

1 Douglas Caiafa, Esq. (SBN 107747)
DOUGLAS CAIAFA, A Professional Law Corporation
2 11845 West Olympic Boulevard, Suite 1245
Los Angeles, California 90064
3 (310) 444-5240 - phone; (310) 312-8260 - fax
Email: dcaiafa@caiafalaw.com

4 Christopher J. Morosoff, Esq. (SBN 200465)
LAW OFFICE OF CHRISTOPHER J. MOROSOFF
5 77-760 Country Club Drive, Suite G
Palm Desert, California 92211
6 (760) 469-5986 - phone; (760) 345-1581 - fax
Email: cjmorosoff@morosofflaw.com

7
8 Reuben D. Nathan, Esq. (SBN 208436)
600 W. Broadway, Suite 700
San Diego, California 92101
9 (619)272-7014 – phone; (619)330-1819 - fax
Email: rnathan@nathanlawpractice.com

10 Attorneys for Plaintiffs MARILYN SPERLING and JERRED SCHUH

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

16 MARILYN SPERLING, an individual;
17 JERRED SCHUH, an individual;
individually and on behalf of all others
18 similarly situated,

19 Plaintiffs,

20 vs.

21
22 STEIN MART, INC., a Florida
23 corporation; and DOES 1 through 10,
inclusive,

24 Defendants.

) CASE NO.: 5:15-cv-01411-BRO-KKx

)
)
) FOURTH AMENDED
) CONSOLIDATED CLASS ACTION
) COMPLAINT

-)
) 1. UNFAIR BUSINESS PRACTICES;
) 2. FRAUDULENT BUSINESS
) PRACTICES;
) 3. UNLAWFUL BUSINESS
) PRACTICES;
) 4. FALSE ADVERTISING; and,
) 5. VIOLATION OF CALIFORNIA
) CONSUMER LEGAL REMEDIES
) ACT
)
)
)

1 This Fourth Amended Consolidated Class Action Complaint (“Complaint”)
2 is brought by an individual consumer in California against retailer STEIN MART,
3 INC. (“Defendant”) for using false, deceptive, or misleading comparative reference
4 prices on the price tags of the products sold in Stein Mart (“Stein Mart”) stores in
5 California. Plaintiffs, MARILYN SPERLING (“Sperling”) and JERRED SCHUH
6 (“Schuh”) (collectively referred to herein as “Plaintiffs”), individually and on
7 behalf of all others similarly situated (collectively referred to as “Class Members”),
8 brings this action against Defendant, and for causes of action against Defendant,
9 based upon personal knowledge, information and belief, and investigation of her
10 counsel, alleges as follows:

11 **JURISDICTION AND VENUE**

- 12 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332(d)
13 (the Class Action Fairness Act of 2005 (“CAFA”)) because the amount in
14 controversy exceeds the value of \$5,000,000, exclusive of interest and costs,
15 because the Class consists of 100 or more putative Class Members, and
16 because at least one putative Class Member is diverse from Defendant, a
17 Florida corporation with its principal place of business in Jacksonville,
18 Florida.
- 19 2. This is a civil action brought under and pursuant to California Business &
20 Professions Code §17200, *et seq.* (the Unfair Competition Law or “UCL”),
21 California Business & Professions Code §17500, *et seq.* (the False
22 Advertising Law or “FAL”), and California Civil Code §1750, *et seq.* (the
23 California Consumer Legal Remedies Act or “CLRA”).
- 24 3. Venue is proper in the Eastern Division of the Central District of California
25 because Defendant transacts a substantial amount of business in this District,
26 Plaintiffs either reside in Riverside County, California, and/or the
27 transactions which form the basis of at least one or more of the Plaintiffs’
28 claims against Defendant occurred in Riverside County, California.

1 4. The Central District of California has personal jurisdiction over the
2 Defendant named in this action because Defendant is a corporate business
3 entity authorized to do business in the State of California and registered with
4 the California Secretary of State to do business, with sufficient minimum
5 contacts in California. Defendant has otherwise intentionally availed itself
6 of the California market through the ownership and operation of
7 approximately 23 retail stores within the State of California, such that the
8 exercise of jurisdiction over Defendant by the California courts is consistent
9 with traditional notions of fair play and substantial justice.

10 5. Defendant transacts business within the county of Los Angeles, and
11 elsewhere throughout the State of California. The violations of law alleged
12 herein have been carried out within the County of Los Angeles and
13 throughout the State of California.

14 **INTRODUCTION**

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

22 7. This is a case about one of the nation's largest retailers, Stein Mart, using
23 deceptive comparative prices at each of its California stores to trick its
24 customers into mistakenly believing that the selling prices of products at
25 Stein Mart stores are significantly lower than the regular prices of those
26 products at other retailers in California. Plaintiffs are typical reasonable
27 American consumers who, like all reasonable consumers, are motivated by
28 the promise of a good deal. Defendant is a large national retailer that makes

1 enormous profits by promising consumers a good deal. Defendant owns and
2 operates a chain of so called “off-price” department stores in California
3 known as Stein Mart stores. Plaintiffs occasionally shop at Stein Mart
4 because of Defendant’s promise that they can get name brand products for
5 significant discounts off department store prices. Defendant supports that
6 promise with price tags on each item in each store which feature
7 Defendant’s selling prices alongside much higher supposedly comparative
8 prices. The comparative prices assure consumers like Plaintiffs that they are
9 receiving an exceptionally good deal and saving a specific dollar amount
10 equal to the difference between the two prices. Defendant’s price tags
11 deceptively instruct customers to “Compare At” the selling prices of
12 Defendant’s products to these higher comparative reference prices. The
13 comparative prices, however, are deceptive. They are not true, bona fide, or
14 properly substantiated comparative prices. They are not what typical,
15 reasonable consumers, like Plaintiffs, think they are. Defendant does not
16 adequately, clearly, or conspicuously disclose to consumers what its
17 “Compare At” reference price is. There is no definition or disclosure at or
18 near the comparative price representations made on the price tags of the
19 items sold at Stein Mart stores in California. Plaintiffs, having been duped
20 by Defendant’s deceptive pricing practices like all other Stein Mart
21 customers, bring this action against Defendant for false, deceptive and
22 misleading advertising on behalf of themselves and all other consumers who
23 have purchased items at Stein Mart stores in California throughout the
24 period from July 15, 2011, to the present (the “Class Period”).

25 **PARTIES**

- 26 8. Plaintiff, Marilyn Sperling, is, and at all times relevant hereto has been,
27 individual and a resident of Los Angeles County, California. On over 5
28 occasions throughout the Class Period, Sperling purchased products from the

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

12 9. Plaintiff, Jerred Schuh, is, and at all times relevant hereto has been,
13 individual and a resident of San Diego County, California. On over 5
14 occasions throughout the Class Period, Schuh purchased products from
15 various locations throughout California, including, but not limited to Orange
16 County, San Diego County, and Riverside County, Stein Mart store which
17 were falsely, deceptively, and/or misleadingly labeled with false, deceptive,
18 and/or misleading, comparative prices. The marked “Compare At” prices
19 for the products which Schuh purchased from Defendant were not actual
20 prices at which substantial and significant sales of those products were made
21 at other principal retail outlets in California. Schuh purchased products from
22 Defendant throughout the Class Period in reliance on Defendant’s false,
23 deceptive and misleading advertising, marketing and pricing schemes, which
24 he would not otherwise have purchased absent Defendant’s deceptive
25 advertising and pricing scheme, and he has lost money and/or property, and
26 has been damaged as a result. Schuh is a reasonable consumer.

27 10. Defendant is a Florida corporation, organized under the laws of the state of
28 Florida, which conducts substantial business on a regular and continuous

1 basis in the state of California. Defendant’s principal place of business is in
2 Jacksonville, Florida.

3 11. The true names and capacities of the Defendants named herein as DOES 1
4 through 10, inclusive, whether individual, corporate, associate or otherwise,
5 are unknown to Plaintiffs who therefore sue such Defendants under fictitious
6 names. Plaintiffs are informed and believe, and on that basis allege, that
7 these Defendants, DOES 1 through 10, are in some manner or capacity, and
8 to some degree, legally responsible and liable for the damages of which
9 Plaintiffs complain. Plaintiffs will seek leave of Court to amend this
10 Complaint to set forth the true names and capacities of all fictitiously-named
11 Defendants within a reasonable time after they become known.

12 **FACTUAL ALLEGATIONS**

13 12. During the Class Period, Plaintiffs bought apparel, shoes, luggage and other
14 items from the Stein Mart store in La Quinta, and store locations in Orange
15 County, Riverside County, and San Diego County, California.

16 13. Plaintiffs were lured into Defendant’s stores with the promise of significant
17 savings on name brand merchandise such as, without limitation, apparel,
18 handbags, shoes, and bed, bath and home items.

19 14. Plaintiffs would shop at Stein Mart stores in California in the future if they
20 could be assured that the comparative reference prices advertised by
21 Defendant were true and accurate reference prices.

22 **I. Defendant Labels Its Products With “Compare At” Reference Prices:**

23 15. Each item offered for sale at Stein Mart is displayed with a comparative
24 price tag which provides 2 prices: the Stein Mart sale price, and another
25 significantly higher price described simply as the “Compare At” price.

26 16. The price tags used by Defendant at Stein Mart stores throughout California
27 are identical in all material respects. They each have a sale price (i.e., a
28 price at which Defendant is selling the item for), and a higher comparative

1 reference price listed above the sale price accompanied by the phrase
2 “Compare At.”

3 17. The price tags do not tell consumers what the phrase “Compare At” means,
4 or give any information about the comparative price other than the dollar
5 amount and the phrase, “Compare At.” Nor are consumers told where
6 Defendant came up with the “Compare At” price. They are simply
7 presented with the 2 prices (the sale price, and the higher “Compare At”
8 reference price), left to guess what the “Compare At” price is, and are led to
9 believe that they are actually saving the difference between the 2 prices.

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

11 18. Defendant compares the prices of its products with higher reference prices
12 which consumers are led to believe are the prices supposedly charged by
13 other merchants for the same products. Defendant labels those higher
14 comparative prices as the “Compare At” prices for those products.

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

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

23 21. Over 30 years of marketing research unanimously concludes that semantic
24 cues presented with comparative reference prices, such as Defendant’s use
25 of the phrase “Compare At” on its price tags, are material to consumers.
26 That is, they influence consumers’ purchasing decisions.

27 22. For example, a well-respected and oft-cited study by Dhruv Grewal & Larry
28 D. Compeau, *Comparative Price Advertising: Informative or Deceptive?*, 11

1 J. of Pub. Pol'y & Mktg. 52, 55 (Spring 1992), concludes that "[b]y creating
2 an impression of savings, the presence of a higher reference price enhances
3 [consumers'] perceived value and willingness to buy [a] product." In other
4 words, comparative reference prices lead consumers to believe they are
5 saving money, and increase their willingness to buy products.

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

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

23 25. Praveen K. Kopalle & Joan Lindsey-Mullikin, *The Impact of External*
24 *Reference Price On Consumer Price Expectations*, 79 J. of Retailing 225
25 (2003), similarly conclude that "research has shown that retailer-supplied
26 reference prices clearly enhance buyers' perceptions of value" and "have a
27 significant impact on consumer purchasing decisions."
28

- 1 26. The belief that they are paying a specific amount less than the market retail
2 price of a product, in and of itself, creates a quantifiable value to consumers,
3 including Plaintiffs. When a deceptive reference price leads a reasonable
4 consumer to mistakenly believe he or she is paying less than the market
5 retail price of a product, then the actual value of the product is less than the
6 consumer believed and less than the amount the consumer paid. Because of
7 the false or misleading reference price, the product actually has less value
8 than the consumer believes it has, and therefore the consumer paid more for
9 the product than the value he or she actually received.
- 10 27. The results of a study by Dr. Jerry B. Gotlieb & Dr. Cyndy Thomas
11 Fitzgerald, *An Investigation Into the Effects of Advertised Reference Prices*
12 *On the Price Consumers Are Willing To Pay For the Product*, 6 J. of App'd
13 Bus. Res. 1 (1990), conclude that “reference prices are important cues
14 consumers use when making the decision concerning how much they are
15 willing to pay for the product.” This study further concludes that
16 “consumers are likely to be misled into a willingness to pay a higher price
17 for a product simply because the product has a higher reference price.”
- 18 28. Consumers place a higher value on products that have reference prices
19 higher than the selling price. When those reference prices are not what the
20 consumer believes them to be – when they are not true, accurate, verified
21 reference prices – then the consumer pays an additional amount for value he
22 or she does not actually receive, equal to the false savings.
- 23 29. The indisputable conclusion of decades of scholarly research concerning
24 comparative reference prices, such as the “Compare At” reference prices
25 used by Defendant, is that they matter – they are material to consumers.
- 26 **III. Defendant Has a Duty to Verify Its “Compare At” Prices:**
- 27 30. The FTC requires that “[a]dvertisers must have evidence to back up their
28 claims (“substantiation”). . . . Before disseminating an ad, advertisers must

1 have appropriate support for all express and implied objective claims that the
2 ad conveys to reasonable consumers. When an ad lends itself to more than
3 one reasonable interpretation, there must be substantiation for each
4 interpretation. The type of evidence needed to substantiate a claim may
5 depend on the product, the claims, and what experts in the relevant field
6 believe is necessary.”

7 31. Plaintiffs are informed and believe, and on that basis allege, that Defendant
8 does not have sufficient evidence to substantiate the validity of its “Compare
9 At” reference prices.

10 32. The FTC Pricing Guides, 16 C.F.R. §233.2, provide rules for merchants
11 such as Defendant that claim “to offer goods at prices lower than those being
12 charged by others for the same merchandise in the advertiser’s trade area.”

13 33. The FTC Pricing Guides require that when merchants such as Defendants
14 use advertising that compares their prices to higher comparative prices for
15 the same merchandise, “the advertised higher price must be based on fact,
16 and not be fictitious or misleading.” The FTC Pricing Guides further
17 provide:

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

22 34. Defendant thus has, and has had, a duty to provide “appropriate support” for,
23 and “evidence to back up,” its “Compare At” reference prices.

24 35. Defendant has, and has had, a duty to verify that its “Compare At” reference
25 prices do not “appreciably exceed the price at which substantial sales” of its
26 products have been made in California.

27 36. Plaintiffs are informed and believe, and on that basis allege, that Defendant
28 does not have such evidence, and has not in fact verified that its “Compare

1 At” reference prices do not “appreciably exceed the price at which
2 substantial sales” of its products have been made in California.

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

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

12 38. Where the advertiser’s comparison price is purportedly based on a
13 manufacturer’s suggested retail price (“MSRP”), the FTC Pricing Guides
14 provide as follows:

15 “Many members of the purchasing public believe that a
16 manufacturer’s list price, or suggested retail price, is the price at
17 which an article is generally sold. Therefore, if a reduction from this
18 price is advertised, many people will believe that they are being
19 offered a genuine bargain. To the extent that list or suggested retail
prices do not in fact correspond to prices at which ***a substantial
number of sales*** of the article in question are made, the advertisement
of a reduction may mislead the consumer.” (Emphasis added).

20 . . .

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

24 39. According to the FTC Pricing Guides, an advertised MSRP:

25 “[w]ill not be deemed fictitious if it is the price at which ***substantial
(that is, not isolated or insignificant) sales*** are made in the
26 advertiser’s trade area (the area in which he does business).
27 Conversely, if the list price is significantly in excess of the highest
price at which ***substantial sales*** in the trade area are made, there is a
28 clear and serious danger of the consumer being misled by an
advertised reduction from this price. . . . [B]efore advertising a

1 manufacturer's list price as a basis for comparison with his own lower
2 price, the retailer should ascertain whether the list price is in fact the
3 price regularly charged by principal outlets in his area." (Emphasis
4 added.).

4 40. The FTC concludes, in its Pricing Guides, that advertising an MSRP as a
5 comparative reference price is "deceptive" if only "an insubstantial volume
6 of sales" of the product in question have been made at the advertised MSRP
7 in the retailer's trade area. Use of an MSRP as a comparative reference price
8 is not considered "deceptive" if "[i]n a *substantial number of representative*
9 *communities, the principal retail outlets* are selling the product at this price
10 in the regular course of business and *in substantial volume.*" (Emphasis
11 added).

12 41. Defendant thus has, and has had, a duty to verify that its "Compare At"
13 reference prices are and have been prices at which substantial sales of its
14 products are and have been made at a substantial number of other principal
15 retail outlets in California.

16 **IV. Defendant Does Not Adequately Verify Its "Compare At" Prices:**

17 42. Plaintiffs are informed and believe, and on that basis allege, that when
18 Defendant advertised prices as "Compare At" prices on the price tags of
19 items sold in its California Stein Mart stores, Defendant was not reasonably
20 certain that the higher prices it advertised did not appreciably exceed the
21 prices at which *substantial sales* of the items were being made in California.

22 43. The "Compare At" prices on Defendant's price tags, including those alleged
23 to be MSRPs, were not prices at which *substantial sales* of those products
24 were made in California. Rather, the "Compare At" reference prices
25 advertised by Defendant, including those alleged to be MSRPs, were
26 significantly in excess of the highest prices at which *substantial sales* of
27 those products were made in California.

28

1 44. Plaintiffs are informed and believe, and on that basis allege, that Defendant
2 did not ascertain whether the “Compare At” prices on its price tags,
3 including those alleged to be MSRPs, were in fact the prices regularly
4 charged by a substantial number of principal outlets in California, or
5 whether its “Compare At” prices were prices at which *substantial sales* of
6 such products were made in California.

7 45. Plaintiffs are informed and believe, and on that basis allege, that Defendant
8 systematically and routinely used unverified comparative prices, including
9 supposed MSRPs, as comparative reference prices for its products which are
10 not, in fact, prices at which those products sold, or are selling, in any
11 substantial volume at the “principal retail outlets” in California. Thus,
12 Defendant’s “Compare At” prices are, and have been throughout the Class
13 Period, deceptive.

14 46. Plaintiffs are informed and believe, and on that basis allege, that often
15 Defendant has not determined or verified the prices other merchants charge
16 for the identical products it sells. Rather, Defendant has used various
17 misleading methods to make up prices which it claims other merchants
18 charge for those products, and then claims that its own prices are
19 significantly lower than those “Compare At” reference prices.

20 47. Plaintiffs are informed and believe, and on that basis allege, that Defendant
21 failed to verify that its “Compare At” prices for its products did not exceed
22 the prices at which substantial sales of the products were being made at
23 principal retail outlets in California.

24 48. Defendant’s decision to use unverified reference prices, including supposed
25 MSRPs, was likely to deceive consumers, including Plaintiffs, by, among
26 other things, representing that the marketplace had assigned retail prices to
27 its products, and that Defendant’s discount off those retail prices made
28 Defendant’s prices attractive. Defendant’s misrepresentation of the

1 “Compare At” prices as actual prices at which substantial sales of its
2 products had been made in California was deceptive, misleading, unlawful,
3 unfair, and/or fraudulent.

4 **V. Defendant’s “Compare At” Reference Prices Are Misleading, Deceptive,**
5 **and/or False:**

6 49. The result of Defendant’s failure to verify its “Compare At” prices was that
7 consumers, including Plaintiffs, were misled into believing that they were
8 receiving substantial savings on the purchase of Defendant’s products when
9 compared to prices charged for those same products at other retailers.

10 Plaintiffs and other Class Members were misled into paying more for
11 Defendant’s products than they would have paid for identical products sold
12 by other merchants.

13 50. Plaintiffs were confronted with ARPs on the items they purchased from
14 Defendant, accompanied by the undefined, unqualified phrase, “Compare
15 At.” Plaintiffs reasonably believed, like all reasonable consumers, that the
16 “Compare At” prices represented the prices that they would expect to pay
17 for those same products at other retailers in their general area. In other
18 words, Plaintiffs reasonably believed that the “Compare At” prices referred
19 to the then prevailing retail prices for those same items - that if they left
20 Defendant’s store and shopped around for those same products, they would
21 likely find them elsewhere at the higher “Compare At” prices provided by
22 Defendant.

23 51. Defendant, however, had a different definition of what it meant by
24 “Compare At” - a definition not adequately disclosed to consumers and not
25 consistent with the common meaning of the phrase “compare at.”

26 52. On each of Defendant’s price tags, Defendant has placed a very small,
27 barely visible asterisk next to the word “Compare.”
28

1 53. At the bottom of some price tags, and on the back of others, Defendant has
2 placed another very small asterisk preceding the following sentence: “See
3 Stein Mart’s Fair Pricing Policy at Steinmart.com or in store.”

4 54. Had Plaintiffs noticed the asterisk on the price tag of any of the items they
5 purchased, then looked for the second asterisk and read the sentence “See
6 Stein Mart’s Fair Pricing Policy at Steinmart.com or in store,” and then been
7 savvy enough to stop their shopping to either locate the small sign on the
8 back of the cash register, or get to a computer, log onto Defendant’s website,
9 somehow navigate to the “customer service” section of the website (even
10 though there is no hyperlink on the website which actually reads “customer
11 service” or anything similar), find the “Fair Pricing Policy” link on the right
12 side of the “customer service” page along with a couple dozen other links
13 (including, among others, shipping and return policies, privacy policy,
14 corporate information, and frequently asked questions), and click on the
15 “Fair Pricing Policy” hyperlink, Plaintiffs would have found Defendant’s
16 definition of “Compare at” as follows:

17
18 “Fair Pricing Policy

19 We strive to offer our customers true everyday value. Our "Compare
20 at" price is based on input from our suppliers. We believe that it
21 represents the original price of the same item or a comparable item at
22 department stores, specialty stores or other full-price stores. Our
23 "Compare at" price may not be the starting price posted by all full-
24 price stores, and some stores may offer substantial discounts off the
25 suggested retail price.”

26
27 55. Plaintiffs, reasonable consumers, did not see the asterisk on any of the price
28 tags of any of the items they purchased from Stein Mart.

1 56. Plaintiffs did not see the sign on the back of the cash register with
2 Defendant's Fair Pricing Policy, Return Policy, and Check Policy, before
3 purchasing any of the items they purchased from Stein Mart.

4 57. Plaintiffs did not see or read Defendant's Fair Pricing Policy before
5 purchasing any of the items they purchased from Stein Mart.

6 **A. Reasonable Consumers Do Not Interpret Defendant's "Compare**
7 **At" Prices to be Prices Defendant Believes to be Original or**
8 **Suggested Retail Prices of Comparable Items:**

9 58. Reasonable consumers like Plaintiffs believe that ARPs are real, verified
10 comparative retail prices. Reasonable consumers believe that ARPs are not
11 numbers that retailers estimate or make up. Reasonable consumers believe
12 that an ARP advertised with the phrase, "Compare At," is a verified retail
13 price for the same item.

14 59. Reasonable consumers do not understand an ARP to be a manufacturer's
15 suggested retail price ("MSRP") unless the ARP is advertised with the term
16 "MSRP."

17 60. Reasonable consumers, including Plaintiffs, believe the "Compare At"
18 reference prices on Defendant's price tags to be the prices at which other
19 merchants supposedly sell the same products.

20 61. A reasonable consumer would interpret Defendant's "Compare At" prices as
21 the prices at which a substantial number of vendors are selling the identical
22 products.

23 62. Nowhere on Defendant's price tags, or in Defendants' price advertising, is it
24 made clear to consumers, including Plaintiffs, that the advertised "Compare
25 At" price is merely what Defendant believes to be the "original price" or
26 "suggested retail price" of a "comparable item." The words "comparable
27 item" do not appear on any price tag of any item sold at Stein Mart.
28 Reasonable consumers, including Plaintiffs, would have to look beyond

1 Defendant's price tags to discover that the "Compare At" price might be a
2 reference to the supposed price of a "comparable item."

3 63. Consumers should not have to sleuth their way into Defendant's website,
4 search for a small sign in the store, or look beyond the price tag itself just to
5 find Defendant's misleading and non-intuitive interpretation of what it
6 means by the phrase "Compare At."

7 64. Even if a consumer were to find Defendant's interpretation of the phrase
8 "Compare At" on its website or on a sign in the store before purchasing a
9 product from Stein Mart, it is still not clear from Defendant's definition
10 exactly what the "Compare At" price actually is.

11 65. Viewed in light of Defendant's definition, Defendant's "Compare At" price
12 could be the "original price of the same item" at other department stores.
13 Or, it could be the "original price of a . . . comparable item" at other
14 department stores. It could simply be what Defendant believes a comparable
15 item might sell for. Or, it could be none of the above. It may be that the
16 particular item, or even a comparable item, was never offered for sale at the
17 "Compare At" price by any other retailer. And consumers, even if they were
18 to find Defendant's definition, would still be left to guess what a
19 "comparable" item might be.

20 66. Even though one of the many different alternative interpretations of
21 Defendant's definition of the phrase "Compare At" might include the price
22 of a "comparable item," there are other equally reasonable and plausible
23 interpretations of the same phrase and definition. One such reasonable and
24 plausible interpretation of the phrase "Compare At" read in light of
25 Defendant's definition is that the "Compare At" price is a reference to the
26 "original price of the same item." This is precisely how Plaintiffs,
27 reasonable consumers, interpreted the "Compare At" prices of each of the
28 items she purchased from Stein Mart – as the "price of the same item."

- 1 67. Defendants’ depiction of prices, as described herein, deceptively represented
2 to consumers, including Plaintiffs, that the “Compare At” price was the price
3 at which the product typically sold in the marketplace, from which
4 Defendants offered a discount.
- 5 68. Plaintiffs are informed and believe, and on that basis allege, that the
6 “Compare At” prices advertised by Defendant were not the then prevailing
7 retail prices for the products that she purchased from Stein Mart.
- 8 69. Nowhere on Defendant’s price tags, or in Defendant’s price advertising, is it
9 made clear to consumers, including Plaintiffs, that the advertised “Compare
10 At” price is not the price at which a substantial number of vendors are
11 selling the identical product.
- 12 70. Nowhere on Defendant’s price tags, or in Defendant’s price advertising, is it
13 made clear to consumers, including Plaintiffs, that the advertised “Compare
14 At” price may not be the starting price at other full-price stores.
- 15 71. Nowhere on or near Defendant’s price tags does Defendant disclose to
16 consumers, including Plaintiffs, what the “Compare At” price is, where
17 Defendant came up with the “Compare At” price, or what Defendant means
18 by the term “Compare.”
- 19 72. Nowhere is it made to consumers, including Plaintiffs, what the “Compare
20 At” price actually is.
- 21 73. The Better Business Bureau (“BBB”) Code of Advertising suggests that if a
22 retailer means to compare its selling price to a higher reference price of
23 supposed identical merchandise, the retailer should use clear language in its
24 advertising such as “selling elsewhere at.”
- 25 74. If the reference price provided by Defendant is meant to be the price of a
26 “comparable item,” then the semantic cue (or phrase) placed on the price tag
27 by Defendant should inform the consumer that the reference price is
28 supposedly the “original price” of a “comparable item.”

1 75. 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 76. Confronted with the simple phrase, “Compare At,” a reasonable consumer
7 would believe that the higher reference price represents the price at which
8 the same item currently sells for in the marketplace – the then-prevailing
9 retail or market price.

10 77. Plaintiffs and all other Class Members reasonably relied upon Defendant’s
11 deceptive, misleading, and/or false representations of comparative prices and
12 false representations of purported savings, discounts and bargains when
13 purchasing merchandise from Defendant’s California stores.

14 78. Plaintiffs did not, and reasonable consumers would not, interpret the
15 semantic phrase “Compare At” the way Defendant interprets it.

16 79. Defendant’s use of the phrase “Compare At” in connection with its ARPs
17 was, and is, false, misleading, and/or deceptive.

18 **B. Defendant’s “Compare At” Price Advertising Omits Necessary**
19 **Information, Including Defendant’s Purported Disclosure:**

20 80. At all times relevant herein, Defendant has been under a duty to Plaintiffs
21 and all other Class Members to adequately disclose the truth about its
22 “Compare At” prices.

23 81. Defendant’s “Compare At” reference prices required, and continue to
24 require, a qualifying disclosure because, amongst other things, Defendant
25 defines and interprets the term “Compare At” in a way that reasonable
26 consumers do not interpret it.

27 82. Defendant has provided a qualifying disclosure, but that disclosure is
28 ambiguous, unclear, and is buried on its websites, and not clearly and

1 conspicuously next to the “Compare At” reference prices, as required by
2 FTC rules.

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

12 84. Defendant attempts to provide that additional “specific information” by way
13 of a disclosure accessible only through a hyperlink at the bottom of its web
14 page, and in small print on signs in its stores not easily seen by, or made
15 clear or conspicuous to, customers. Defendants’ disclosure is inadequate
16 and violative of FTC rules and guidelines.

17 85. Where, as here, the retailer and the consumer do not share the same meaning
18 of the comparative reference phrase (“Compare At”), and thus the term is
19 open to more than one interpretation, the use of that term is misleading and
20 deceptive.

21 86. It is a deceptive marketing act and/or practice for Defendant to define its
22 reference prices as what it believes are “original,” “starting,” or “suggested
23 retail” prices of “comparable” items, but fail to clearly and conspicuously
24 disclose that definition to consumers. If the reference prices provided by
25 Defendant on the price tags of its products are meant to be “original,”
26 “starting,” or “suggested retail” prices of “comparable” items, those price tags
27 should say so.

28

1 87. Plaintiffs did not, and reasonable consumers would not, interpret the
2 semantic phrase “Compare At” the way Defendant interprets it.

3 88. Where, as here, the retailer ascribes a secret, undisclosed meaning to the
4 phrase that differs from that which reasonable consumers, including
5 Plaintiffs, would ascribe to it, the use of that term is misleading and
6 deceptive.

7 89. It is a deceptive marketing act and/or practice for Defendant to fail to clearly
8 and conspicuously disclose its definition or interpretation of its phrase
9 “Compare At” to its customers.

10 90. Therefore, Defendant’s use of the semantic term “Compare At” in
11 connection with its ARPs for its products was, and is, false, misleading,
12 and/or deceptive.

13 91. The facts that Defendant misrepresented and/or failed to disclose are
14 material facts that a reasonable person would have considered material; i.e.,
15 facts that would contribute to a reasonable person’s decision to purchase
16 merchandise offered for sale by Defendant. Defendant’s deceptive
17 comparison reference prices, and/or false representations of discounts from
18 misleading, deceptive, and/or false comparative prices, and false
19 representations of purported savings, discounts and/or bargains, are
20 objectively material to the reasonable consumer.

21 92. Plaintiffs and all other Class Members reasonably and justifiably acted and
22 relied to their detriment on Defendant’s failure to disclose, and concealment
23 of, the truth about its comparative prices, in purchasing merchandise at
24 Defendant’s stores throughout California.

25 **C. Defendant’s Failure to Adequately Disclose What Its “Compare**
26 **At” Prices Are Violates FTC Guidelines:**

27 93. The FTC provides detailed requirements concerning the use of purported
28 disclosures in their “.com Disclosures” rules.

1 94. Defendant provides a disclosure of its definition or interpretation of its
2 “Compare At” prices on its website, and that disclosure therefore is subject
3 to the FTC’s “.com Disclosures” rules.

4 95. The FTC has a “clear and conspicuous requirement” for advertising
5 disclosures, which requires any such disclosures to be presented to
6 consumers “clearly and prominently.”

7 96. The FTC’s “clear and conspicuous requirement” requires that “disclosures
8 must be clear and conspicuous.”

9 97. When making a disclosure related to an advertising claim, the FTC’s clear
10 and conspicuous requirement requires that “[d]isclosures should be placed as
11 close as possible to the claim they qualify,” or the “triggering claim.”

12 98. The FTC requires that “[w]hen the disclosure of qualifying information is
13 necessary to prevent an ad from being deceptive, the information should be
14 presented clearly and conspicuously so that consumers can actually notice
15 and understand it. A . . . disclaimer that is easily missed on a website [is] not
16 likely to be effective. Nor can advertisers use fine print to contradict other
17 statements in an ad or to clear up misimpressions that the ad would leave
18 otherwise. . . . To ensure that disclosures are effective, advertisers should use
19 clear and unambiguous language, [and] place any qualifying information
20 close to the claim being qualified.”

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

24 100. Defendant’s “Compare At” reference prices require qualification.

25 101. Defendant’s qualifying disclosures are not presented clearly or
26 conspicuously, nor are they presented so that consumers can notice them.

27 102. Defendant’s disclosures of qualifying information (i.e., that Defendants’
28 “Compare At” reference prices are what it believes to be original, starting, or

1 suggested retail prices of “comparable” items) are not placed close to the
2 “Compare At” claims. They are placed on a website only accessible by
3 linking to them through a hyperlink, and on signage in Defendants’ stores
4 that is not easily seen by, nor made clear and/or conspicuous to, customers.

5 103. Defendant does not, and did not, place any disclosure of qualifying
6 information regarding its “Compare At” reference prices close to the
7 “Compare At” claims.

8 104. Plaintiffs did not see, and were not aware of, Defendant’s disclosures.

9 105. When using a hyperlink to lead to a disclosure, the FTC requires, among
10 other things, that the advertiser make the link “obvious.”

11 106. Defendant’s hyperlinks to its disclosures are not obvious.

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

18 108. Defendant’s qualifying disclosures are an “integral part” of its “Compare
19 At” reference price claims. Those disclosures should not be, and should not
20 have been, communicated to consumers through a hyperlink. Those
21 disclosures should be, and should have been, placed on the price tags of
22 Defendant’s products immediately next to the “Compare At” price claims.

23 109. The FTC’s disclosure rules further provide that “[a]dvertisers are responsible
24 for ensuring that their messages are truthful and not deceptive. Accordingly,
25 disclosures must be communicated effectively so that consumers are likely
26 to notice and understand them in connection with the representations that the
27 disclosures modify. Simply making the disclosure available somewhere in
28

1 the ad, where some consumers might find it, does not meet the clear and
2 conspicuous standard.”

3 110. Defendant’s disclosures do not meet the FTC’s “clear and conspicuous
4 standard.”

5 111. Defendant’s failure to adequately disclosure to Class Members, including
6 Plaintiffs, its definition or interpretation of the phrase “Compare At” violates
7 the FTC’s “clear and conspicuous standard.”

8 112. The FTC’s disclosure rules further provide that “[i]t is the advertiser’s
9 responsibility to draw attention to the required disclosures.”

10 113. Defendant does not draw attention to its disclosures.

11 114. The FTC’s disclosure rules further provide that “[d]isclosures must be
12 effectively communicated to consumers before they make a purchase or
13 incur a financial obligation.”

14 115. Defendant does not effectively communicate its disclosures concerning its
15 “Compare At” prices to consumers before they make their purchase(s) at
16 Stein Mart stores in California.

17 116. The FTC’s disclosure rules further provide that “[i]f the disclosure needs to
18 be in the ad itself but it does not fit, the ad should be modified so it does not
19 require such a disclosure or, if that is not possible, that space-constrained ad
20 should not be used. . . . If a disclosure is necessary to prevent an
21 advertisement from being deceptive, unfair, or otherwise violative of a
22 Commission rule, and if it is not possible to make the disclosure clear and
23 conspicuous, then either the claim should be modified so the disclosure is
24 not necessary or the ad should not be disseminated.”

25 117. Defendant was required to put a qualifying disclosure on its price tags. Or, if
26 putting a qualifying disclosure on its price tags was not possible,
27 Defendant’s “Compare At” reference prices should not have been, and
28 should not be, used.

D. Defendant’s Use of Reference Prices Does Not Comply with Established Legal Requirements:

118. Plaintiffs are informed and believe, and on that basis allege, that in advertising the “Compare At” price for a product, Defendant did not, and does not, actually present the prevailing market price for that product (i.e. the price at which other merchants were selling the identical product), or the price at which substantial sales of the product were made at principal retail outlets in California. Rather, Defendant used, and continues to use, vague, misleading, and/or subjective measures to inflate the comparative prices, and thus artificially increase the discounts and savings it claims to be offering consumers.

119. Through its deceptive, misleading, and/or false marketing, advertising and pricing scheme, Defendant has violated, and continues to violate, California law which prohibits advertising goods for sale at a discount when compared to unsubstantiated prices at which other merchants purportedly sell the goods, and prohibits misleading statements about the existence and amount of comparative prices. Specifically, Defendant has violated, and continues to violate, the UCL, the FAL, the CLRA, and the Federal Trade Commission Act (“FTCA”), which prohibits “unfair or deceptive acts or practices in or affecting commerce” (15 U.S.C. §45(a)(1)), and specifically prohibits false advertisements (15 U.S.C. §52(a)).

120. Under the FTCA, advertising must be truthful and non-deceptive, advertisers such as Defendant must have evidence to back up their claims, and advertisements cannot be unfair. An advertisement is deceptive, according to the FTC, if it contains a misstatement or omits information that is likely to mislead consumers acting reasonably under the circumstances, and the statement or omitted information is material - that is, important to a consumer’s decision to buy or use the product.

- 1 121. The prices which Defendant advertises, and has advertised, as “Compare At”
2 prices are misleading, fictitious, and/or are not based on fact.
- 3 122. Defendant failed to make clear to its customers, including Plaintiffs, that its
4 “Compare At” reference prices were not then prevailing market prices.
- 5 123. Defendant’s “Compare At” reference prices were likely to mislead
6 reasonable consumers into believing that Defendant’s prices were
7 significantly lower than the prices offered by other merchants for the
8 identical products, and that consumers would enjoy significant savings by
9 purchasing those products from Defendant instead of from other merchants.
- 10 124. Defendant’s false and/or misleading comparative pricing representations
11 made it more likely that consumers would purchase particular products from
12 Defendant. Defendant’s misleading claims of significant discounts were
13 likely to persuade consumers who were not inclined to purchase products at
14 all to buy them from Defendant solely because they were misled into
15 believing that they were getting an unusually good deal.
- 16 125. Defendant’s misrepresentations about its pricing were likely to mislead
17 consumers, and in fact did mislead Plaintiffs, into believing that Defendant’s
18 prices would always be significantly lower than the prices offered by other
19 merchants for the identical products.
- 20 126. Defendant misrepresented the existence, nature and amount of price
21 discounts by purporting to offer specific dollar discounts from expressly
22 referenced comparative prices, which were misrepresented as “Compare At”
23 prices. These purported discounts were false, deceptive, and/or misleading,
24 however, because the referenced comparative prices were not bona fide
25 reference prices and did not represent true comparative prices for identical
26 products sold by other merchants in California.
- 27 127. Defendant has engaged in a company-wide, pervasive and continuous
28 campaign of deceptively claiming that each of its products sold at a far

1 higher price by other merchants in order to induce Plaintiffs and all Class
2 Members to purchase merchandise at purportedly marked-down sale prices.
3 California law prohibits such practices.

4 128. Defendant’s deceptive and misleading representations, as described herein,
5 accompanied virtually every product sold in California Stein Mart stores
6 each and every day throughout the Class Period, and Defendant is still
7 making such deceptive and misleading comparative price claims for many, if
8 not all, of the products in its California stores.

9 129. Throughout the Class Period Defendant routinely and systematically made
10 untrue, deceptive, and misleading comparative advertising claims about the
11 prices of its products, as described herein.

12 130. Defendant advertised each of its products sold in its California Stein Mart
13 stores with a comparative reference price, preceded by the misleading phrase
14 “Compare At.” However, Defendant did not ensure that the “Compare At”
15 reference prices it advertised in comparison to its sale prices in fact
16 corresponded to prices at which a substantial number of sales of each such
17 labeled product were made at other principal retail outlets in California.

18 131. Throughout the Class Period, Defendant’s “Compare At” prices constituted
19 material misstatements, and/or omitted material information about its
20 comparative prices, that were likely to mislead reasonable consumers.

21 132. Defendant has intentionally failed to disclose to, and/or fraudulently
22 concealed from, Plaintiffs and all other Class Members the truth about its
23 alleged comparative prices for the purpose of inducing Plaintiffs and other
24 Class Members to purchase merchandise at each of its Stein Mart stores
25 throughout California.

26 133. Plaintiffs are informed and believe, and on that basis allege, that even if and
27 when a “Compare At” price for a product may have represented an actual
28 “recent documented selling price” of the same product, Defendant chose the

- 1 highest price at which the product was selling in the marketplace, and
2 presented that price to consumers as the “Compare At” price.
- 3 134. Defendant knew or should have known that its representations concerning its
4 “Compare At” prices, or the sales of other merchants’ identical products,
5 were untrue and/or misleading.
- 6 135. Defendant knows and has known, should reasonably know, or should have
7 known, that its comparative price advertising is, and has been, deceptive,
8 misleading, false, fraudulent, unfair and/or unlawful.
- 9 136. Defendant knew or should have known that using inflated and/or unverified
10 comparative reference prices without verifying that they were prices at
11 which substantial sales of those products had been made in California,
12 thereby creating either fictitious or inflated “Compare At” prices and either
13 fictitious or inflated discounts or savings, was unlawful.
- 14 137. The use of the term “Compare At” by Defendant on the price tags of the
15 products sold in its California Stein Mart stores constituted the
16 dissemination of untrue, deceptive and/or misleading statements to
17 consumers about the prices of the products so listed as compared with the
18 prices offered by other merchants for the same products. Defendant knew,
19 or by the exercise of reasonable care should have known, that those
20 statements were untrue, deceptive, and/or misleading. Each such statement
21 constitutes, and has constituted, a separate violation of California Business
22 & Professions Code §17500. Each such statement also violates, and has
23 violated, California Civil Code §1750(a)(13).
- 24 138. Plaintiffs, individually and on behalf of all others similarly situated, seek
25 restitution and injunctive relief under the UCL, FAL and CLRA to stop
26 Defendant’s pervasive and rampant false and misleading advertising and
27 marketing campaign.

28 ///

PLAINTIFFS' PURCHASES

1
2 139. Plaintiffs purchased numerous products throughout the Class Period from
3 Defendant's California stores, in reliance on Defendant's false, deceptive
4 and/or misleading advertising and false, deceptive, and/or misleading price
5 comparisons, which she would not otherwise have purchased but for
6 Defendant's false, deceptive and/or misleading advertising, and false,
7 deceptive and/or misleading price comparisons as described herein.

8 **Plaintiff Marilyn Sperling's Purchases:**

9 140. For example, and without limitation, on September 14, 2014, Plaintiff
10 Sperling purchased a pair of Peck & Peck Petite pants from Defendant's La
11 Quinta, California, Stein Mart store for a total payment of \$53.99. The Peck
12 & Peck Petite pants were advertised with a price tag which had two prices
13 on it: a Stein Mart sale price, and a significantly higher "Compare At"
14 reference price. To the best of Sperling's recollection, the Stein Mart sale
15 price was preceded by the phrase "Our Price," and was listed as \$49.99. To
16 the best of Sperling's recollection, the "Compare At" price was preceded by
17 the phrase "Compare At," and was listed as \$78.00.

18 141. Defendant is the exclusive retailer of Peck & Peck pants, and Peck & Peck is
19 Defendant's private label. As such, no retailer other than Defendant sells or
20 has sold Peck & Peck pants at the "Compare At" price advertised by
21 Defendant or at any other price.

22 142. Sperling believes that further investigation and discovery will reveal that
23 Defendant has never sold the Peck & Peck Petite pants that Sperling
24 purchased at the "Compare At" price of \$78.00.

25 143. Therefore the "Compare At" price advertised by Defendant in connection
26 with the Peck & Peck Petite pants that Sperling purchased was false,
27 deceptive, misleading, and/or likely to confuse a reasonable consumer like
28 Sperling because a reasonable consumer would believe, as Sperling did, that

1 the “Compare At” price was a reference to the price at which the Peck &
2 Peck pants actually sold either at Stein Mart or some other retailer.
3 However, the Peck & Peck pants never did sell for the “Compare At” price
4 advertised by Defendant at Stein Mart or at any other retailer. Thus,
5 Sperling, a reasonable consumer, was deceived and misled.

6 144. The “Compare At” price of the Peck & Peck pants was false because it was
7 not a price at which the Peck & Peck pants had ever sold anywhere.

8 145. The “Compare At” price of the Peck & Peck pants was misleading because a
9 reasonable consumer would think that it was a price at which the Peck &
10 Peck pants had sold at some time and at some retailer, and would not think
11 that it was a reference to the supposed price of a “comparable item.”
12 Sperling was misled by the “Compare At” price.

13 146. Defendant’s price tag was likely to confuse a reasonable consumer because,
14 among other things, the words “comparable item” did not appear anywhere
15 on the price tag.

16 147. Defendant’s price tag was misleading and confusing because, among other
17 things, the asterisk next to the word “compare” was so small that a
18 reasonable consumer including Sperling would not notice it.

19 148. Defendant’s price tag was misleading and confusing because, among other
20 things, a reasonable consumer like Sperling would have to look somewhere
21 other than the price tag itself to discover that the “Compare At” price may
22 have been a reference to the supposed price of a “comparable item.”

23 149. By way of further example, and without limitation, in or about November
24 2014, Sperling purchased a Revelation travel bag from Defendant’s La
25 Quinta, California, Stein Mart Store. The Revelation travel bag purchased
26 by Sperling in or about November 2014, was also advertised with a price tag
27 which had two prices advertised on it: a Stein Mart sale price, and a
28 significantly higher “Compare At” reference price. To the best of Sperling’s

1 recollection, the Stein Mart sale price of the Revelation travel bag was
2 approximately \$59.99, and the “Compare At” price was approximately
3 double the sale price, or approximately \$110.00.

4 150. Each product Sperling purchased from Defendant was advertised with a
5 price tag which had two prices advertised on it: a Stein Mart sale price, and a
6 significantly higher “Compare At” reference price.

7 151. The “Compare At” reference prices were not true, bona fide reference prices
8 as discussed herein – i.e., they did not represent the prices at which a
9 substantial volume of sales of the products Sperling purchased had sold for
10 at other principal retail outlets in California in or about October 2014.

11 152. When Sperling shopped at Defendant’s La Quinta, California, Stein Mart
12 store, she was exposed to, saw, believed, and relied on Defendant’s
13 “Compare At” price advertising. Sperling purchased the products that she
14 did from Stein Mart because she believed she was receiving added value, or
15 saving a quantifiable amount of money, equal to the difference between the
16 “Compare At” prices, which she reasonably believed to be verified market
17 retail prices for the actual products she purchased, and the Stein Mart sale
18 prices.

19 153. When Sperling shopped at Defendant’s La Quinta, California, Stein Mart
20 store, she was unaware of Defendant’s definition or interpretation of the
21 “Compare At” price. Defendant failed to clearly, conspicuously, or
22 adequately disclose its definition or interpretation to Sperling or any other
23 Class Member.

24 154. The comparison prices on the items purchased by Sperling at Defendant’s La
25 Quinta, California, Stein Mart store, and the corresponding price reductions,
26 added value, and/or savings, were false, misleading and/or deceptive.

27 155. Sperling is informed and believes, and on that basis alleges, that the
28 prevailing retail prices for the items that she purchased from Defendant were

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

10 156. In addition to Sperling’s purchases on September 14, 2014, and in
11 November 2014, Sperling made numerous other purchases of products from
12 Defendant’s La Quinta, California, Stein Mart store throughout the Class
13 Period, including without limitation a pair of Yellow Box sandals which had
14 a Stein Mart sale price of \$49.95 and a “Compare At” reference price of
15 \$59.00. With respect to each such purchase, including the September 14,
16 2014, and November 2014, purchases, Sperling purchased those products
17 from Defendant after viewing and relying on Defendant’s advertising which
18 included false and/or misleading comparison prices placed on the price tags
19 of the items which she purchased. Sperling is informed and believes, and on
20 that basis alleges, that the comparison prices, and the corresponding price
21 reductions and/or savings, were false and deceptive. Sperling is further
22 informed and believes, and on that basis alleges, that the prevailing retail
23 prices for the items that she purchased from Defendant were materially
24 lower than the “Compare At” prices advertised by Defendant. Sperling
25 would not have purchased any such product from Defendant in the absence
26 of Defendant’s false, and/or deceptive, and/or misleading advertising, and/or
27 misrepresentations.

28 ///

1 **Plaintiff Jerred Schuh's Purchases:**

2 157. By way of example, Plaintiff Schuh purchased a Kenneth Cole suit jacket
3 and pants from Defendant's Riverside, California, Stein Mart Store. The
4 Kenneth Cole items purchased by Schuh in or about December 2016, were
5 also advertised with price tags which had two prices advertised on them: a
6 Stein Mart sale price, and a significantly higher "Compare At" reference
7 price. The price of the Kenneth Cole suit jacket was \$109.99 and the suit
8 pants were approximately \$49.99, and the "Compare At" prices were
9 \$225.00 for the suit jacket and \$95.00 for the suit pants. The receipt issued
10 by Defendant, provided to Schuh at the time of purchase, represented the "If
11 Purchased Elsewhere" price was \$320.00.

12 158. Each product Schuh purchased from Defendant was advertised with a price
13 tag which had two prices advertised on it: a Stein Mart sale price, and a
14 significantly higher "Compare At" reference price.

15 159. The "Compare At" reference prices were not true, bona fide reference prices
16 as discussed herein – i.e., they did not represent the prices at which a
17 substantial volume of sales of the products Schuh purchased had sold for at
18 other principal retail outlets in California in or about December 2016.

19 160. When Schuh shopped at Defendant's Riverside, California, Stein Mart store,
20 he was exposed to, saw, believed, and relied on Defendant's "Compare At"
21 price advertising. Schuh purchased the products that he did from Stein Mart
22 because he believed he was receiving added value, or saving a quantifiable
23 amount of money, equal to the difference between the "Compare At" prices,
24 which he reasonably believed to be verified market retail prices for the
25 actual products he purchased, and the Stein Mart sale prices.

26 161. When Schuh shopped at Defendant's Riverside, California, Stein Mart store,
27 he was unaware of Defendant's definition or interpretation of the "Compare
28

1 At” price. Defendant failed to clearly, conspicuously, or adequately disclose
2 its definition or interpretation to Schuh or any other Class Member.

3 162. The comparison prices on the items purchased by Schuh at Defendant’s
4 Riverside, California, Stein Mart store, and the corresponding price
5 reductions, added value, and/or savings, were false, misleading and/or
6 deceptive.

7 163. Schuh is informed and believes, and on that basis alleges, that the prevailing
8 retail prices for the items that he purchased from Defendant were materially
9 lower than the “Compare At” prices advertised by Defendant. Schuh
10 reasonably believed that the “Compare At” prices associated with the items
11 that he purchased from Defendant were the then prevailing retail prices for
12 the items at other full-price retailers. He reasonably believed that the
13 “Compare At” prices were the prices he would pay for those items at other
14 retailers in his general area. Schuh would not have purchased any such
15 product from Defendant in the absence of Defendant’s false, misleading
16 and/or deceptive advertising, and/or misrepresentations as described more
17 fully herein.

18 164. By way of further example, Schuh purchased an Alan Flusser shirt from
19 Defendant’s Poway, California, Stein Mart Store. The Alan Flusser item
20 purchased by Schuh in or about January 2017, was also advertised with a
21 price tag which had two prices advertised on it: a Stein Mart sale price, and a
22 significantly higher “Compare At” reference price. The price of the Alan
23 Flusser shirt was \$34.99, and the “Compare At” price was \$80.00. The
24 receipt issued by Defendant, provided to Schuh, at the time of purchase,
25 represented the “If Purchased Elsewhere” price was \$80.00. The Alan
26 Flusser shirt is exclusive and only sold by Defendant’s retail store.

27
28

- 1 165. Each product Schuh purchased from Defendant was advertised with a price
2 tag which had two prices advertised on it: a Stein Mart sale price, and a
3 significantly higher “Compare At” reference price.
- 4 166. The “Compare At” reference prices were not true, bona fide reference prices
5 as discussed herein – i.e., they did not represent the prices at which a
6 substantial volume of sales of the products Schuh purchased had sold for at
7 other principal retail outlets in California in or about January 2017.
- 8 167. When Schuh shopped at Defendant’s Poway, California, Stein Mart store, he
9 was exposed to, saw, believed, and relied on Defendant’s “Compare At”
10 price advertising. Schuh purchased the products that he did from Stein Mart
11 because he believed he was receiving added value, or saving a quantifiable
12 amount of money, equal to the difference between the “Compare At” prices,
13 which he reasonably believed to be verified market retail prices for the
14 actual products he purchased, and the Stein Mart sale prices.
- 15 168. When Schuh shopped at Defendant’s Poway, California, Stein Mart store, he
16 was unaware of Defendant’s definition or interpretation of the “Compare
17 At” price. Defendant failed to clearly, conspicuously, or adequately disclose
18 its definition or interpretation to Schuh or any other Class Member.
- 19 169. The comparison prices on the items purchased by Schuh at Defendant’s
20 Poway, California, Stein Mart store, and the corresponding price reductions,
21 added value, and/or savings, were false, misleading and/or deceptive.
- 22 170. Schuh is informed and believes, and on that basis alleges, that the prevailing
23 retail prices for the items that he purchased from Defendant were materially
24 lower than the “Compare At” prices advertised by Defendant. Schuh
25 reasonably believed that the “Compare At” prices associated with the items
26 that he purchased from Defendant were the then prevailing retail prices for
27 the items at other full-price retailers. He reasonably believed that the
28 “Compare At” prices were the prices he would pay for those items at other

1 retailers in his general area. Schuh would not have purchased any such
2 product from Defendant in the absence of Defendant's false, misleading
3 and/or deceptive advertising, and/or misrepresentations as described more
4 fully herein.

5 **CLASS ACTION ALLEGATIONS**

6 171. Plaintiffs bring this action on behalf of themselves and on behalf of all other
7 persons similarly situated (the "Class" or "Class Members") against
8 Defendant, namely:

9 All persons who, while in the State of California, and between July
10 15, 2011, and the present (the "Class Period"), purchased from Stein
11 Mart one or more items at any Stein Mart store in the State of
12 California with a price tag that contained a "Compare At" price which
13 was higher than the price listed as the Stein Mart sale price on the
14 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.

15 172. Plaintiffs reserve the right to expand, limit, modify, or amend this class
16 definition, including the addition of one or more subclasses, in connection
17 with their motion for class certification, or at any other time, based upon,
18 among other things, changing circumstances and/or new facts obtained
19 during discovery.

20 173. Defendant's deceptive, misleading, and/or false comparative price
21 advertising scheme, disseminated to California consumers via
22 representations on the price tags of each of Defendant's items in its
23 California Stein Mart stores, has been rampant throughout California as part
24 of a massive, years-long, pervasive campaign and has been consistent across
25 all of Defendant's merchandise at each of its stores throughout California.
26 For example, Defendant's pricing scheme has throughout the Class Period
27 been prominently displayed directly on the price tag of each item sold, with
28 express references to alleged comparative prices that have never existed

1 and/or do not, and/or did not then, currently constitute the prevailing market
2 retail prices for such merchandise or prices at which a substantial volume of
3 sales of each such product had been made in California.

4 174. Plaintiffs and all other Class Members were each exposed to Defendant’s
5 deceptive, misleading, and/or false comparative price advertising as
6 described herein.

7 175. Plaintiffs are informed and believe, and on that basis allege, that hundreds of
8 thousands, of California consumers have been victims of Defendant’s
9 deceptive, misleading and unlawful pricing scheme.

10 176. Plaintiffs are and have been members of the proposed Class described
11 herein.

12 177. The number of persons in the proposed Class is so numerous that joinder of
13 all such persons would be impracticable. While the exact number and
14 identities of all such persons are unknown to Plaintiffs at this time and can
15 only be obtained through appropriate discovery, Plaintiffs are informed and
16 believe, and on that basis allege, that the proposed Class herein includes
17 over 100,000 persons.

18 178. Common questions of law and/or fact exist in this case with respect to the
19 Class which predominate over any questions affecting only individual
20 members of the Class, which do not vary between members thereof, and
21 which drive the resolution of the claims of Plaintiffs and all other Class
22 Members.

23 179. The common questions of law and/or fact include, but are not limited to:
24 a. Whether products at Stein Mart stores in California are advertised
25 with “Compare At” reference prices;
26 b. Whether a reasonable consumer would interpret the phrase “Compare
27 At” as Defendant interprets it;
28

- 1 c. How a reasonable consumer interprets the phrase “Compare At” on a
- 2 price tag;
- 3 d. Whether a reasonable consumer is likely to be deceived by
- 4 Defendant’s use of its “Compare At” reference prices;
- 5 e. Whether the phrase “Compare At” is susceptible to more than one
- 6 reasonable interpretation;
- 7 f. Whether the phrase “Compare At” is misleading and/or deceptive;
- 8 g. Whether, during the Class Period, Defendant used false and/or
- 9 misleading “Compare At” prices on the price tags of items sold in its
- 10 California stores, and whether Defendant falsely advertised
- 11 comparative price discounts for its merchandise;
- 12 h. Whether, during the Class Period, the “Compare At” prices advertised
- 13 by Defendant were in fact the prevailing market prices for the
- 14 respective identical items sold by other retailers in the marketplace at
- 15 the time of the dissemination and/or publication of the advertised
- 16 “Compare At” prices;
- 17 i. Whether, during the Class Period, the “Compare At” prices advertised
- 18 by Defendant were in fact prices at which substantial sales of those
- 19 products were made at principal retail outlets in California;
- 20 j. Whether Defendant failed to adequately disclose its interpretation of
- 21 its “Compare At” reference prices to consumers;
- 22 k. Whether Defendant’s disclosures of its interpretation of its “Compare
- 23 At” reference prices comply with established legal requirements for
- 24 online disclosures;
- 25 l. Whether Defendant’s price tags omit necessary information;
- 26 m. Whether Defendant adequately verified that its “Compare At”
- 27 reference prices meet FTC and/or other legal requirements;
- 28

- 1 n. Whether Defendant’s price-comparison advertising was false,
2 deceptive or misleading within the meaning of the UCL, FAL, CLRA
3 and/or FTCA;
- 4 o. Whether Defendant’s comparative pricing on its “Compare At” price
5 tags would be material to a reasonable consumer’s purchasing
6 decisions;
- 7 p. Whether Defendant engaged in unfair, unlawful and/or fraudulent
8 business practices under California law;
- 9 q. Whether Defendant misrepresented and/or failed to disclose material
10 facts about its product pricing and purported discounts;
- 11 r. Whether Defendant has made false or misleading statements of fact
12 concerning the reasons for, existence of, or amounts of price
13 reductions;
- 14 s. Whether Class Members are entitled to damages and/or restitution;
15 and, if so, what the proper measure of restitution is; and,
- 16 t. Whether Defendant continues to use false, deceptive, misleading
17 and/or unlawful price comparisons such that injunctions are
18 necessary.

19 180. Plaintiffs’ claims and those of all other Class Members arise out of a
20 common course of conduct by Defendant.

21 181. All Class Members, including the proposed Class representatives, were
22 exposed to Defendant’s misrepresentations or omissions of material fact
23 claiming that its “Compare At” prices were accurate bona fide comparison
24 prices. Defendant’s misrepresentations or omissions of material fact were
25 uniformly made to all respective Class Members. In addition, it can be
26 reasonably presumed that all Class Members, including Plaintiffs,
27 affirmatively acted in response to the representations contained in
28

1 Defendant's false comparative price advertising scheme when purchasing
2 merchandise at each and any of Defendant's stores in California.

3 182. The common questions of law and/or fact in this case are susceptible to
4 common proof.

5 183. Resolution of the common questions of law and/or fact in this case will
6 resolve issues that are central to Plaintiffs' claims and the claims of all other
7 Class Members.

8 184. The claims of Plaintiffs and all Class Members involve the same untrue,
9 deceptive, and/or misleading representations by Defendant conveyed to each
10 Class Member by way of representations on the price tags of each product
11 sold to each Class Member.

12 185. Each Class Members' claims, including those of Plaintiffs, allege that
13 Defendant's price tags convey a deceptive, misleading, and/or untrue
14 representation that the price at which Defendant offered a product was lower
15 compared to a fictitious, deceptive, or misleading "Compare At" price.

16 186. Common proof in this case will produce a common answer as to whether
17 Defendant's use of "Compare At" reference prices complies with legal
18 requirements for the use of such reference prices, and whether Defendant's
19 price-comparison advertising resulted in false, deceptive, or misleading price
20 comparisons.

21 187. Common proof will resolve the common questions essential to resolution of
22 the Class claims in this case in one stroke for all Class Members.

23 188. The claims of the named Plaintiffs in this case are typical of, and not
24 antagonistic to, those of the other Class Members which they seek to
25 represent. Plaintiffs and the Class they seek to represent have all been
26 exposed to and deceived (or were likely to be deceived) by Defendant's false
27 comparative price advertising scheme, as alleged herein.

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1 189. The crux of Plaintiffs' claims - that Defendant's price tags on each item in
2 each of its California stores convey false, deceptive, and/or misleading
3 comparative prices as described more fully herein - is common to all Class
4 Members.

5 190. Plaintiffs' claims, and those of all Class Members, are based on conduct
6 which is not unique to Plaintiffs.

7 191. Plaintiffs and all Class Members have been injured by the same common
8 course of conduct by Defendant, and have suffered the same or similar
9 injury, as alleged herein.

10 192. Disposition of Plaintiffs' claims in a class action will benefit all parties and
11 the Court.

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

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

17 195. In this case, Plaintiffs seek to recover relatively small sums for themselves
18 and all other Class Members. Accordingly, the disparity between the cost of
19 litigating individual claims and the individual recoveries sought make
20 individual claims highly unlikely, if not impossible. Litigation costs would
21 render individual prosecution of Class Members' claims prohibitive. In
22 cases such as this, where the individual recoveries sought by each Class
23 Member are relatively small and eclipsed by the cost of litigating an
24 individual claim, a class action is the only method by which Class Members
25 may hope to resolve their claims.

26 196. The prosecution of separate actions by individual members of the proposed
27 Class herein would create a risk of inconsistent and/or varying adjudications
28 with respect to individual members of the proposed Class which would or

1 may establish incompatible standards of conduct for Defendant, and which
2 would also create a risk of adjudications with respect to individual members
3 of the proposed Class herein which would, as a practical matter, be
4 dispositive of the interests of other members of the proposed Class not
5 parties to the particular individual adjudications, and/or would or may
6 substantially impede or impair the ability of those other members to protect
7 their interests.

8 197. Plaintiffs are adequate representatives of the Class they seek to represent
9 because they are members of the Class, and their interests do not conflict
10 with the interests of the Class Members they seek to represent. Plaintiffs
11 will fairly and adequately represent and protect the interest of the Class
12 because their interests are not antagonistic to the Class. Plaintiffs have no
13 conflict of interest with any other Class Member. Plaintiffs have retained
14 counsel who are competent and experienced in the prosecution of consumer
15 fraud and class action litigation. Plaintiffs and their counsel will prosecute
16 this action vigorously on behalf of the Class.

17 198. Plaintiffs are informed and believe, and on that basis allege, that Defendant
18 has one or more databases through which a significant majority of Class
19 Members may be identified and ascertained, and that Defendant maintains
20 contact information, including email and home mailing addresses, through
21 which notice of this action could be disseminated in accordance with due
22 process requirements.

23 199. The definition of the proposed Class herein objectively depicts who the
24 members of the Class are, making it administratively feasible to determine
25 whether a particular person is a Member of the Class described herein.
26 Because the alleged misrepresentations in this case (i.e., the false, deceptive,
27 and/or misleading comparative prices) appear on the price tags of each
28

1 product purchased, there is no concern that the Class may include
2 individuals who were not exposed to Defendant’s misrepresentations.

3 **FIRST CAUSE OF ACTION**

4 **UNFAIR BUSINESS PRACTICES**

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

6 (By Plaintiffs on behalf of themselves and all others similarly situated, and the
7 general public, against Defendant)

8 200. Plaintiffs re-alleges and incorporate by reference, as though fully set forth
9 herein, all previous paragraphs of this Complaint.

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

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

15 203. Defendant’s use of and reference to materially misleading, deceptive, and/or
16 false “Compare At” prices on the price tags of merchandise sold to
17 consumers in California Stein Mart stores violated and continues to violate
18 the FTCA, 15 U.S.C. §45(a)(1) and 15 U.S.C. §52(a), as well as FTC
19 Pricing Guides. It also violated and continues to violate Cal. Bus. & Prof.
20 Code §§17200 and 17501, and Cal. Civ. Code §1770(a)(13), by, among
21 other things, advertising false comparative prices as described herein.

22 204. Defendant has violated the “unfair” prong of the UCL by representing false,
23 deceptive, and/or misleading comparative prices and corresponding price
24 discounts and/or savings for merchandise where Defendant, in fact, inflated,
25 estimated, or fabricated the purported “Compare At” prices for such
26 products, and failed to adequately disclose to consumers what such
27 “Compare At” prices were, such that the promised discount and/or saving
28 was false, misleading and/or deceptive.

- 1 205. These acts and practices were unfair because they caused Plaintiffs, and
2 were likely to cause reasonable consumers, to falsely believe that Defendant
3 is, and has throughout the Class Period been, offering value, discounts or
4 bargains from the prevailing market price, value or worth of the products
5 sold that did not, in fact, exist. As a result, purchasers, including Plaintiffs,
6 reasonably perceived that they were receiving products that regularly sold in
7 the retail marketplace at substantially higher prices than what they paid (and
8 were, therefore, worth more or had a higher value than they actually had).
9 This perception has induced reasonable purchasers, including Plaintiffs, to
10 buy such products, which they otherwise would not have purchased.
- 11 206. Plaintiffs and all other Class Members were likely to be deceived by
12 Defendants' use of the term "Compare At" on the price tags of merchandise
13 at Stein Mart stores in California.
- 14 207. In deciding to purchase merchandise at Stein Mart, Plaintiffs relied on
15 Defendant's misleading and deceptive representations regarding "Compare
16 At" prices. The comparative "Compare At" prices placed by Defendant on
17 the price tags of merchandise at its California stores played a substantial role
18 in Plaintiffs' decisions to purchase the products they purchased from
19 Defendant, and Plaintiffs would not have purchased those items in the
20 absence of Defendant's misrepresentations. Accordingly, Plaintiffs have
21 suffered monetary loss as a direct result of Defendant's unlawful practices
22 described herein.
- 23 208. Plaintiffs, like all other Class Members, saw Defendant's "Compare At"
24 reference prices on the products they purchased before purchasing those
25 products. The "Compare At" prices were material to Plaintiffs, as they were
26 to all other Class Members. Plaintiffs relied on the "Compare At" prices in
27 making their purchasing decisions. Plaintiffs, like all other Class members,
28 placed added value on the products they purchased from Stein Mart because

1 they believed the “Compare At” reference prices were true, accurate,
2 verified comparative reference prices that represented the market retail
3 prices of the products they purchased. Because Defendant’s “Compare At”
4 prices were not true, accurate, or verified comparative reference prices (as
5 described herein), the actual value of the products Plaintiffs and all other
6 Class Members purchased at Stein Mart was less than they believed and less
7 than what they paid for those products. Plaintiffs and all other Class
8 Members therefore paid more for the products they purchased from
9 Defendant than the value they received.

10 209. The gravity of the harm to Class Members resulting from these unfair acts
11 and practices outweighed any conceivable reasons, justifications and/or
12 motives of Defendant for engaging in such deceptive acts and practices. By
13 committing the acts and practices alleged above, Defendant engaged in
14 unfair business practices within the meaning of California Business &
15 Professions Code §17200, *et seq.*

16 210. Through its unfair acts and practices, Defendant has improperly obtained
17 money from Plaintiffs and all other Class Members. As such, Plaintiffs
18 requests that this Court cause Defendant to restore this money to Plaintiffs
19 and all Class Members, and to enjoin Defendant from continuing to violate
20 the UCL as discussed herein and/or from violating the UCL in the future.
21 Otherwise, Plaintiffs, the Class, and members of the general public may be
22 irreparably harmed and/or denied an effective and complete remedy if such
23 an order is not granted.

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SECOND CAUSE OF ACTION

FRAUDULENT BUSINESS PRACTICES

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

(By Plaintiffs on behalf of themselves and all others similarly situated, and the general public, against Defendant)

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

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

213. Defendant’s use of and reference to materially misleading, deceptive, and/or false “Compare At” prices on the price tags of merchandise sold to consumers in California Stein Mart stores violated and continues to violate the FTCA, 15 U.S.C. §45(a)(1) and 15 U.S.C. §52(a), as well as FTC Pricing Guides. It also violated and continues to violate Cal. Bus. & Prof. Code §§17200 and 17501, and Cal. Civ. Code §1770(a)(13), by, among other things, advertising false comparative prices as described herein.

214. Defendant’s false comparative prices, including, but not limited to, its “Compare At” prices placed on the price tags of the products sold in its California Stein Mart stores, were “fraudulent” within the meaning of the UCL because they deceived Plaintiffs, and were likely to deceive reasonable consumers and Class Members, into believing that Defendant was offering value, discounts or bargains from the prevailing market price, value or worth of the products sold that did not, in fact, exist. As a result, purchasers, including Plaintiffs, reasonably perceived that they were receiving products that regularly sold in the retail marketplace at substantially higher prices than what they paid (and were, therefore, worth more and had a higher value than they actually had). This perception induced reasonable purchasers,

1 including Plaintiffs, to buy such products from Defendant's stores in
2 California, which they otherwise would not have purchased.

3 215. Defendant's acts and practices as described herein have deceived Plaintiffs
4 and were highly likely to deceive reasonable members of the consuming
5 public. In deciding to purchase merchandise at Stein Mart, Plaintiffs relied
6 on Defendant's misleading and deceptive representations regarding its
7 "Compare At" prices. The comparative "Compare At" prices placed by
8 Defendant on the price tags of merchandise at Stein Mart stores in California
9 played a substantial role in Plaintiffs' decisions to purchase those products,
10 and Plaintiffs would not have purchased those items in the absence of
11 Defendant's misrepresentations. Accordingly, Plaintiffs have suffered
12 monetary loss as a direct result of Defendant's unlawful practices, and did
13 not receive the value they thought they were getting, as described herein.

14 216. As a result of the conduct described above, Defendant has been unjustly
15 enriched at the expense of Plaintiffs and all other Class Members.
16 Specifically, Defendant has been unjustly enriched by obtaining revenues
17 and profits that it would not otherwise have obtained absent its false,
18 misleading and/or deceptive conduct.

19 217. Through its fraudulent acts and practices, Defendant has improperly
20 obtained money from Plaintiffs and all other Class Members. As such,
21 Plaintiffs request that this Court cause Defendant to restore this money to
22 Plaintiffs and all Class Members, and to enjoin Defendant from continuing
23 to violate the UCL as discussed herein and/or from violating the UCL in the
24 future. Otherwise, Plaintiffs, the Class, and members of the general public
25 may be irreparably harmed and/or denied an effective and complete remedy
26 if such an order is not granted.

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THIRD CAUSE OF ACTION

UNLAWFUL BUSINESS PRACTICES

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

(By Plaintiffs on behalf of themselves and all others similarly situated, and the general public, against Defendant)

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

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

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

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

222. Defendant’s use of and reference to materially misleading, deceptive, and/or false “Compare At” prices on the price tags of merchandise sold to consumers in California Stein Mart stores violated and continues to violate the FTCA, 15 U.S.C. §45(a)(1) and 15 U.S.C. §52(a), as well as FTC Pricing Guides. It also violated and continues to violate Cal. Bus. & Prof. Code §§17200 and 17501, and Cal. Civ. Code §1770(a)(13), by, among other things, advertising false comparative prices as described herein.

223. As a result of the conduct described above, Defendant has been unjustly enriched at the expense of Plaintiffs and other Class Members. Specifically, Defendant has been unjustly enriched by obtaining revenues and profits that it would not otherwise have obtained absent its false, misleading and deceptive conduct.

1 224. Through its unfair acts and practices, Defendant has improperly obtained
2 money from Plaintiffs and all other Class Members. As such, Plaintiffs
3 request that this Court cause Defendant to restore this money to Plaintiffs
4 and all Class Members, and to enjoin Defendant from continuing to violate
5 the UCL, and/or from violating the UCL in the future. Otherwise, Plaintiffs,
6 the Class, and members of the general public may be irreparably harmed
7 and/or denied an effective and complete remedy if such an order is not
8 granted.

9 **FOURTH CAUSE OF ACTION**

10 **FALSE ADVERTISING**

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

12 (By Plaintiffs on behalf of themselves and all others similarly situated, and the
13 general public, against Defendant)

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

16 226. The FAL prohibits unfair, deceptive, untrue, or misleading advertising,
17 including, but not limited to, false statements as to worth, value and former
18 price.

19 227. The FAL makes it unlawful for a business to disseminate any statement
20 which is untrue or misleading, and which is known, or which by the exercise
21 of reasonable care should be known, to be untrue or misleading.

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

1 were, therefore, worth more than they actually were, and had greater value
2 than they actually did).

3 229. Defendant’s practice of failing to adequately disclose to consumers what the
4 phrase “Compare At” means on the price tags of the merchandise in
5 California Stein Mart stores, was misleading to Plaintiffs and all other Class
6 Members. Defendant knew, or by the exercise of reasonable care should
7 have known, that reasonable consumers, such as Plaintiffs, would not
8 interpret the phrase “Compare At” the way Defendant interprets it.

9 230. On each day throughout the Class Period, Defendant, with the intent to
10 induce members of the public to purchase products offered at its California
11 stores, made or caused to be made each of the untrue and/or misleading
12 statements, claims, and/or representations described herein.

13 231. On each day throughout the Class Period, Defendant, with the intent to
14 induce members of the public to purchase products offered at its California
15 stores, made or caused to be made untrue and/or misleading claims to
16 consumers throughout California including, but not limited to, the following
17 claims with respect to products offered for sale at California Stein Mart
18 stores:

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

- 1 d. That Defendant’s 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.
- 4 232. Defendant knew, or by the exercise of reasonable care should have known,
5 that these claims were untrue, deceptive, and/or misleading.
- 6 233. In addition to the allegations made above, each of Defendant’s statements,
7 claims, and/or representations described herein were untrue, deceptive,
8 and/or misleading because, among other things:
- 9 a. Defendant 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. Defendant’s “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. Defendant’s “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 Defendant interprets it; and/or
- 22 e. Defendant’s “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. Defendant 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 a. The existence and/or amounts of price reductions represented by the
2 difference between Defendant’s “Compare At” reference price and its
3 sale price; and,
4 b. The existence and/or amount of the savings to a consumer purchasing
5 a particular product from Defendant instead of another merchant
6 represented by the difference between Defendant’s “Compare At”
7 reference price and its sale price.

- 8 238. Plaintiffs and each Class Member are “consumers” within the meaning of
9 California Civil Code §1761(d).
- 10 239. Defendant’s sale of merchandise at its Stein Mart stores in California to
11 Plaintiffs and other Class Members are “transactions” within the meaning of
12 California Civil Code §1761(e).
- 13 240. The merchandise purchased by Plaintiffs and other Class Members at
14 Defendant’s stores in California throughout the Class Period are “goods”
15 within the meaning of California Civil Code §1761(a).
- 16 241. Defendant has engaged in unfair methods of competition, and/or unfair
17 and/or deceptive acts or practices against Plaintiffs and other Class
18 Members, in violation of the CLRA, by making false and/or misleading
19 statements of fact concerning the reasons for, the existence of, and/or the
20 amount(s) of price reductions for products sold to Plaintiffs and other Class
21 Members at California Stein Mart stores throughout the Class Period.
22 Defendant provided false, deceptive, and/or misleading “Compare At” prices
23 on the price tags of the merchandise sold in its California stores, and
24 compared those false and/or misleading comparative prices to the prices at
25 which Defendant sold its merchandise, to give the illusion to consumers that
26 they were receiving a discount, or achieving a saving or bargain when
27 compared to the purchase of those same items at other retailers in the
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1 consumers' area. The promised discounts, savings, and/or bargains,
2 however, were deceptive, misleading, and/or false.

3 242. The price reductions alleged by Defendant to be the difference between the
4 "Compare At" prices and Defendant's sale prices did not exist, and were
5 false, deceptive, and/or misleading.

6 243. Defendant's acts and/or practices described herein are in violation of
7 California Civil Code §1770(a)(13).

8 244. As a result of Defendant's acts and/or practices described herein, Plaintiffs
9 and other Class Members have been damaged in that Defendant's unlawful,
10 false and/or misleading acts and/or practices described herein played a
11 substantial and material role in Plaintiffs' and other Class Members'
12 decisions to purchase products at Defendant's Stein Mart stores in
13 California. Absent these acts and/or practices, Plaintiffs and other Class
14 Members would not have purchased the products that they did from
15 Defendant.

16 245. Pursuant to California Civil Code §1780(a)(2), Plaintiffs, on behalf of
17 themselves and all other Class Members, request that this Court enjoin
18 Defendant from continuing to engage in the unlawful and deceptive
19 methods, acts and/or practices alleged herein. Unless Defendant is
20 permanently enjoined from continuing to engage in such violations of the
21 CLRA, California consumers will continue to be damaged by Defendant's
22 acts and/or practices in the same way as those acts and/or practices have
23 damaged Plaintiffs and other Class Members.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of all Class
3 Members, pray for judgment against Defendant as follows:

4 **CLASS CERTIFICATION**

5 1. That the Court certify the Class herein to proceed as a class action pursuant
6 to Fed. R. Civ. Proc. 23(b)(1), 23(b)(2) and/or 23(b)(3), adjudge Plaintiffs to
7 be adequate representatives of the Class, and appoint Plaintiffs' counsel as
8 class counsel for the Class.

9 **VIOLATION OF BUSINESS & PROFESSIONS CODE §§17200 et seq., and**
10 **17500 et seq.:**

- 11 2. A judgment awarding Plaintiffs and all Class Members restitution and/or
12 other equitable relief, including, without limitation, restitutionary
13 disgorgement of all profits, or some portion of profits, and/or unjust
14 enrichment that Defendant obtained from Plaintiffs and the Class as a result
15 of the unlawful, unfair and/or fraudulent business practices described herein.
- 16 3. An order enjoining Defendant from continuing to violate the UCL and/or
17 FAL as described herein, and/or an order enjoining Defendant from violating
18 the UCL and/or FAL in the future.
- 19 4. A judgment awarding Plaintiffs their costs of suit, including reasonable
20 attorneys' fees pursuant to California Code of Civil Procedure §1021.5 and
21 as otherwise permitted by statute or law, and pre- and post-judgment
22 interest; and,
- 23 5. For such other and further relief as the Court may deem proper.

24 **VIOLATION OF CIVIL CODE §1770:**

25 6. An order enjoining Defendant from continuing to violate the CLRA as
26 described herein, and/or an order enjoining Defendant from violating the
27 CLRA in the future;

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- 1 7. A judgment awarding Plaintiffs their costs of suit, including reasonable
- 2 attorneys' fees pursuant to California Civil Code §1780(d) and as otherwise
- 3 permitted by statute, and pre- and post-judgment interest; and,
- 4 8. For such other and further relief as the Court may deem proper.

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6 **DEMAND FOR JURY TRIAL**

7 Plaintiffs hereby demand a trial by jury for all claims so triable.

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10 Dated: April 5, 2016

By: LAW OFFICE OF CHRISTOPHER J.
MOROSOFF

11

12 */s/ Christopher J. Morosoff*

13 CHRISTOPHER J. MOROSOFF,
14 Attorneys for Plaintiffs

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