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8 Attorneys for Plaintiff MARILYN SPERLING

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **EASTERN DIVISION**

12 MARILYN SPERLING, an individual;
13 individually and on behalf of all others
14 similarly situated,

15
16 Plaintiffs,

17 vs.

18
19 STEIN MART, INC., a Florida
20 corporation; and DOES 1 through 100,
inclusive,

21
22 Defendant.

) **CASE NO.: 5:15-cv-01411**

) **CLASS ACTION**

) **COMPLAINT FOR:**

) **1. UNFAIR BUSINESS PRACTICES**
) **(California Business & Professions**
) **Code §17200 et seq.);**

) **2. FRAUDULENT BUSINESS**
) **PRACTICES (California Business**
) **& Professions Code §17200 et seq.);**

) **3. UNLAWFUL BUSINESS**
) **PRACTICES (California Business**
) **& Professions Code §17200 et seq.);**

) **4. FALSE ADVERTISING (California**
) **Business & Professions Code**
) **§17500 et seq.); and,**

) **5. VIOLATION OF CONSUMER**
) **LEGAL REMEDIES ACT**
) **(California Civil Code §1750 et seq.)**

1 Comes now Plaintiff MARILYN SPERLING (“Plaintiff” or “SPERLING”),
2 individually and on behalf of all others similarly situated (collectively referred to
3 as “Class Members”), and for causes of action against Defendants and each of
4 them, based upon personal knowledge, information and belief, and investigation of
5 her counsel, alleges as follows:

6 **JURISDICTION AND VENUE**

- 7 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332(d)
8 (the Class Action Fairness Act of 2005 (“CAFA”)) because the amount in
9 controversy exceeds the value of \$5,000,000, exclusive of interest and costs,
10 because the class consists of 100 or more putative Class Members, and
11 because at least one putative Class Member is diverse from Defendant
12 STEIN MART, INC. (“STEIN MART”), a Florida corporation with its
13 principal place of business in Jacksonville, Florida.
- 14 2. This is a civil action brought under and pursuant to California Business &
15 Professions Code §17200, *et seq.* (the Unfair Competition Law or “UCL”),
16 California Business & Professions Code §17500, *et seq.* (the False
17 Advertising Law or “FAL”), and California Civil Code §1750, *et seq.* (the
18 California Consumer Legal Remedies Act or “CLRA”).
- 19 3. Venue is proper in the Eastern Division of the Central District of California
20 because Defendant transacts a substantial amount of business in this District,
21 Plaintiff resides in Riverside County, California, and the transactions which
22 form the basis of Plaintiff’s claims against Defendant occurred in the city of
23 La Quinta, in Riverside County, California.
- 24 4. The Central District of California has personal jurisdiction over the
25 Defendant named in this action because Defendant is a corporate business
26 entity authorized to do business in the State of California and registered with
27 the California Secretary of State to do business, with sufficient minimum
28 contacts in California. Defendant has otherwise intentionally availed itself

1 of the California market through the ownership and operation of
2 approximately 23 retail stores within the State of California, such that the
3 exercise of jurisdiction over Defendant by the California courts is consistent
4 with traditional notions of fair play and substantial justice.

- 5 5. Defendant transacts business within the county of Riverside, and elsewhere
6 throughout the State of California. The violations of law alleged herein have
7 been carried out within the County of Riverside and throughout the State of
8 California.

9 **INTRODUCTION**

- 10 6. This is a case about deceptive advertising – about one of the nation’s largest
11 retailers using deceptive comparative prices to trick its customers into
12 mistakenly believing they are specific and substantial amounts on name
13 brand items. Plaintiff Marilyn Sperling is a typical American consumer
14 who, like all reasonable consumers, is motivated by the promise of a good
15 deal. Defendant is a large national retailer that makes enormous profits by
16 promising consumers a good deal. Defendant owns and operates a chain of
17 so called “off-price” department stores in California known as Stein Mart
18 stores. Plaintiff occasionally shops at Stein Mart because of Defendant’s
19 promise that she can get name brand products for up to 60% off department
20 store prices. Defendant supports that promise with price tags on each item
21 that feature Defendant’s selling price alongside a much higher supposedly
22 comparative price. The comparative price assures consumers like Plaintiff
23 that they are receiving an exceptionally good deal and saving a specific
24 dollar amount equal to the difference between the two prices. Defendant’s
25 price tags deceptively instruct customers to “compare” the sale prices of its
26 products to these higher comparative prices. The comparative prices,
27 however, are false. They are not true, bona fide comparative prices.
28 Plaintiff, having been duped by Defendant’s deceptive pricing practices like

1 all other Stein Mart customers, brings this action against Defendant for false,
2 deceptive and misleading advertising on behalf of herself and all other
3 consumers who have purchased items at Stein Mart stores in California
4 throughout the period from July 15, 2011, to the present (the “Class
5 Period”).

6 **PARTIES**

- 7 7. Plaintiff SPERLING is, and at all times relevant hereto has been, an
8 individual and a resident of Riverside County, California. On at least 5
9 occasions throughout the Class Period, Plaintiff purchased products from
10 Defendant’s La Quinta, California, Stein Mart store which were falsely,
11 deceptively, and/or misleadingly labeled with false, deceptive, and/or
12 misleading, comparative prices. The marked “Compare At” prices for the
13 products which Plaintiff purchased from Defendant were not actual prices
14 that other retailers were selling those products for. Plaintiff purchased
15 products from Defendant throughout the Class Period in reliance on
16 Defendant’s false, deceptive and misleading advertising, marketing and
17 pricing schemes, which she would not otherwise have purchased absent
18 Defendant’s deceptive advertising and pricing scheme, and Plaintiff has lost
19 money and/or property, and has been damaged as a result.
- 20 8. Plaintiff is informed and believes, and on that basis alleges, that Defendant
21 STEIN MART, INC. (hereinafter “STEIN MART” or “Defendant”) is a
22 Florida corporation, organized under the laws of the state of Florida, which
23 conducts substantial business on a regular and continuous basis in the state
24 of California. STEIN MART’s principal place of business is in Jacksonville,
25 Florida.
- 26 9. The true names and capacities of the Defendants named herein as DOES 1
27 through 100, inclusive, whether individual, corporate, associate or otherwise,
28 are unknown to Plaintiff who therefore sues such Defendants under fictitious

1 names. Plaintiff is informed and believes, and on that basis alleges, that
2 these Defendants, DOES 1 through 100, are in some manner or capacity, and
3 to some degree, legally responsible and liable for the damages of which
4 Plaintiff complains. Plaintiff will seek leave of Court to amend this
5 Complaint to set forth the true names and capacities of all fictitiously-named
6 Defendants within a reasonable time after they become known.

7 **FACTUAL ALLEGATIONS**

8 10. Plaintiff bought luggage and other items from the Stein Mart store in La
9 Quinta, California.

10 11. Plaintiff was lured into Defendant' La Quinta store with the promise of
11 significant savings on name brand merchandise such as, without limitation,
12 apparel, handbags, shoes, and bed, bath and home items.

13 12. Each item offered for sale at Stein Mart is displayed with a comparative
14 price tag which provides 2 prices: the Stein Mart sale price and another
15 significantly higher price described simply as the "Compare To" price.

16 13. Consumers are not told exactly what the phrase "Compare To" means, or
17 given any information about the comparative price other than the dollar
18 amount and the phrase, "Compare To." Nor are they told where STEIN
19 MART came up with the "Compare To" price. They are simply presented
20 with the 2 prices (the Stein Mart sale price, and the higher "Compare To"
21 reference price), left to guess what the "Compare To" price is, and are led to
22 believe that they are actually saving the difference between the 2 prices.

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

26 15. Retailers, like Defendant, present these reference prices (commonly referred
27 to as "advertised reference prices" or "ARPs") to consumers with short tag-
28 line phrases such as "former price," "regular price," "list price," "MSRP," or

1 “compare at.” These marketing phrases are commonly referred to as
2 “semantic cues.”

- 3 16. The semantic cues used by retailers can be either informative or deceptive,
4 depending on the specificity of the language and the truthfulness or accuracy
5 of the ARP.
- 6 17. In the case of specifically worded semantic cues such as “former price” or
7 “regular price,” the ARP can be informative if, and only if, the ARP
8 provided by the retailer is a true, accurate, bona fide former or regular price
9 which the retailer has charged for the item.
- 10 18. On the other hand, vague terms or phrases which are susceptible to more
11 than one reasonable interpretation, such as “compare to,” are almost always
12 misleading and deceptive.
- 13 19. If a semantic cue (a word or phrase attached to an ARP) is clear and
14 susceptible to only one reasonable interpretation, then the use of that word or
15 phrase in connection with an ARP may not be legally prohibited so long as
16 the ARP is a true, bona fide price.
- 17 20. If, on the other hand, a semantic cue is unclear or open to multiple
18 interpretations, as is the case when an ARP is preceded by the undefined and
19 unqualified phrase “compare at,” then the use of that word or phrase in
20 connection with an ARP is deceptive and is thus prohibited by, among other
21 things, the Federal Trade Commission (“FTC”) regulations, 16 C.F.R.
22 §233.1, *et seq.* (commonly referred to as the “FTC Pricing Guides”).
- 23 21. Plaintiff was confronted with ARPs on the items she purchased from
24 Defendant, accompanied by the simple, undefined, unqualified phrase,
25 “Compare At.” Plaintiff reasonably believed, like all reasonable consumers,
26 that the “Compare At” price represented the price that she would expect to
27 pay for those same items at other retailers in her general area. In other
28 words, Plaintiff reasonably believed that the “Compare At” price referred to

1 the then prevailing retail price for that same item - that if she left Stein Mart
2 and shopped around for that same item, she would likely find it elsewhere at
3 the higher “Compare At” price provided by Defendant.

4 22. Defendant, however, had a different definition of what it meant by
5 “Compare At” - a definition undisclosed to consumers and not consistent
6 with the common meaning of the phrase “compare at.”

7 23. Had Plaintiff been savvy enough, and stopped her shopping to get to a
8 computer, log onto Defendant’s website, somehow navigate to the “customer
9 service” section of the website (even though there is no hyperlink on the
10 website which actually reads “customer service” or anything similar), find
11 the “Fair Pricing Policy” link on the right side of the “customer service”
12 page along with a couple dozen other links (including, among others,
13 shipping and return policies, privacy policy, corporate information, and
14 frequently asked questions), and click on the “Fair Pricing Policy”
15 hyperlink, Plaintiff would have found Defendant’s definition of “Compare
16 at” as follows:

17
18 **Fair Pricing Policy**

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

24 24. Nowhere on Defendant’s price tags, or in Defendant’s price advertising, is it
25 made clear to consumers, including Plaintiff, that the advertised “Compare
26 At” price is merely a number that Defendant “believes” to “represent” the
27 “original price” of the same, “or a comparable item,” at full-price
28 department stores, or a “suggested retail price.”

- 1 25. Nowhere on Defendant's price tags, or in Defendant's price advertising, is it
2 made clear to consumers, including Plaintiff, that the advertised "Compare
3 At" price "may not be the starting price posted by" other full-price
4 department stores.
- 5 26. Nowhere on Defendant's price tags, or in Defendant's price advertising, are
6 consumers told that other stores "may offer substantial discounts off" of
7 Defendant's "Compare At" price.
- 8 27. Consumers should not have to sleuth their way 3 layers into Defendant's
9 website just to find Defendant's interpretation of what it means by the
10 phrase "Compare At."
- 11 28. Even if a consumer were to find Defendant's interpretation of the phrase
12 "Compare At" on its website before purchasing a product from Stein Mart, it
13 is still not clear from Defendant's definition exactly what its "Compare At"
14 price actually represents.
- 15 29. Defendant's "Compare At" price could be the original price of the same
16 item. Or, it could be the original price of a "comparable" item. Or neither.
17 Defendant's definition warns that it may not be the "starting price" at all.
- 18 30. The Better Business Bureau ("BBB") Code of Advertising suggests that if a
19 retailer means to compare its selling price to a higher reference price of
20 supposed identical merchandise, the retailer should use clear language in its
21 advertising such as "selling elsewhere at."
- 22 31. If the reference price provided by Defendant is meant by them to be the
23 price of a "comparable item," then the semantic cue (or phrase) attached to
24 that reference price by Defendant should inform the consumer that the
25 reference price is supposedly the "original price" of a "comparable item."
- 26 32. The BBB Code of Advertising suggests that if a retailer means to compare
27 its selling price to a higher reference price of comparable merchandise, the
28 retailer should use clear language in its advertising such as "comparative

1 value,” “compares with merchandise selling at,” or “equal to merchandise
2 selling for.”

3 33. Because Defendant’s “Compare At” price is based on Defendant’s “belief,”
4 it admittedly may not be the “original” or “starting” price of either the same
5 item or a comparable item.

6 34. So, what is it?

7 35. Defendant’s definition suggests that the “Compare At” price on its price tags
8 may in fact be the manufacturer’s “suggested retail price,” otherwise known
9 as an MSRP.

10 36. If the reference price provided by Defendant is meant by them to be a
11 product’s MSRP, then the semantic cue (or phrase) attached to that reference
12 price by Defendant should inform the consumer that the reference price is a
13 supposed MSRP - it should say MSRP.

14 37. Confronted with the simple phrase, “Compare At,” a reasonable consumer
15 would believe that the higher reference price represents the price at which
16 the same item currently sells for in the marketplace – the then-prevailing
17 retail or market price.

18 38. After reading Defendant’s interpretation of the phrase “Compare At,” a
19 reasonable consumer would not know what the reference price represents. It
20 could be the actual original price of the same item; the actual original price
21 of a comparable item; simply what Defendant “believes” to be the original
22 price of the same item; what Defendant “believes” to be the price of a
23 comparable item; or it “may not be the starting price” of either the same item
24 or a comparable item; or it may be the “suggested retail price,” or MSRP.

25 39. Where, as here, the retailer and the consumer do not share the same meaning
26 of the semantic cue (“compare at”), and thus the phrase is open to more than
27 one interpretation, the use of that phrase is misleading and deceptive.
28

1 40. Where, as here, the retailer ascribes a secret, undisclosed meaning to the
2 semantic cue that differs from that which a reasonable consumer, such as
3 Plaintiff, would ascribe to it, the use of that phrase is misleading and
4 deceptive.

5 41. It is a deceptive marketing act and/or practice for Defendant to define its
6 reference prices as either the original prices of the same items, the original
7 prices of comparable items, the MSRPs, or none of the above, but fail to
8 disclose that definition to consumers. There is no reason, other than
9 deception, to use a term like “Compare At” and then provide multiple
10 definitions of that term buried 3 hyperlinks into a website without disclosing
11 that definition to consumers.

12 42. Reasonable consumers, like Plaintiff, would believe that Defendant’s
13 “Compare At” prices referred to the retail prices that consumers would pay
14 at other full-price retailers for the advertised merchandise.

15 43. Unbeknownst to Plaintiff and other consumers, Defendant’s “Compare At”
16 prices do not refer to retail prices at other full-price retailers for the
17 advertised products. Rather, they misleadingly and deceptively may refer to
18 one of many multiple possible prices provided by Defendant’s definition.

19 44. Plaintiff did not, and reasonable consumers would not, interpret the semantic
20 phrase “Compare At” the way Defendant interprets it.

21 45. Therefore, Defendant’s use of the semantic phrase “compare at” in
22 connection with its ARPs for its products was, and is, false, misleading,
23 and/or deceptive.

24 **GENERAL FACTUAL ALLEGATIONS**

25 46. Defendant owns and operate approximately 23 Stein Mart stores throughout
26 the state of California.

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1 47. Throughout the Class Period Defendant routinely and systematically made
2 the untrue, deceptive, and misleading comparative advertising claims
3 described herein about the prices of its products.

4 48. Defendant compared the prices of its products with higher ARPs which
5 consumers were led to believe were the prices supposedly charged by other
6 merchants for the same products. Defendant labeled those higher
7 comparative prices as the “Compare At” prices for those products.

8 49. The price tags placed by Defendant on or near the products it sells to
9 consumers in its California Stein Mart stores include, and have included, that
10 price at which Defendant offered the particular product to consumers, as
11 well as a different, and higher reference price which reasonable consumers
12 would believe to be the price at which other merchants supposedly sell the
13 same product - called the “Compare At” price. The “Compare At” price,
14 however, is, and has been throughout the Class Period, false, deceptive,
15 and/or misleading.

16 50. In advertising the “Compare At” price for a product, Defendant did not, and
17 does not, actually present the prevailing market price for that product, i.e.
18 the price at which other merchants were selling the identical product.
19 Rather, Defendant used, and continues to use, vague, misleading, and/or
20 subjective measures to inflate the comparative prices, and/or used the
21 supposed MSRPs for the products, and thus artificially increased the
22 discounts it claimed to be offering consumers.

23 51. The FTC Guides Against Deceptive Pricing (“Pricing Guides”), 16 C.F.R.
24 §233.2, provide rules for merchants such as Defendant that claim “to offer
25 goods at prices lower than those being charged by others for the same
26 merchandise in the advertiser’s trade area.”

27 52. The FTC Pricing Guides require that when a merchant such as Defendant
28 uses advertising that compares its prices to higher comparative prices for the

1 same merchandise, “the advertised higher price must be based on fact, and
2 not be fictitious or misleading.” The FTC Pricing Guides further provide:

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

7 53. Plaintiff is informed and believes, and on that basis alleges, that the prices
8 which Defendant advertises, and has advertised, as “Compare At” prices are
9 not based on fact, are fictitious, and/or are misleading.

10 54. Plaintiff is informed and believes, and on that basis alleges, that when
11 Defendant advertised prices as “Compare At” prices on the price tags of
12 items sold in its California Stein Mart stores, Defendant was not reasonably
13 certain that the higher price it advertised did not appreciably exceed the
14 price at which substantial sales of the items were being made in the area.

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

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

25 56. According to Defendant’s definition, the prices advertised by Defendant as
26 the “Compare At” prices for some or all of the items sold at Defendant’s
27 California Stein Mart stores was a price that Defendant alleges to be the
28 price of comparable items.

1 57. Defendant did not make clear to consumers that the “Compare At” price was
2 supposed to be the original price of products of similar quality and/or style.

3 58. Plaintiff is informed and believes, and on that basis alleges, that when
4 Defendant’s “Compare At” price allegedly referred to the price of
5 comparable items, Defendant was not reasonably certain that the “Compare
6 At” price did not exceed the price at which similar merchandise was offered
7 by representative retail outlets in the area.

8 59. Where the advertiser’s comparison price is purportedly based on a
9 “suggested retail” price, or manufacturer’s suggested retail price (“MSRP”),
10 the FTC Pricing Guides provide as follows:

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

19 60. With respect to advertised “retail” prices, “suggested retail” prices, or
20 “MSRPs,” the FTC Pricing Guides provide:

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
24 the exact prices at which articles are in fact generally sold at retail. . . .
25 Today, only in the rare case are all sales of an article at the
26 manufacturer’s suggested retail or list price.”

27 61. According to the FTC Pricing Guides, an advertised retail price, suggested
28 retail price, or MSRP:

“[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 advertiser’s
trade area (the area in which he does business). 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 clear and serious danger of
the consumer being misled by an advertised reduction from this price.
. . . [B]efore advertising a manufacturer’s list price as a basis for
comparison with his own lower price, the retailer should ascertain
whether the list price is in fact the price regularly charged by principal
outlets in his area.”

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62. Plaintiff is informed and believes, and on that basis alleges, that the “Compare At” prices which Defendant alleges to be, and have been, “suggested retail” prices, or MSRPs, for its products were not prices at which substantial sales of those products were made in the relevant trade area(s), but were significantly in excess of the highest prices at which substantial sales of those products were made in the relevant trade areas(s).
63. Plaintiff is informed and believes, and on that basis alleges, that Defendant did not ascertain whether the “Compare At” prices which Defendant alleges to be MSRPs were in fact the prices regularly charged by principal outlets in the relevant area(s).
64. Defendant’s depiction of prices, as described herein, falsely represented to consumers that the “Compare At” price was the price at which the product typically sold in the marketplace, from which Defendant offered a discount, with the purported discounted price represented as “Our Price.”
65. Plaintiff is informed and believes, and on that basis alleges, that even if and when a “Compare At” price for a product may have represented an actual “recent documented selling price” of the same product, Defendant chose the highest price at which the product was selling in the marketplace, and presented that price to consumers as the “Compare At” price.
66. Plaintiff is informed and believes, and on that basis alleges, that Defendant’s untrue and misleading representations accompanied virtually every product sold in its California stores each and every day throughout the Class Period, and that Defendant is still making such untrue and misleading comparative price claims for many, if not all, of the products in its California Stein Mart stores.

- 1 67. Defendant has routinely and systematically made untrue and misleading
2 comparative advertising claims about the prices which other merchants
3 charge for the identical products offered by Defendant.
- 4 68. Plaintiff is informed and believes, and on that basis alleges, that often
5 Defendant has not determined or verified the prices other merchants charge
6 for the identical products it sells. Rather, Defendant has used various
7 misleading methods to make up its own prices which it claims other
8 merchants charge for those products, and then claims that its own prices are
9 significantly lower than those “Compare At” prices.
- 10 69. Plaintiff is informed and believes, and on that basis alleges, that Defendant
11 has advertised comparative prices which do not exist.
- 12 70. Plaintiff is informed and believes, and on that basis alleges, that Defendant
13 has made up prices supposedly charged by other merchants.
- 14 71. Defendant knew or should have known that its representations concerning its
15 “Compare At” prices, or other merchants’ prices for identical products, were
16 untrue and/or misleading.
- 17 72. Defendant’s representations were likely to mislead reasonable consumers
18 into believing that Defendant’s prices were significantly lower than the
19 prices offered by other merchants for the identical products, and that
20 consumers would enjoy significant savings by purchasing those products
21 from Defendant instead of from other merchants.
- 22 73. Defendant’s false and/or misleading comparative pricing representations
23 made it more likely that consumers would purchase particular products from
24 Defendant. For some products, Defendant’s misleading claims of a huge
25 discount were likely to persuade consumers who were not inclined to
26 purchase the product at all to buy it from Defendant solely because they
27 were misled into believing that they were getting an unusually good deal.
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1 74. Defendant's misrepresentations about its pricing were likely to mislead
2 consumers into believing that Defendant's prices would always be
3 significantly lower than the prices offered by other merchants for the
4 identical products.

5 75. Defendant misrepresented the existence, nature and amount of price
6 discounts by purporting to offer specific dollar discounts from expressly
7 referenced comparative prices, which were misrepresented as "Compare At"
8 prices. These purported discounts were false, however, because the
9 referenced comparative prices were fabricated and did not represent true
10 comparative prices for identical products sold by other merchants.
11 Furthermore, the advertised "Compare At" prices were not the prevailing
12 market retail prices for the products sold by Defendant.

13 76. Plaintiff is informed and believes, and on that basis alleges, that the alleged
14 comparative prices affixed to each item at Defendant's California Stein Mart
15 stores at all relevant times throughout the Class Period were false prices and
16 not true prices that other merchants had sold any such item for at any time
17 during the time that such item was marked with the alleged "Compare At"
18 price.

19 77. Defendant has engaged in a company-wide, pervasive and continuous
20 campaign of falsely claiming that each of its products sold at a far higher
21 price by other merchants in order to induce Plaintiff and all Class Members
22 to purchase merchandise at purportedly marked-down sale prices. Because
23 such practices are misleading, yet effective, California law prohibits them.

24 78. Plaintiff is informed and believes, and on that basis alleges, that Defendant's
25 false comparative price advertising scheme, disseminated to California
26 consumers via representations on price tags, as well as in-store advertising,
27 print advertising, and/or internet advertising, has been rampant throughout
28 California as part of a massive, years-long, pervasive campaign and has been

1 consistent across all of Defendant's merchandise at each of its Stein Mart
2 stores throughout California. For example, Defendant's pricing scheme has
3 throughout the Class Period been prominently displayed directly on the price
4 tag of each item sold, with express references to alleged comparative prices
5 that have never existed and/or do not, and/or did not then, currently
6 constitute the prevailing market retail prices for such merchandise.

7 79. Plaintiff and all other Class Members were each exposed to Defendant's
8 false, untrue, deceptive and/or misleading comparative price advertising as
9 described herein.

10 80. Plaintiff is informed and believes, and on that basis alleges, that tens of
11 thousands, if not hundreds of thousands, of California consumers have been
12 victims of Defendant's deceptive, misleading and unlawful pricing scheme.

13 81. Defendant knows and has known, should reasonably know, or should have
14 known, that its comparative price advertising scheme is, and has been, false,
15 deceptive, misleading, fraudulent, unfair and/or unlawful.

16 82. Defendant has fraudulently concealed from, and intentionally failed to
17 disclose to, Plaintiff and all other Class Members the truth about its alleged
18 comparative prices.

19 83. At all times relevant herein, Defendant has been under a duty to Plaintiff and
20 all other Class Members to adequately disclose the truth about its alleged
21 "Compare At" prices.

22 84. The facts that Defendant misrepresented and/or failed to disclose are
23 material facts that a reasonable person would have considered material; i.e.,
24 facts that would contribute to a reasonable person's decision to purchase
25 merchandise offered for sale by Defendant. Defendant's false
26 representations of discounts from false, misleading or deceptive comparative
27 prices, and false representations of purported savings, discounts and/or
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1 bargains, are objectively material to the reasonable consumer, and therefore
2 reliance upon such representations may be presumed as a matter of law.

3 85. Plaintiff relied upon Defendant's false, deceptive and/or misleading
4 representations of comparative prices and false representations of purported
5 savings, discounts and bargains when purchasing merchandise from
6 Defendant's Stein Mart store in La Quinta, California.

7 86. Plaintiff and all other Class Members reasonably and justifiably acted and
8 relied to their detriment on Defendant's false, deceptive and/or misleading
9 comparative price advertising, and/or Defendant's failure to disclose, and
10 concealment of, the truth about its false comparative price advertising
11 scheme, in purchasing merchandise at Defendant's Stein Mart stores
12 throughout California.

13 87. Defendant intentionally concealed and failed to disclose the truth about its
14 misrepresentations and false comparative price advertising scheme for the
15 purpose of inducing Plaintiff and other Class Members to purchase apparel
16 and other merchandise at each of its Stein Mart stores throughout California.

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

27 89. Under the FTCA, advertising must be truthful and non-deceptive, advertisers
28 such as Defendant must have evidence to back up their claims, and

1 advertisements cannot be unfair. An advertisement is deceptive, according
2 to the FTC, if it contains a misstatement or omits information that is likely to
3 mislead consumers acting reasonably under the circumstances, and the
4 statement or omitted information is material - that is, important to a
5 consumer's decision to buy or use the product.

6 90. Throughout the Class Period, Defendant's "Compare At" prices contained
7 material misstatements, and/or omitted material information, about its
8 comparative prices that were likely to mislead reasonable consumers.

9 91. A reasonable consumer would interpret Defendant's "Compare At" price as
10 the price at which a substantial number of vendors are selling the identical
11 product.

12 92. Plaintiff is informed and believes, and on that basis alleges, that Defendant
13 was often ignorant of the price at which other merchants were selling the
14 identical products to consumers, and that Defendant did not know whether
15 the "Compare At" price it advertised accurately reflected the price at which
16 the product was typically offered in the marketplace.

17 93. Plaintiff is informed and believes, and on that basis alleges, that Defendant
18 failed to verify that its "Compare At" prices for its products did not exceed
19 the prices at which substantial sales of the products were being made in the
20 marketplace.

21 94. The result of Defendant's ignorance of the accuracy of its "Compare At"
22 prices, and its failure to verify that accuracy, was that consumers were
23 misled into believing that they were receiving substantial savings on the
24 purchase of Defendant's products when compared to prices charged for
25 those same products at other retailers. Plaintiff is informed and believes,
26 and on that basis alleges, that consumers were on occasion misled into
27 paying more for Defendant's products than they would have paid for
28 identical products sold by other merchants.

- 1 95. Defendant's decision to advertise a price which did not actually exist, or
2 which was an MSRP, was likely to deceive consumers by representing that
3 the marketplace had assigned a retail price to that product, and that
4 Defendant's discount off that retail price made Defendant's price attractive.
5 Defendant's representation of the "Compare At" price as an actual price
6 being charged for that product was unlawful, unfair, and/or fraudulent.
- 7 96. Defendant knew or should have known that creating either a fictitious or
8 inflated "Compare At" price to create either a fictitious or inflated discount
9 or savings, was unlawful.
- 10 97. The use of the phrase "Compare At" by Defendant on the price tags of the
11 products sold in its California Stein Mart stores constituted the
12 dissemination of an untrue, deceptive and/or misleading statement to
13 consumers about the price of the product so listed as compared with the
14 prices offered by other merchants for the same product. Defendant knew, or
15 by the exercise of reasonable care should have known, that those statements
16 were untrue, deceptive, and/or misleading. Each such statement constitutes,
17 and has constituted, a separate violation of California Business &
18 Professions Code §17500. Each such statement also violates, and has
19 violated, California Civil Code §1750(a)(13).
- 20 98. Plaintiff, individually and on behalf of all others similarly situated, seeks
21 restitution and injunctive relief under the UCL, FAL and CLRA to stop
22 Defendant's pervasive and rampant false and misleading advertising and
23 marketing campaign.

24 **PLAINTIFF'S PURCHASES**

- 25 99. Plaintiff purchased numerous products throughout the Class Period from
26 Defendant's Stein Mart store in La Quinta, California, in reliance on
27 Defendant's false advertising and false price comparisons, which she would
28 not otherwise have purchased but for Defendant's false, deceptive and/or

1 misleading advertising, and false, deceptive and/or misleading price
2 comparison scheme as described herein.

3 100. For example, and without limitation, on September 14, 2014, Plaintiff
4 purchased a Revelation travel bag from Defendant's La Quinta, California,
5 Stein Mart store for a total payment of \$53.99. The Revelation travel bag
6 purchased by Plaintiff on September 14, 2014, was advertised with a price
7 tag which contained an untrue, deceptive, and/or misleading "Compare At"
8 price representation, as discussed herein – i.e., a higher, yet false, deceptive,
9 and/or misleading "Compare At" reference price.

10 101. Each time Plaintiff shopped at Defendant's La Quinta, California, store,
11 including on September 14, 2014, Plaintiff was exposed to, saw, believed,
12 and relied on Defendant's "Compare At" price advertising.

13 102. Each time Plaintiff shopped at Defendant's La Quinta, California, store,
14 including on September 14, 2014, Plaintiff was unaware of Defendant's
15 definition or interpretation of the "Compare At" price found on its website.
16 Defendant failed to disclose its definition or interpretation to Plaintiff or any
17 other Class Member.

18 103. In addition to Plaintiff's purchase on September 14, 2014, Plaintiff made
19 numerous other purchases of products from Defendant's La Quinta,
20 California, Stein Mart store throughout the Class Period. With respect to
21 each such purchase, including the September 14, 2014, purchase, Plaintiff
22 purchased those products from Defendant after viewing and relying on
23 Defendant's advertising which included the false, deceptive, and/or
24 misleading comparison prices discussed herein placed on the price tags of
25 the items which Plaintiff purchased. Plaintiff is informed and believes, and
26 on that basis alleges, that the comparison prices, and the corresponding price
27 reductions and/or savings, were false, misleading and/or deceptive. Plaintiff
28 is further informed and believes, and on that basis alleges, that the prevailing

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

CLASS ACTION ALLEGATIONS

13
 14 104. Plaintiff brings this action on behalf of herself and on behalf of all other
 15 persons similarly situated (the “Class” or “Class Members”), namely:

16 All persons who, while in the State of California, and between July
 17 15, 2011, and the present (the “Class Period”), purchased from STEIN
 18 MART one or more items at any STEIN MART store in the State of
 19 California with a price tag that contained a “Compare At” price which
 20 was higher than the price listed as the STEIN MART sale price on the
 21 price tag, and who have not received a refund or credit for their
 purchase(s). Excluded from the Class are Defendant, as well as
 Defendant’s 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 Defendant.

22 105. Plaintiff reserves the right to expand, limit, modify, or amend this class
 23 definition, including the addition of one or more subclasses, in connection
 24 with her motion for class certification, or at any other time, based upon,
 25 among other things, changing circumstances and/or new facts obtained
 26 during discovery.

27 106. Each member of the proposed Class herein has been exposed to Defendant’s
 28 false and/or misleading pricing and advertising scheme.

1 107. Plaintiff is and has been a member of the proposed Class described herein.

2 108. The number of persons in the proposed Class herein is so numerous that
3 joinder of all such persons would be impracticable. While the exact number
4 and identities of all such persons are unknown to Plaintiff at this time and
5 can only be obtained through appropriate discovery, Plaintiff is informed
6 and believes, and on that basis alleges, that the proposed Class herein
7 includes over 100,000 persons.

8 109. Common questions of law and/or fact exist in this case with respect to the
9 proposed Class which predominate over any questions affecting only
10 individual members of the Class, which do not vary between members
11 thereof, and which drive the resolution of the claims of Plaintiff and all other
12 Class Members

13 110. The common questions of law and/or fact include, but are not limited to:
14 a. Whether a reasonable consumer would interpret the phrase “Compare
15 At” as Defendant interprets it;
16 b. Whether the phrase “Compare At” is susceptible to more than one
17 reasonable interpretation;
18 c. Whether the phrase “Compare At” is misleading and/or deceptive;
19 d. Whether, during the Class Period, Defendant used false and/or
20 misleading “Compare At” prices on the price tags of items sold in its
21 California Stein Mart stores, and whether Defendant falsely advertised
22 comparative price discounts for its merchandise;
23 e. Whether, during the Class Period, the “Compare At” prices advertised
24 by Defendant were in fact the prevailing market prices for the
25 respective identical items sold by other retailers in the marketplace at
26 the time of the dissemination and/or publication of the advertised
27 “Compare At” prices;
28

- 1 f. Whether Defendant's price-comparison advertising scheme was false,
2 deceptive or misleading within the meaning of the UCL, FAL, and/or
3 CLRA;
- 4 g. Whether Defendant made false, deceptive or misleading statements in
5 its advertisements;
- 6 h. Whether Defendant's comparative price advertising as described
7 herein was likely to deceive a reasonable consumer and/or members
8 of the public;
- 9 i. Whether Defendant's comparative pricing on its "Compare At" price
10 tags would be material to a reasonable consumer's purchasing
11 decisions;
- 12 j. How to calculate the prevailing market prices for products sold in
13 Defendant's California Stein Mart stores;
- 14 k. Whether Defendant engaged in unfair, unlawful and/or fraudulent
15 business practices under California law;
- 16 l. Whether Defendant misrepresented and/or failed to disclose material
17 facts about its product pricing and discounts;
- 18 m. Whether Defendant has made false or misleading statements of fact
19 concerning the reasons for, existence of, or amounts of price
20 reductions;
- 21 n. Whether Defendant's conduct, as alleged herein, was intentional and
22 knowing;
- 23 o. Whether Class Members are entitled to damages and/or restitution;
24 and, if so, what amount of revenues and/or profits Defendant received,
25 and what amount of money is and/or was lost by Class Members as a
26 result of the conduct alleged herein; and,
- 27 p. Whether Defendant continues to use false, misleading and/or illegal
28 price comparisons such that an injunction is necessary.

1 111. Plaintiff's claims and those of all other Class Members arise out of a
2 common course of conduct by Defendant.

3 112. All Class Members, including Plaintiff, were exposed to Defendant's
4 misrepresentations or omissions of material fact claiming that its "Compare
5 At" prices were accurate bona fide comparison prices. Due to the scope and
6 extent of Defendant's consistent false, deceptive and/or misleading price
7 advertising scheme, disseminated in a massive, years-long campaign to
8 California consumers via its false, deceptive and/or misleading "Compare
9 At" prices placed on the price tags of the products sold in its California Stein
10 Mart stores, it can be reasonably inferred that such misrepresentations or
11 omissions of material fact were uniformly made to all Class Members. In
12 addition, it can be reasonably presumed that all Class Members, including
13 Plaintiff, affirmatively acted in response to the representations contained in
14 Defendant's false comparative price advertising scheme when purchasing
15 merchandise at each and any of Defendant's Stein Mart stores in California.

16 113. The common questions of law and/or fact in this case are susceptible to
17 common proof.

18 114. Resolution of the common questions of law and/or fact in this case will
19 resolve issues that are central to the claims of Plaintiff and all other Class
20 Members.

21 115. The claims of Plaintiff and all Class Members involve the same untrue,
22 deceptive, and/or misleading representations by Defendant conveyed to each
23 Class Member by way of representations on the price tags of each product
24 sold to each Class Member.

25 116. Each Class Member's claim, including those of Plaintiff, alleges that
26 Defendant's price tags convey an untrue, deceptive, and/or misleading
27 representation that the price at which Defendant offered a product was lower
28 compared to a fictitious, deceptive, or misleading "Compare At" price.

- 1 117. Common proof in this case will produce a common answer as to whether
2 Defendant's price-comparison advertising resulted in false, deceptive, or
3 misleading price comparisons.
- 4 118. Common proof will resolve the common questions essential to resolution of
5 the Class claims in this case in one stroke for all Class Members.
- 6 119. The claims of the named Plaintiff in this case are typical of, and not
7 antagonistic to, those of the other Class Members which she seeks to
8 represent. Plaintiff and the Class she seeks to represent have all been
9 exposed to and deceived (or were likely to be deceived) by Defendant's false
10 comparative price advertising scheme, as alleged herein.
- 11 120. The crux of Plaintiff's claims - that Defendant's price tags on each item in
12 each of its California stores convey false, deceptive, and/or misleading
13 comparative prices as described more fully herein - is common to all Class
14 Members.
- 15 121. Plaintiff's claims, and those of all Class Members, are based on conduct
16 which is not unique to Plaintiff.
- 17 122. Plaintiff and all Class Members have been injured by the same common
18 course of conduct by Defendant, and have suffered the same or similar
19 injury, as alleged herein.
- 20 123. Disposition of Plaintiff's claims in a class action will benefit all parties and
21 the Court.
- 22 124. A class action in this case is superior to any other available method for the
23 fair and efficient adjudication of the claims presented herein.
- 24 125. If individual Class Members were each required to bring his or her own
25 individual claims, any potential recovery by any such Class Member would
26 be dwarfed by the cost of litigating on an individual basis.
- 27 126. In this case, Plaintiff seeks to recover relatively small sums for herself and
28 all other Class Members. Accordingly, the disparity between the cost of

1 litigating individual claims and the individual recoveries sought make
2 individual claims highly unlikely, if not impossible. Litigation costs would
3 render individual prosecution of Class Members' claims prohibitive. In
4 cases such as this, where the individual recoveries sought by each Class
5 Member are relatively small and eclipsed by the cost of litigating an
6 individual claim, a class action is the only method by which Class Members
7 may hope to resolve their claims.

8 127. A class action is superior to other available means for the fair and efficient
9 adjudication of Plaintiff's and Class Members' claims. Because of the
10 relatively modest size of individual Class Members' claims, few, if any,
11 Class Members could afford to seek legal redress of the wrongs complained
12 of herein on an individual basis. Absent the class action, Class Members
13 and the general public would not likely recover, or would not likely have the
14 chance to recover, damages or restitution, and Defendant will be permitted
15 to retain the proceeds of its misdeeds and continue its unlawful conduct.

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

26 129. Plaintiff is an adequate representative of the Class because she is a member
27 of the Class and her interests do not conflict with the interests of the Class
28 Members she seeks to represent. Plaintiff will fairly and adequately

1 represent and protect the interest of the Class because her interests are not
2 antagonistic to the Class. Plaintiff has no conflict of interest with any other
3 Class Member. Plaintiff has retained counsel who are competent and
4 experienced in the prosecution of consumer fraud and class action litigation.
5 Plaintiff and her counsel will prosecute this action vigorously on behalf of
6 the Class.

7 130. Plaintiff is informed and believes, and on that basis alleges, that Defendant
8 has one or more databases through which a significant majority of Class
9 Members may be identified and ascertained, and it maintains contact
10 information, including email and home mailing addresses, through which
11 notice of this action could be disseminated in accordance with due process
12 requirements.

13 131. The definition of the proposed Class herein objectively depicts who the
14 members of the proposed Class are, making it administratively feasible to
15 determine whether a particular person is a Class Member. Because the
16 alleged misrepresentations in this case (i.e., the false, deceptive, and/or
17 misleading comparative prices) appear on the price tags of each product
18 purchased, there is no concern that the Class may include individuals who
19 were not exposed to Defendant's misrepresentations.

20 **FIRST CAUSE OF ACTION**

21 **UNFAIR BUSINESS PRACTICES**

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

23 (By Plaintiff on behalf of herself and all other similarly situated, and the general
24 public)

25 132. Plaintiff re-alleges and incorporates by reference, as though fully set forth
26 herein, paragraphs 1 through 131 of this Complaint.

- 1 133. The UCL defines unfair business competition to include any “unlawful,
2 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue
3 or misleading” advertising. Cal. Bus. & Prof. Code §17200.
- 4 134. Advertising or promotional practices are unlawful under the UCL if
5 members of the public are likely to be deceived by them.
- 6 135. Defendant has violated the “unfair” prong of the UCL by representing false
7 comparative prices and corresponding price discounts and/or savings for
8 merchandise where Defendant, in fact, inflated, estimated, or fabricated the
9 purported “Compare At” prices for such products, and failed to disclose to
10 consumers that such “Compare At” prices were inflated, estimated, or
11 fabricated, such that the promised discount and/or saving was false,
12 misleading and/or deceptive.
- 13 136. These acts and practices were unfair because they caused Plaintiff, and were
14 likely to cause reasonable consumers, to falsely believe that Defendant is,
15 and has throughout the Class Period been, offering value, discounts or
16 bargains from the prevailing market price, value or worth of the products
17 sold that did not, in fact, exist. As a result, purchasers, including Plaintiff,
18 reasonably perceived that they were receiving products that regularly sold in
19 the retail marketplace at substantially higher prices (and were, therefore,
20 worth more) than what they paid. This perception has induced reasonable
21 purchasers, including Plaintiff, to buy such products, which they otherwise
22 would not have purchased.
- 23 137. Plaintiff and all other Class Members were likely to be deceived by
24 Defendant’s use of the phrase “Compare At” on the price tags of
25 merchandise at its Stein Mart stores in California.
- 26 138. In deciding to purchase merchandise at Defendant’s Stein Mart store,
27 Plaintiff relied on Defendant’s misleading and deceptive representations
28 regarding its supposed “Compare At” prices. The comparative “Compare

1 At” prices placed by Defendant on the price tags of merchandise at Stein
2 Mart stores in California played a substantial role in Plaintiff’s decisions to
3 purchase the products she purchased from Defendant, and Plaintiff would
4 not have purchased those items in the absence of Defendant’s
5 misrepresentations. Accordingly, Plaintiff has suffered monetary loss as a
6 direct result of Defendant’s unlawful practices described herein.

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

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

21 **SECOND CAUSE OF ACTION**

22 **FRAUDULENT BUSINESS PRACTICES**

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

24 (By Plaintiff on behalf of herself and all others similarly situated, and the general
25 public)

26 141. Plaintiff re-alleges and incorporates by reference, as though fully set forth
27 herein, paragraphs 1 through 140 of this Complaint.
28

- 1 142. A business act or practice is “fraudulent” under the UCL if it is likely to
2 deceive members of the consuming public.
- 3 143. Defendant’s false comparative prices, including, but not limited to, its
4 “Compare At” prices placed on the price tags of the products sold in its
5 California Stein Mart stores, were “fraudulent” within the meaning of the
6 UCL because they deceived Plaintiff, and were likely to deceive reasonable
7 consumers and Class Members, into believing that Defendant was offering
8 value, discounts or bargains from the prevailing market price, value or worth
9 of the products sold that did not, in fact, exist. As a result, purchasers,
10 including Plaintiff, reasonably perceived that they were receiving products
11 that regularly sold in the retail marketplace at substantially higher prices
12 (and were, therefore, worth more) than what they paid. This perception
13 induced reasonable purchasers, including Plaintiff, to buy such products
14 from Defendant’s Stein Mart stores in California, which they otherwise
15 would not have purchased.
- 16 144. Defendant’s acts and practices as described herein have deceived Plaintiff
17 and were highly likely to deceive reasonable members of the consuming
18 public. Specifically, in deciding to purchase merchandise at Defendant’s
19 Stein Mart store, Plaintiff relied on Defendant’s misleading and deceptive
20 representations regarding its supposed “Compare At” prices. The
21 comparative “Compare At” prices placed by Defendant on the price tags of
22 merchandise at Stein Mart stores in California played a substantial role in
23 Plaintiff’s decision to purchase those products, and Plaintiff would not have
24 purchased those items in the absence of Defendant’s misrepresentations.
25 Accordingly, Plaintiff has suffered monetary loss as a direct result of
26 Defendant’s unlawful practices described herein.
- 27 145. As a result of the conduct described above, Defendant has been unjustly
28 enriched at the expense of Plaintiff and all other Class Members.

1 Specifically, Defendant has been unjustly enriched by obtaining revenues
2 and profits that it would not otherwise have obtained absent its false,
3 misleading and/or deceptive conduct.

4 146. Through its fraudulent acts and practices, Defendant has improperly
5 obtained money from Plaintiff and all other Class Members. As such,
6 Plaintiff requests that this Court cause Defendant to restore this money to
7 Plaintiff and all Class Members, and to enjoin Defendant from continuing to
8 violate the UCL as discussed herein and/or from violating the UCL in the
9 future. Otherwise, Plaintiff, the Class and members of the general public
10 may be irreparably harmed and/or denied an effective and complete remedy
11 if such an order is not granted.

12 **THIRD CAUSE OF ACTION**

13 **UNLAWFUL BUSINESS PRACTICES**

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

15 (By Plaintiff on behalf of herself and all others similarly situated, and the general
16 public)

17 147. Plaintiff re-alleges and incorporates by reference, as though fully set forth
18 herein, paragraphs 1 through 146 of this Complaint.

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

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

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

27 151. Defendant’s use of and reference to materially false “Compare At” prices on
28 the price tags of merchandise sold to consumers in its California Stein Mart

1 stores violated and continues to violate the FTCA, 15 U.S.C. §45(a)(1) and
2 15 U.S.C. §52(a), as well as FTC Price Guides. It also violated and
3 continues to violate Cal. Bus. & Prof. Code §§17200 and 17501, and Cal.
4 Civ. Code §1770(a)(13), by advertising false comparative prices that were,
5 in fact, not the prevailing market prices at other retailers in the marketplace
6 at the time of the publication.

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

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

20 **FOURTH CAUSE OF ACTION**

21 **FALSE ADVERTISING**

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

23 (By Plaintiff on behalf of herself and all others similarly situated, and the general
24 public)

25 154. Plaintiff re-alleges and incorporates by reference, as though fully set forth
26 herein, paragraphs 1 through 153 of this Complaint.

- 1 155. The FAL prohibits unfair, deceptive, untrue, or misleading advertising,
2 including, but not limited to, false statements as to worth, value and former
3 price.
- 4 156. The FAL makes it unlawful for a business to disseminate any statement
5 which is untrue or misleading, and which is known, or which by the exercise
6 of reasonable care should be known, to be untrue or misleading.
- 7 157. Defendant's practice of disseminating allegedly comparative "Compare At"
8 prices associated with its apparel and other merchandise, which were
9 materially greater than the true prevailing prices of those products, and/or
10 not true comparative prices for those products, as alleged more fully herein,
11 was an unfair, deceptive and misleading advertising practice because it gave
12 the false impression that the products sold by Defendant regularly sold in the
13 retail marketplace at substantially higher prices (and were, therefore, worth
14 more) than they actually were. In fact, the apparel and other merchandise
15 sold by Defendant at its Stein Mart stores in California did not have a
16 prevailing market price close to the "Compare At" prices advertised.
- 17 158. Defendant's practice of disseminating reference prices it alleges to be
18 MSRPs without disclosing to consumers that its "Compare At" prices were
19 meant to be MSRPs was misleading to Plaintiff and all other Class
20 Members. Defendant knew, or by the exercise of reasonable care should
21 have known, that reasonable consumers, such as Plaintiff, would not
22 interpret the statement "Compare At" to mean MSRP.
- 23 159. On each day throughout the Class Period, Defendant, with the intent to
24 induce members of the public to purchase products offered at its California
25 Stein Mart stores, made or caused to be made each of the untrue and/or
26 misleading statements, claims, and/or representations described herein.
- 27 160. On each day throughout the Class Period, Defendant, with the intent to
28 induce members of the public to purchase products offered at its California

1 Stein Mart stores, made or caused to be made untrue and/or misleading
2 claims to consumers throughout California including, but not limited to, the
3 following claims with respect to products offered for sale at its California
4 Stein Mart stores:

- 5 a. That when other merchants offered an identical product for sale,
6 Defendant had previously ascertained and/or determined the price at
7 which those merchants typically offered that identical product for sale.
8 b. That the “Compare At” price for a product was the price at which
9 other merchants typically offered that identical product for sale.
10 c. That Defendant’s sale price for a product was lower than the price at
11 which other merchants typically offered that identical product for sale.
12 d. That Defendant’s sale price for a product was a discount from the
13 price at which other merchants typically offered that identical product
14 for sale.
15 e. That Defendant had previously sold that product at the “Compare At”
16 price advertised for that product.
17 f. That the advertised “retail” price, “suggested retail” price, or
18 “MSRP,” for a product was the price at which other merchants
19 typically offered that identical product for sale.

20 161. Defendant knew, or by the exercise of reasonable care should have known,
21 that these claims were untrue and/or misleading.

22 162. In addition to the allegations made above, each of Defendant’s statements,
23 claims, and/or representations described herein were untrue and/or
24 misleading because, among other things:

- 25 a. Defendant set “Compare At” prices without ascertaining and/or
26 determining the prices at which other merchants typically sold the
27 identical products;

- 1 b. Defendant’s “Compare At” prices, or “MSRP” prices, were fictitious,
2 having been based on something other than the prices at which other
3 merchants typically sold those identical products;
- 4 c. Defendant’s “Compare At” prices, or “MSRP” prices, were calculated
5 by using the highest sales price at which another merchant was
6 offering, or had offered, the identical product for sale, instead of the
7 price at which other merchants typically offered that product for sale
8 to consumers;
- 9 d. A reasonable consumer would not interpret the phrase “Compare At”
10 the way Defendant interprets it, or to mean MSRP; and/or
- 11 e. Defendant’s “Compare At” prices, or “MSRP” prices, were higher
12 than the lowest price at which a consumer would commonly be able to
13 purchase the identical product at a retail establishment in the
14 consumer’s area, and:
- 15 i. Defendant knew that the “Compare At” price, or “MSRP”
16 price, was higher than the lowest price at which a consumer
17 would commonly be able to purchase the identical product at a
18 retail establishment in the consumer’s area; or
- 19 ii. Defendant did not know whether merchants were typically
20 offering the product for sale at the “Compare At” price, or
21 “MSRP” price.

22 163. When Defendant made or caused to be made the untrue and/or misleading
23 claims, statements, and/or misrepresentations described herein to consumers
24 in California, Defendant failed to adequately disclose the facts pleaded
25 herein.

26 164. Through its unfair acts and practices, Defendant has improperly obtained
27 money from Plaintiff and all other Class Members. As such, Plaintiff
28 requests that this Court cause Defendant to restore this money to Plaintiff

1 and all Class Members, and to enjoin Defendant from continuing to violate
2 the FAL, and/or from violating the FAL in the future. Otherwise, Plaintiff,
3 the Class and members of the general public may be irreparably harmed
4 and/or denied an effective and complete remedy if such an order is not
5 granted.

6 **FIFTH CAUSE OF ACTION**

7 **VIOLATION OF CALIFORNIA CONSUMER LEGAL REMEDIES ACT**

8 (California Civil Code §1750 *et seq.*)

9 (By Plaintiff on behalf of herself and all others similarly situated, and the general
10 public)

11 165. Plaintiff re-alleges and incorporates by reference, as though fully set forth
12 herein, paragraphs 1 through 164 of this Complaint.

13 166. 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 Stein Mart stores, made or caused to be made false and/or misleading claims
16 to consumers throughout California including, but not limited to, the
17 following claims with respect to products offered for sale at its California
18 Stein Mart stores:

- 19 a. The existence and/or amounts of the price reductions represented by
20 the difference between the “Compare At” price and Defendant’s sale
21 price; and,
22 b. The existence and/or amount of the savings to a consumer purchasing
23 a particular product from Defendant instead of another merchant
24 represented by the difference between the “Compare At” price and
25 Defendant’s sale price.

26 167. Plaintiff and each Class Member are “consumers” within the meaning of
27 Civil Code §1761(d).
28

- 1 168. Defendant's sale of merchandise at its Stein Mart stores in California to
2 Plaintiff and other Class Members are "transactions" within the meaning of
3 Civil Code §1761(e).
- 4 169. The merchandise purchased by Plaintiff and other Class Members at
5 Defendant's Stein Mart stores in California throughout the Class Period are
6 "goods" within the meaning of Civil Code §1761(a).
- 7 170. Defendant has engaged in unfair methods of competition, and/or unfair
8 and/or deceptive acts or practices against Plaintiff and other Class Members,
9 in violation of the CLRA, by making false and/or misleading statements of
10 fact concerning the reasons for, the existence of, and/or the amount(s) of
11 price reductions for its products sold to Plaintiff and other Class Members at
12 its California Stein Mart stores throughout the Class Period. Defendant
13 provided a false and/or misleading "Compare At" price on the price tags of
14 the items sold in its California Stein Mart stores, and compared that false
15 and/or misleading comparative price to the price at which Defendant sold the
16 items, to give the illusion to consumers that they were receiving a discount,
17 or achieving a saving or bargain when compared to the purchase of those
18 same items at other retailers in the consumer's area. The promised
19 discounts, savings, and/or bargains, however, were false.
- 20 171. The price reductions alleged by Defendant to be the difference between the
21 "Compare At" prices and Defendant's sale prices did not exist, and were
22 false and/or misleading.
- 23 172. Defendant's acts and/or practices described herein are in violation of Civil
24 Code §1770(a)(13).
- 25 173. As a result of Defendant's acts and/or practices described herein, Plaintiff
26 and other Class Members have been damaged in that Defendant's unlawful,
27 false and/or misleading acts and/or practices described herein played a
28 substantial and material role in Plaintiff's and other Class Members'

1 decisions to purchase products at Defendant's Stein Mart stores in
2 California. Absent these acts and/or practices, Plaintiff and other Class
3 Members would not have purchased the products that they did from
4 Defendant.

5 174. Pursuant to California Civil Code §1780(a)(2), Plaintiff, on behalf of herself
6 and all other Class Members, request that this Court enjoin Defendant from
7 continuing to engage in the unlawful and deceptive methods, acts and/or
8 practices alleged herein. Unless Defendant is permanently enjoined from
9 continuing to engage in such violations of the CLRA, California consumers
10 will continue to be damaged by Defendant's acts and/or practices in the
11 same way as those acts and/or practices have damaged Plaintiff and other
12 Class Members.

13
14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff, on behalf of herself and on behalf of all Class
16 Members, prays for judgment against Defendant as follows:

17 **CLASS CERTIFICATION**

18 1. An order certifying that this action may be maintained as a class action, that
19 Plaintiff be appointed Class Representative, and Plaintiff's counsel be
20 appointed Class Counsel.

21 **VIOLATION OF BUSINESS & PROFESSIONS CODE §§17200 et seq., and**
22 **17500 et seq.:**

23 2. A judgment awarding Plaintiff and all Class Members restitution and/or
24 other equitable relief, including, without limitation, restitutionary
25 disgorgement of all profits and unjust enrichment that Defendant obtained
26 from Plaintiff and the Class as a result of its unlawful, unfair and/or
27 fraudulent business practices described herein.

- 1 3. An order enjoining Defendant from continuing to violate the UCL and/or
- 2 FAL as described herein, and/or an order enjoining Defendant from violating
- 3 the UCL and/or FAL in the future.
- 4 4. A judgment awarding Plaintiff her costs of suit, including reasonable
- 5 attorneys' fees pursuant to Code of Civil Procedure §1021.5 and as
- 6 otherwise permitted by statute or law, and pre- and post-judgment interest;
- 7 and,
- 8 5. For such other and further relief as the Court may deem proper.

9 **VIOLATION OF CIVIL CODE §1770:**

- 10 6. An order enjoining Defendant from continuing to violate the CLRA as
- 11 described herein, and/or an order enjoining Defendant from violating the
- 12 CLRA in the future;
- 13 7. A judgment awarding Plaintiff her costs of suit, including reasonable
- 14 attorneys' fees pursuant to Civil Code §1780(d) and as otherwise permitted
- 15 by statute, and pre- and post-judgment interest; and,
- 16 8. For such other and further relief as the Court may deem proper.

17
18 **DEMAND FOR JURY TRIAL**

19 Plaintiff hereby demands a trial by jury for all claims so triable.

20
21
22 Dated: July 15, 2015

By:

23 

24 _____
25 CHRISTOPHER J. MOROSOFF,
26 LAW OFFICE OF CHRISTOPHER J. MOROSOFF
27 Attorneys for Plaintiff MARILYN SPERLING
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