defendants' price tags convey a deceptive, misleading, and/or untrue
5 representation that the price at which Defendants offered a product was
6 lower compared to a fictitious, deceptive, or misleading "Compare At" price.

7 207. Common proof in this case will produce a common answer as to whether
8 Defendants' use of their "Compare At" reference prices complies with legal
9 requirements for the use of such reference prices, and whether Defendants'
10 price-comparison advertising resulted in false, deceptive, or misleading price
11 comparisons.

12 208. Common proof will resolve the common questions essential to resolution of
13 the Class claims in this case in one stroke for all Class Members.

14 209. The claims of the named Plaintiffs in this case are typical of, and not
15 antagonistic to, those of the other Subclass Members which each seeks to
16 represent. Plaintiffs and the Subclasses each seeks to represent have all been
17 exposed to and deceived (or were likely to be deceived) by Defendants' false
18 comparative price advertising scheme, as alleged herein.

19 210. The crux of Plaintiffs' claims - that Defendants' price tags on each item in
20 each of their California stores convey false, deceptive, and/or misleading
21 comparative prices as described more fully herein - is common to all Class
22 Members.

23 211. Plaintiffs' claims, and those of all Class Members, are based on conduct
24 which is not unique to any named Plaintiff.

25 212. Plaintiffs and all Subclass Members each seeks to represent have been
26 injured by the same common course of conduct by the respective Subclass
27 Defendants, and have suffered the same or similar injury, as alleged herein.
28

1 213. Disposition of Plaintiffs' claims in a class action will benefit all parties and
2 the Court.

3 214. A class action in this case is superior to any other available method for the
4 fair and efficient adjudication of the claims presented herein.

5 215. If individual Class Members were each required to bring his or her own
6 individual claims, any potential recovery by any such Class Member would
7 be dwarfed by the cost of litigating on an individual basis.

8 216. In this case, Plaintiffs seek to recover relatively small sums for themselves
9 and all other respective Subclass Members. Accordingly, the disparity
10 between the cost of litigating individual claims and the individual recoveries
11 sought make individual claims highly unlikely, if not impossible. Litigation
12 costs would render individual prosecution of Class Members' claims
13 prohibitive. In cases such as this, where the individual recoveries sought by
14 each Class Member are relatively small and eclipsed by the cost of litigating
15 an individual claim, a class action is the only method by which Class
16 Members may hope to resolve their claims.

17 217. The prosecution of separate actions by individual members of the proposed
18 Subclasses herein would create a risk of inconsistent and/or varying
19 adjudications with respect to individual members of the proposed Subclasses
20 which would or may establish incompatible standards of conduct for
21 Defendants, and which would also create a risk of adjudications with respect
22 to individual members of the proposed Subclasses herein which would, as a
23 practical matter, be dispositive of the interests of other members of the
24 proposed Subclasses not parties to the particular individual adjudications,
25 and/or would or may substantially impede or impair the ability of those other
26 members to protect their interests.

27 218. Plaintiffs are each adequate representatives of the respective Subclasses they
28 seek to represent because each is a member of the Subclass she seeks to

1 represent, and no Plaintiffs' interests conflict with the interests of the
2 Subclass Members she seeks to represent. Each Plaintiff will fairly and
3 adequately represent and protect the interest of the Subclass she seeks to
4 represent because no Plaintiffs' interests are antagonistic to the Subclass she
5 seeks to represent. No Plaintiff has any conflict of interest with any other
6 Subclass Member she seeks to represent. Plaintiffs have retained counsel
7 who are competent and experienced in the prosecution of consumer fraud
8 and class action litigation. Plaintiffs and their counsel will prosecute this
9 action vigorously on behalf of each Subclass.

10 219. Plaintiffs are informed and believe, and on that basis allege, that Defendants
11 have one or more databases through which a significant majority of Class
12 Members may be identified and ascertained, and that Defendants each
13 maintain contact information, including email and home mailing addresses,
14 through which notice of this action could be disseminated in accordance
15 with due process requirements.

16 220. The definition of the proposed Subclasses herein objectively depict who the
17 members of each proposed Subclass are, making it administratively feasible
18 to determine whether a particular person is a Member of any Subclass
19 described herein. Because the alleged misrepresentations in this case (i.e.,
20 the false, deceptive, and/or misleading comparative prices) appear on the
21 price tags of each product purchased, there is no concern that any Subclass
22 may include individuals who were not exposed to the respective Subclass
23 Defendants' misrepresentations.

24 ///

25 ///

26 ///

27 ///

28 ///

FIRST CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES

(California Business & Professions Code §17200 *et seq.*)

(By Plaintiffs CHESTER and FRIEDMAN on behalf of themselves and all others similarly situated, and the general public, against Defendants TJX and MAXX)

(By Plaintiff BERKOFF on behalf of herself and all others similarly situated, and the general public, against Defendants TJX and MARSHALLS)

(By Plaintiffs METOYER and BERKOFF on behalf of themselves and all others similarly situated, and the general public, against Defendants TJX and HOMEGOODS)

221. Plaintiffs re-allege and incorporate by reference, as though fully set forth herein, all previous paragraphs of this Complaint.

222. The UCL defines unfair business competition to include any “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal. Bus. & Prof. Code §17200.

223. Advertising or promotional practices are unlawful under the UCL if a reasonable consumer is likely to be deceived by them.

224. Defendants have violated the “unfair” prong of the UCL by representing false, deceptive, and/or misleading comparative prices and corresponding price discounts and/or savings for merchandise where Defendants, in fact, inflated, estimated, or fabricated the purported “Compare At” prices for such products, and failed to disclose to consumers that such “Compare At” prices were inflated, estimated, or fabricated, such that the promised discount and/or saving was false, misleading and/or deceptive.

225. These acts and practices were unfair because they caused Plaintiffs, and were likely to cause reasonable consumers, to falsely believe that Defendants are, and have throughout the Class Period been, offering value, discounts or bargains from the prevailing market price, value or worth of the

1 products sold that did not, in fact, exist. As a result, purchasers, including
2 Plaintiffs, reasonably perceived that they were receiving products that
3 regularly sold in the retail marketplace at substantially higher prices (and
4 were, therefore, worth more) than what they paid. This perception has
5 induced reasonable purchasers, including Plaintiffs, to buy such products,
6 which they otherwise would not have purchased.

7 226. Plaintiffs and all other Class Members were likely to be deceived by
8 Defendants' use of the phrase "Compare At" on the price tags of
9 merchandise at TJ Maxx, Marshalls, and/or HomeGoods stores in California.

10 227. In deciding to purchase merchandise at Defendants' stores, Plaintiffs relied
11 on Defendants' misleading and deceptive representations regarding
12 supposed "Compare At" prices. The comparative "Compare At" prices
13 placed by Defendants on the price tags of merchandise at their California
14 stores played a substantial role in each Plaintiff's decisions to purchase the
15 products she purchased from Defendants, and Plaintiffs would not have
16 purchased those items in the absence of Defendants' misrepresentations.
17 Accordingly, Plaintiffs have suffered monetary loss as a direct result of
18 Defendants' unlawful practices described herein.

19 228. The gravity of the harm to Class Members resulting from these unfair acts
20 and practices outweighed any conceivable reasons, justifications and/or
21 motives of Defendants for engaging in such deceptive acts and practices. By
22 committing the acts and practices alleged above, Defendants engaged in
23 unfair business practices within the meaning of California Business &
24 Professions Code §17200, *et seq.*

25 229. Through their unfair acts and practices, Defendants have improperly
26 obtained money from Plaintiffs and all other Class Members. As such,
27 Plaintiffs requests that this Court cause Defendants to restore this money to
28 Plaintiffs and all Subclass Members, and to enjoin Defendants from

1 continuing to violate the UCL as discussed herein and/or from violating the
2 UCL in the future. Otherwise, Plaintiffs, the Subclasses described herein,
3 and members of the general public may be irreparably harmed and/or denied
4 an effective and complete remedy if such an order is not granted.

5 **SECOND CAUSE OF ACTION**

6 **FRAUDULENT BUSINESS PRACTICES**

7 (California Business & Professions Code §17200 *et seq.*)

8 (By Plaintiffs CHESTER and FRIEDMAN on behalf of themselves and all others
9 similarly situated, and the general public, against Defendants TJX and MAXX)

10 (By Plaintiff BERKOFF on behalf of herself and all others similarly situated, and
11 the general public, against Defendants TJX and MARSHALLS)

12 (By Plaintiffs METOYER and BERKOFF on behalf of themselves and all others
13 similarly situated, and the general public, against Defendants TJX and

14 HOMEGOODS)

15 230. Plaintiffs re-allege and incorporate by reference, as though fully set forth
16 herein, all previous paragraphs of this Complaint.

17 231. A business act or practice is “fraudulent” under the UCL if it is likely to
18 deceive members of the consuming public.

19 232. Defendants’ false comparative prices, including, but not limited to, their
20 “Compare At” prices placed on the price tags of the products sold in their
21 California TJ Maxx, Marshalls, or HomeGoods stores, were “fraudulent”
22 within the meaning of the UCL because they deceived Plaintiffs, and were
23 likely to deceive reasonable consumers and Subclass Members, into
24 believing that Defendants were offering value, discounts or bargains from
25 the prevailing market price, value or worth of the products sold that did not,
26 in fact, exist. As a result, purchasers, including Plaintiffs, reasonably
27 perceived that they were receiving products that regularly sold in the retail
28 marketplace at substantially higher prices (and were, therefore, worth more)

1 than what they paid. This perception induced reasonable purchasers,
2 including Plaintiffs, to buy such products from Defendants' stores in
3 California, which they otherwise would not have purchased.

4 233. Defendants' acts and practices as described herein have deceived Plaintiffs
5 and were highly likely to deceive reasonable members of the consuming
6 public. Specifically, in deciding to purchase merchandise at Defendants'
7 stores, Plaintiffs relied on Defendants' misleading and deceptive
8 representations regarding their supposed "Compare At" prices. The
9 comparative "Compare At" prices placed by Defendants on the price tags of
10 merchandise at TJ Maxx, Marshalls, and/or HomeGoods stores in California
11 played a substantial role in each Plaintiff's decisions to purchase those
12 products, and Plaintiffs would not have purchased those items in the absence
13 of Defendants' misrepresentations. Accordingly, Plaintiffs have suffered
14 monetary loss as a direct result of Defendants' unlawful practices described
15 herein.

16 234. As a result of the conduct described above, Defendants have been unjustly
17 enriched at the expense of Plaintiffs and all other respective Subclass
18 Members. Specifically, Defendants have been unjustly enriched by
19 obtaining revenues and profits that they would not otherwise have obtained
20 absent their false, misleading and/or deceptive conduct.

21 235. Through their fraudulent acts and practices, Defendants have improperly
22 obtained money from Plaintiffs and all other respective Subclass Members.
23 As such, Plaintiffs request that this Court cause Defendants to restore this
24 money to Plaintiffs and all Class Members, and to enjoin Defendants from
25 continuing to violate the UCL as discussed herein and/or from violating the
26 UCL in the future. Otherwise, Plaintiffs, the respective Subclasses they seek
27 to represent, and members of the general public may be irreparably harmed
28

1 and/or denied an effective and complete remedy if such an order is not
2 granted.

3 **THIRD CAUSE OF ACTION**

4 **UNLAWFUL BUSINESS PRACTICES**

5 (California Business & Professions Code §17200 *et seq.*)

6 (By Plaintiffs CHESTER and FRIEDMAN on behalf of themselves and all others
7 similarly situated, and the general public, against Defendants TJX and MAXX)

8 (By Plaintiff BERKOFF on behalf of herself and all others similarly situated, and
9 the general public, against Defendants TJX and MARSHALLS)

10 (By Plaintiffs METOYER and BERKOFF on behalf of themselves and all others
11 similarly situated, and the general public, against Defendants TJX and
12 HOMEGOODS)

13 236. Plaintiffs re-allege and incorporate by reference, as though fully set forth
14 herein, all previous paragraphs of this Complaint.

15 237. A business act or practice is “unlawful” under the UCL if it violates any
16 other law or regulation.

17 238. The FTCA prohibits “unfair or deceptive acts or practices in or affecting
18 commerce” (15 U.S.C. §45(a)(1)) and specifically prohibits false
19 advertisements. 15 U.S.C. §52(a)).

20 239. Cal. Civ. Code §1770(a)(13), prohibits a business from “[m]aking false or
21 misleading statements of fact concerning reasons for, existence of, or
22 amounts of price reductions.”

23 240. Defendants’ use of and reference to materially misleading, deceptive, and/or
24 false “Compare At” prices on the price tags of merchandise sold to
25 consumers in California TJ Maxx, Marshalls, and/or HomeGoods stores
26 violated and continues to violate the FTCA, 15 U.S.C. §45(a)(1) and 15
27 U.S.C. §52(a), as well as FTC Pricing Guides. It also violated and continues
28 to violate Cal. Bus. & Prof. Code §§17200 and 17501, and Cal. Civ. Code

1 §1770(a)(13), by, among other things, advertising false comparative prices
2 that were, in fact, not the prevailing market prices at other retailers in the
3 marketplace at the time of the publication.

4 241. As a result of the conduct described above, Defendants have been unjustly
5 enriched at the expense of Plaintiffs and other Subclass Members.
6 Specifically, Defendants have been unjustly enriched by obtaining revenues
7 and profits that they would not otherwise have obtained absent their false,
8 misleading and deceptive conduct.

9 242. Through their unfair acts and practices, Defendants have improperly
10 obtained money from Plaintiffs and all other respective Subclass Members.
11 As such, Plaintiffs request that this Court cause Defendants to restore this
12 money to Plaintiffs and all respective Subclass Members they seek to
13 represent, and to enjoin Defendants from continuing to violate the UCL,
14 and/or from violating the UCL in the future. Otherwise, Plaintiffs, the
15 Subclasses they seek to represent, and members of the general public may be
16 irreparably harmed and/or denied an effective and complete remedy if such
17 an order is not granted.

18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1 **FOURTH CAUSE OF ACTION**

2 **FALSE ADVERTISING**

3 (California Business & Professions Code §17500 *et seq.*)

4 (By Plaintiffs CHESTER and FRIEDMAN on behalf of themselves and all others
5 similarly situated, and the general public, against Defendants TJX and MAXX)

6 (By Plaintiff BERKOFF on behalf of herself and all others similarly situated, and
7 the general public, against Defendants TJX and MARSHALLS)

8 (By Plaintiffs METOYER and BERKOFF on behalf of themselves and all others
9 similarly situated, and the general public, against Defendants TJX and
10 HOMEGOODS)

11 243. Plaintiffs re-allege and incorporate by reference, as though fully set forth
12 herein, all previous paragraphs of this Complaint.

13 244. The FAL prohibits unfair, deceptive, untrue, or misleading advertising,
14 including, but not limited to, false statements as to worth, value and former
15 price.

16 245. The FAL makes it unlawful for a business to disseminate any statement
17 which is untrue or misleading, and which is known, or which by the exercise
18 of reasonable care should be known, to be untrue or misleading.

19 246. Defendants' practice of disseminating allegedly comparative "Compare At"
20 prices associated with their merchandise, which were materially greater than
21 the true prevailing prices of those products, and/or not true or verified
22 comparative prices for those products, as alleged more fully herein, was an
23 unfair, deceptive and/or misleading advertising practice because it gave the
24 false impression that the products sold by Defendants regularly sold in the
25 retail marketplace at substantially higher prices (and were, therefore, worth
26 more) than they actually were.

27 247. Defendants' practice of disseminating reference prices they allege to be
28 estimates of what comparable products may have sold for, without

1 disclosing to consumers that their “Compare At” prices were meant to be
2 such estimates, was misleading to Plaintiff and all other Class Members.
3 Defendants knew, or by the exercise of reasonable care should have known,
4 that reasonable consumers, such as Plaintiffs, would not interpret the
5 statement “Compare At” to be a reference to an estimate of what comparable
6 products may have sold for.

7 248. On each day throughout the Class Period, Defendants, with the intent to
8 induce members of the public to purchase products offered at their
9 respective California stores, made or caused to be made each of the untrue
10 and/or misleading statements, claims, and/or representations described
11 herein.

12 249. On each day throughout the Class Period, Defendants, with the intent to
13 induce members of the public to purchase products offered at their
14 respective California stores, made or caused to be made untrue and/or
15 misleading claims to consumers throughout California including, but not
16 limited to, the following claims with respect to products offered for sale at
17 California TJ Maxx, Marshalls, and/or HomeGoods stores:

- 18 a. That when other merchants offered an identical product for sale,
19 Defendants had previously ascertained and/or determined the price at
20 which substantial sales of that product had been made by principal
21 retail outlets in California.
- 22 b. That the “Compare At” price for a product was the price at which
23 other principal retail outlets in California regularly sold that identical
24 product.
- 25 c. That Defendants’ sale price for a product was lower than the price at
26 which other principal retail outlets in California regularly sold that
27 identical product.

28

1 d. That Defendants’ sale price for a product was a discount from the
2 price at which other principal retail outlets in California regularly sold
3 that identical product.

4 250. Defendants knew, or by the exercise of reasonable care should have known,
5 that these claims were untrue, deceptive, and/or misleading.

6 251. In addition to the allegations made above, each of Defendants’ statements,
7 claims, and/or representations described herein were untrue, deceptive,
8 and/or misleading because, among other things:

- 9 a. Defendants set “Compare At” prices without ascertaining and/or
10 determining the prices at which other principal retail outlets in
11 California regularly sold the identical products;
- 12 b. Defendants’ “Compare At” prices were fictitious, having been based
13 on something other than the prices at which other principal retail
14 outlets in California regularly sold the identical products;
- 15 c. Defendants’ “Compare At” prices were calculated by using the
16 highest sales price at which another merchant was offering, or had
17 offered, the identical product for sale, instead of the price at which
18 other principal retail outlets in California regularly sold the identical
19 products;
- 20 d. A reasonable consumer would not interpret the phrase “Compare At”
21 the way Defendants interpret it; and/or
- 22 e. Defendants’ “Compare At” prices were higher than the lowest price at
23 which a consumer would commonly be able to purchase the identical
24 product at a retail establishment in the consumer’s area, and:
 - 25 i. Defendants knew that the “Compare At” price was higher than
26 the lowest price at which a consumer would commonly be able
27 to purchase the identical product at other retail establishments
28 in the consumer’s area; or

- 1 255. On each day throughout the Class Period, Defendants, with the intent to
2 induce members of the public to purchase products offered at their
3 respective California stores, made or caused to be made false and/or
4 misleading claims to consumers throughout California including, but not
5 limited to, the following claims with respect to products offered for sale at
6 their respective California stores:
- 7 a. The existence and/or amounts of price reductions represented by the
8 difference between Defendants’ “Compare At” reference price and
9 their sale price; and,
 - 10 b. The existence and/or amount of the savings to a consumer purchasing
11 a particular product from Defendants instead of another merchant
12 represented by the difference between Defendants’ “Compare At”
13 reference price and their sale price.
- 14 256. Plaintiffs and each respective Subclass Member are “consumers” within the
15 meaning of California Civil Code §1761(d).
- 16 257. Defendants’ sale of merchandise at its respective TJ Maxx, Marshalls,
17 and/or HomeGoods stores in California to Plaintiffs and other Subclass
18 Members are “transactions” within the meaning of California Civil Code
19 §1761(e).
- 20 258. The merchandise purchased by Plaintiffs and other Subclass Members at
21 Defendants’ respective stores in California throughout the Class Period are
22 “goods” within the meaning of California Civil Code §1761(a).
- 23 259. Defendants have engaged in unfair methods of competition, and/or unfair
24 and/or deceptive acts or practices against Plaintiffs and other respective
25 Subclass Members, in violation of the CLRA, by making false and/or
26 misleading statements of fact concerning the reasons for, the existence of,
27 and/or the amount(s) of price reductions for products sold to Plaintiffs and
28 other respective Subclass Members at California TJ Maxx, Marshalls, and/or

1 HomeGoods stores throughout the Class Period. Defendants provided false,
2 deceptive, and/or misleading “Compare At” prices on the price tags of the
3 merchandise sold in their respective California stores, and compared those
4 false and/or misleading comparative prices to the prices at which Defendants
5 sold their merchandise, to give the illusion to consumers that they were
6 receiving a discount, or achieving a saving or bargain when compared to the
7 purchase of those same items at other retailers in the consumers’ area. The
8 promised discounts, savings, and/or bargains, however, were deceptive,
9 misleading, and/or false.

10 260. The price reductions alleged by Defendants to be the difference between the
11 “Compare At” prices and Defendants’ sale prices did not exist, and were
12 false, deceptive, and/or misleading.

13 261. Defendants’ acts and/or practices described herein are in violation of
14 California Civil Code §1770(a)(13).

15 262. As a result of Defendants’ acts and/or practices described herein, Plaintiffs
16 and other respective Subclass Members have been damaged in that
17 Defendants’ unlawful, false and/or misleading acts and/or practices
18 described herein played a substantial and material role in each respective
19 Plaintiff’s and other respective Subclass Members’ decisions to purchase
20 products at Defendants’ TJ Maxx, Marshalls, and/or HomeGoods stores in
21 California. Absent these acts and/or practices, Plaintiffs and other respective
22 Subclass Members would not have purchased the products that they did from
23 Defendants.

24 263. Pursuant to California Civil Code §1780(a)(2), Plaintiffs, on behalf of
25 themselves and all other respective Subclass Members, request that this
26 Court enjoin Defendants from continuing to engage in the unlawful and
27 deceptive methods, acts and/or practices alleged herein. Unless Defendants
28 are permanently enjoined from continuing to engage in such violations of the

1 CLRA, California consumers will continue to be damaged by Defendants'
2 acts and/or practices in the same way as those acts and/or practices have
3 damaged Plaintiff and other Class Members.

4
5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of all
7 respective Subclass Members, pray for judgment against Defendants as follows:

8 **CLASS CERTIFICATION**

9 1. That the Court certify the subclasses herein to proceed as class actions
10 pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or 23(b)(3), adjudge Plaintiffs
11 CHESTER and FRIEDMAN to be adequate representatives of the TJ Maxx
12 Subclass, adjudge Plaintiff BERKOFF to be an adequate representative of
13 the Marshalls Subclass, adjudge Plaintiffs METOYER and BERKOFF to be
14 adequate representatives of the HomeGoods Subclass, and appoint Plaintiffs'
15 counsel as class counsel for each subclass herein.

16 **VIOLATION OF BUSINESS & PROFESSIONS CODE §§17200 et seq., and**
17 **17500 et seq.:**

- 18 2. A judgment awarding Plaintiffs and all respective Subclass Members
19 restitution and/or other equitable relief, including, without limitation,
20 restitutionary disgorgement of all profits, or some portion of profits, and/or
21 unjust enrichment that Defendants obtained from Plaintiffs and the
22 respective Subclasses as a result of the unlawful, unfair and/or fraudulent
23 business practices described herein.
- 24 3. An order enjoining Defendants from continuing to violate the UCL and/or
25 FAL as described herein, and/or an order enjoining Defendants from
26 violating the UCL and/or FAL in the future.
- 27 4. A judgment awarding Plaintiffs their costs of suit, including reasonable
28 attorneys' fees pursuant to California Code of Civil Procedure §1021.5 and

