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9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

11 JOSHUA TEPERSON, on behalf of  
12 himself and all others similarly situated,

13  
14 Plaintiff,

15 vs.

16 SEARS ROEBUCK & COMPANY,  
17

18 Defendant.  
19  
20

Case No. '15CV1892 L DHB

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff JOSHUA TEPERSON brings this action on behalf of himself and all  
2 others similarly situated against Defendant SEARS ROEBUCK & COMPANY (“Sears”  
3 or “Defendant”), and states:

4 **I. NATURE OF ACTION**

5 1. This is a class action regarding Defendant’s false and misleading  
6 advertisement of “original” prices, “sale” prices, and corresponding phantom  
7 “markdowns” on merchandise sold in its retail stores and/or Internet website. During the  
8 Class Period (defined below), Defendant advertised false former prices and false price  
9 discounts for merchandise sold throughout its retail stores and/or Internet website.

10 2. During the Class Period, Defendant continually misled consumers by  
11 advertising merchandise at discounted “sale” prices. Defendant would compare the “sale”  
12 prices to false former retail prices, which were misrepresented as “original” or “regular”  
13 retail prices. The advertised discounts overstated and did not represent a bona fide price  
14 at which Defendant formerly sold the merchandise and were nothing more than mere  
15 phantom markdowns, because the represented former prices were artificially inflated and  
16 were never the original prices for merchandise sold at Defendant’s retail stores and/or on  
17 its Internet website. In addition, the represented “original” prices were not the prevailing  
18 market retail prices within three months immediately preceding the publication of the  
19 advertised former prices, as required by California law.

20 3. Defendant conveys its deceptive pricing scheme to consumers through the  
21 use of various media platforms including, but not limited to, its website and online  
22 promotional materials, in-store displays, and print advertisements. For example, on  
23 Defendant’s Internet website ([www.sears.com](http://www.sears.com)) the pricing scheme is prominently  
24 displayed directly under each “discounted” item listed with the “regular” prices, which  
25 never existed and/or did not constitute the prevailing market retail prices for such products  
26 within the three months immediately preceding the publication of the advertisement, with  
27 a line striking through them. Once a consumer clicks on a specific product the former  
28 price is explicitly referred to as the “regular price” directly to the right of the product

1 description and images. In addition, upon check-out, Defendant provides Internet  
2 consumers, including Plaintiff, with sales receipts continuing the misrepresentations  
3 regarding false price discounts. The stated discount from the false former price is listed  
4 for each item purchased and below the “order total” a “regular/clearance price subtotal” is  
5 given along with “sale price savings,” which misrepresents the purported total amount a  
6 consumer would have paid at the “regular” prices and the fabricated amount saved by the  
7 consumer.

8 4. Through its false and misleading marketing, advertising and pricing scheme,  
9 Defendant violated, and continues to violate, California, federal, and other state law  
10 prohibiting advertising goods for sale as discounted from former prices which are false,  
11 and prohibiting misleading statements about the existence and amount of price reductions.  
12 Specifically, Defendant violated, and continues to violate, California’s Business &  
13 Professions Code §§17200, *et seq.* (the “UCL”), California’s Business & Professions  
14 Code §§17500, *et seq.* (the “FAL”), the California Consumers’ Legal Remedies Act,  
15 California Civil Code §§1750, *et seq.* (the “CLRA”), and the Federal Trade Commission  
16 Act (“FTCA”), which prohibits “unfair or deceptive acts or practices in or affecting  
17 commerce” (15 U.S.C. §45(a)(1)) and false advertisements (15 U.S.C. §52(a)).

18 5. Plaintiff brings this action on behalf of himself and other similarly situated  
19 consumers who have purchased one or more items at Defendant’s retail stores and/or on  
20 its Internet website that were deceptively represented as discounted from false former  
21 prices in order to halt the dissemination of this false, misleading, and deceptive price  
22 scheme, correct the false and misleading perception it has created in the minds of  
23 consumers, and obtain redress for those who have purchased this product. Plaintiff seeks  
24 to permanently enjoin Defendant from using false and misleading claims regarding retail  
25 price comparisons in their packaging, labeling, and advertising. Further, Plaintiff seeks to  
26 obtain restitution and other appropriate relief in the amount by which Defendant was  
27 unjustly enriched as a result of its sales of merchandise offered at a false discount.  
28 Finally, Plaintiff seeks reasonable attorneys’ fees pursuant to Cal. Code Civ. Proc.

1 §1021.5 as this lawsuit seeks the enforcement of an important right affecting the public  
2 interest and satisfies the statutory requirements for an award of attorneys' fees.

3 **II. JURISDICTION AND VENUE**

4 6. This Court has original jurisdiction of this Action pursuant to the Class  
5 Action Fairness Act, 28 U.S.C §1332 (d)(2). The matter in controversy, exclusive of  
6 interest and costs, exceeds the sum or value of \$5,000,000 and at least some members of  
7 the proposed Classes have a different citizenship from Defendant.

8 7. The Southern District of California has personal jurisdiction over the  
9 Defendant named in this action because Defendant is a corporation or other business  
10 entity authorized to conduct and does conduct business in the State of California.  
11 Defendant is registered with the California Secretary of State to do sufficient business  
12 with sufficient minimum contacts in California, and/or otherwise intentionally avails itself  
13 of the California market through the ownership and operation of over 200 retail stores  
14 within the State of California.

15 8. Venue is proper under 18 U.S.C. §1965(a) because Defendant transacts  
16 substantial business in this District. A substantial part of the events giving rise to  
17 Plaintiff's claims arose here.

18 **III. PARTIES**

19 **Plaintiff**

20 9. Plaintiff Joshua Teperson resides in San Diego, California. Teperson, in  
21 reliance on Defendant's false and deceptive advertising, marketing, and "discount"  
22 pricing schemes, purchased almost \$4,000 in merchandise through Defendant's Internet  
23 website on November 7, 2014, and was damaged thereby.

24 **Defendant**

25 10. Plaintiff alleges upon information and belief that Defendant Sears Roebuck  
26 & Company is a New York corporation with its principal executive offices in Hoffman  
27 Estates, Illinois. It is a subsidiary of the publicly traded Delaware corporation, Sears  
28 Holding Corporation (NYSE: SHLD). Defendant advertises, markets, distributes, and/or

1 sells product to hundreds of thousands of consumers in California and throughout the  
2 United States.

#### 3 **IV. FACTUAL BACKGROUND**

##### 4 **A. Sears Regularly Engages in Deceptive Pricing**

5 11. Consumers' Checkbook/Center for the Study of Services ("CSS") is an  
6 independent, nonprofit consumer organization based in Washington, D.C. Its stated  
7 purpose is "to provide consumers information to help them get high quality services and  
8 products at the best possible prices."

9 12. Beginning in June 2014, and continuing through March 2015, CSS conducted  
10 a survey of seven national retail chains and Amazon.com tracking prices weekly for six to  
11 10 big-ticket items from each retailer.<sup>1</sup> Most price checks were made online with spot  
12 checking of in-store prices.

13 13. The CSS survey discovered that for some of the stores, including Sears,  
14 "some of the products for almost all of the weeks we checked were offered at sale prices."

15 14. Specifically, the CSS report made the following findings regarding Sears'  
16 price discounting scheme:

17 Of the seven chains we tracked, *Sears had the most egregious always-on-*  
18 *sale pricing practices*: For the nine items we checked at Sears, almost all  
19 were almost always offered at a sale price. Two of the items were offered at  
20 sale prices for 44 out of 44 weeks, one was offered at a sale price for 43 out  
21 of 44 weeks, and one was offered at a sale price for 40 out of 44 weeks.  
22 Except for one item, all the items we tracked at Sears were always or almost  
23 always listed at sale prices. During the rare times Sears sold items at their  
24 regular prices, they were still listed as being "on sale." During these times,  
25 Sears simply omitted the item's regular price.

26 Sears' sale prices are also shown as more steeply discounted from its regular  
27 prices than the sale prices of the other chains we checked. Most items are  
28 shown as being on sale for 40% or more off their regular prices, leading  
customers to believe the "current" sale offers them fantastic deals. The

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<sup>1</sup> The report of the CSS survey "Sale Fail" can be found at <http://www.checkbook.org/salefail/> (last accessed August 25, 2015).

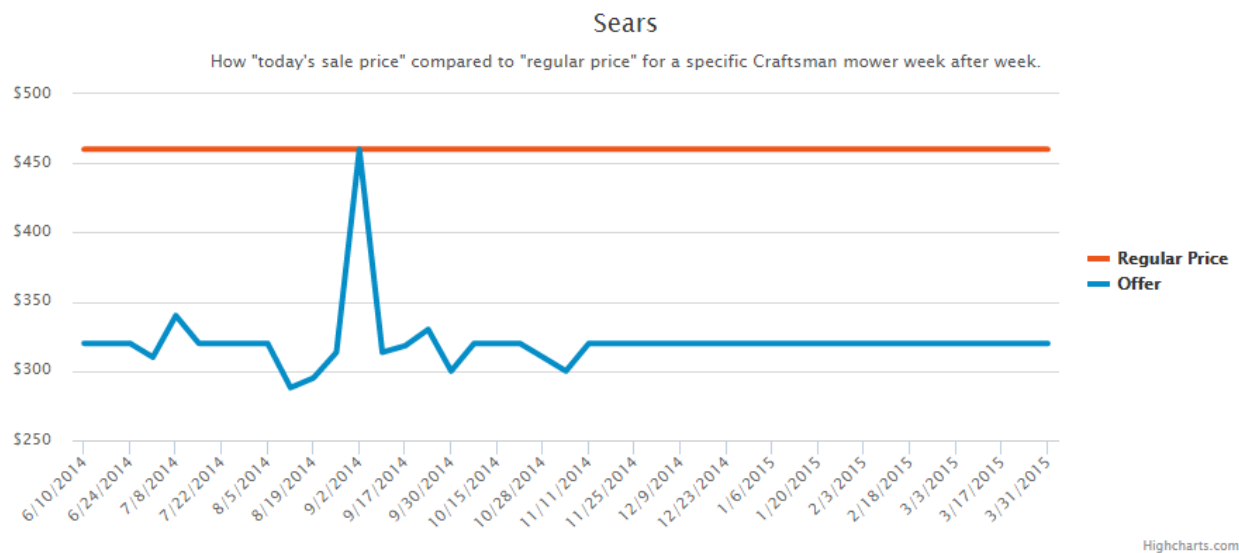
opposite is usually the case: Many items sold by Sears can be purchased for lower prices elsewhere.

\* \* \*

[F]or most of the items we tracked, Sears always or almost always listed them as being on sale. For a few of the items, Sears charged its “regular” prices for only a few weeks. And Sears seemed to list items at regular prices only during weeks that are historically low-traffic weeks (for example, at the end of summer for the mower we priced). *Checkbook.org believes Sears’ pricing practices are deceptive and misleading.*

[Emphasis added.]

15. One representative item offered by Sears and tracked by CSS was offered at the “regular” price only once in the course of the study:



16. As the CSS report put it, at Sears, *“the sales often never end.”* [Emphasis added.]

### B. Plaintiff’s Purchases of Purported Sales Items

17. On November 7, 2014, Plaintiff began searching for new appliances on Defendant’s Internet website (www.sears.com). Upon clicking on the “appliance” section of the website, he observed that directly under each “discounted” appliance the “regular” prices were listed in small, grey font with a line striking through them. Below the

1 “regular” price strikethroughs was the “discounted” price in larger, bold, red font.  
2 Believing he was able to pay significantly less than what certain products were worth and  
3 typically sell for in the retail marketplace, Plaintiff was induced to purchase three major  
4 appliances, all of which were offered at prices considerably lower than their stated regular  
5 prices.

6 18. Plaintiff purchased two Kenmore appliances, which is a Sears private brand,  
7 and one Whirlpool appliance, which was manufactured by others solely for sale by Sears.

8 19. Specifically, relying upon Defendant’s misrepresentations and false and  
9 deceptive advertising, Plaintiff purchased a Kenmore Elite front-load washer, a private  
10 and exclusive brand of Sears. The washer indicated that the regular price was \$1,749.99,  
11 but was being offered at a “sale” price of \$1,099.99, providing Plaintiff with a \$650  
12 “savings.” Upon information and belief, these purported “original” prices and  
13 corresponding price “discounts” and savings were false and misleading, as the prevailing  
14 retail price from the Kenmore Elite front-load washer during the three months  
15 immediately prior to Plaintiff’s purchase was not the \$1,749.99 “regular” price advertised  
16 by Sears. Plaintiff would not have purchased the washer without the misrepresentations  
17 made by Sears. As a result, Plaintiff has been personally victimized by and suffered  
18 economic injury as a direct result of Defendant’s unlawful, unfair, and fraudulent conduct.

19 20. Additionally, relying upon Defendant’s misrepresentations and false and  
20 deceptive advertising, Plaintiff purchased a Kenmore Elite dryer, a private and exclusive  
21 brand of Sears. The dryer indicated that the regular price was \$1,849.99, but was being  
22 offered at a “sale” price of \$1,199.99, providing Plaintiff with another \$650 “savings.”  
23 Upon information and belief, these purported “original” prices and corresponding price  
24 “discounts” and savings were false and misleading, as the prevailing retail price from the  
25 Kenmore Elite dryer during the three months immediately prior to Plaintiff’s purchase  
26 was not the \$1,849.99 “regular” price advertised by Sears. Plaintiff would not have  
27 purchased the dryer without the misrepresentations made by Sears. As a result, Plaintiff  
28

1 has been personally victimized by and suffered economic injury as a direct result of  
2 Defendant's unlawful, unfair, and fraudulent conduct.

3 21. Also, relying upon Defendant's misrepresentations and false and deceptive  
4 advertising, Plaintiff purchased a Whirlpool refrigerator. The refrigerator indicated that  
5 the regular price was \$2,199.99, but was being offered at a "sale" price of \$1,499.99,  
6 providing Plaintiff with a \$700 "savings." Upon information and belief, these purported  
7 "original" prices and corresponding price "discounts" and savings were false and  
8 misleading, as the prevailing retail price from the Whirlpool refrigerator during the three  
9 months immediately prior to Plaintiff's purchase was not the \$2,199.99 "regular" price  
10 advertised by Sears. Plaintiff would not have purchased the refrigerator without the  
11 misrepresentations made by Sears. As a result, Plaintiff has been personally victimized by  
12 and suffered economic injury as a direct result of Defendant's unlawful, unfair, and  
13 fraudulent conduct.

14 22. Furthermore, upon check-out on November 7, 2014, Sears provided Plaintiff  
15 with a sales receipt containing the same misleading information regarding false regular  
16 prices and discounts Plaintiff supposedly received on the merchandise he purchased. The  
17 false "regular" price is indicated to the right of each purchased item with a deliberate line  
18 going through the price to indicate to the consumer they are receiving a "deal." Below  
19 each "regular" price is the "sale" price.

20 23. Defendant knows that its comparative price advertising is false, deceptive,  
21 misleading, and unlawful under California, federal, and other state law.

22 24. Defendant fraudulently concealed from and intentionally failed to disclose to  
23 Plaintiff and other members of the Classes the truth about its advertised price and former  
24 prices.

25 25. At all relevant times, Defendant has been under a duty to Plaintiff and the  
26 Classes to disclose the truth about its "regular" and former prices.

27 26. Plaintiff relied upon Defendant's artificially inflated "regular" prices and  
28 false discounts when purchasing merchandise from Defendant. Plaintiff would not have



1 made such purchases but for Defendant’s representations of fabricated “original” prices  
2 and false discounts.

3 27. Plaintiff and the Classes reasonably and justifiably acted and relied on the  
4 substantial price differences that Defendant advertised, and made purchases believing that  
5 they were receiving a substantial discount on an item of greater value than it actually was.  
6 Plaintiff, like other Class members, was lured in, relied on, and damaged by these pricing  
7 schemes that Defendant carried out.

8 28. Defendant intentionally concealed and failed to disclose material facts  
9 regarding the truth about false former price advertising in order to provoke Plaintiff and  
10 the Classes to purchase merchandise in its retail stores and/or on its Internet website.

11 **V. CLASS ALLEGATIONS**

12 29. Plaintiff brings this action on behalf of himself and all other similarly  
13 situated Class members pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of  
14 Civil Procedure and seeks certification of the following Class against Defendant:

15 All persons who purchased one or more items offered at a purported discount  
16 from an “original” or “regular” any time between August 26, 2011 to the date  
17 of certification (the “Class Period”).

18 30. Plaintiff also brings this action individually and as a Class action pursuant to  
19 Federal Rule of Civil Procedure 23 on behalf of all persons located within the state of  
20 California (the “California Class”) and on behalf of all persons located within states with  
21 similar consumer protection laws (collectively with the Nationwide and California  
22 Classes, the “Classes”).

23 31. Excluded from the Classes are Defendant, as well as its officers, employees,  
24 agents or affiliates, and any judge who presides over this action, as well as all past and  
25 present employees, officers and directors of Sears.

26 32. Plaintiff reserves the right to expand, limit, modify, or amend this class  
27 definition, including the addition of one or more subclasses, in connection with his motion  
28

1 for class certification, or at any other time, based upon, *inter alia*, changing circumstances  
2 and/or new facts obtained during discovery.

3 33. This action is brought and may properly be maintained as a Class action  
4 pursuant to Federal Rule of Civil Procedure 23. This action satisfies the numerosity,  
5 typicality, adequacy, predominance, and superiority requirements of those provisions.

6 34. **Numerosity:** The class members are so numerous that joinder of all members  
7 is impracticable. Plaintiff is informed and believes that the proposed Classes contain  
8 hundreds of thousands of individuals who have been damaged by Defendant's conduct as  
9 alleged herein. The precise number of Class members is unknown to Plaintiff.

10 35. **Existence and Predominance of Common Questions of Law and Fact:**  
11 This action involves common questions of law and fact, which predominate over any  
12 questions affecting individual Class members. These common legal and factual questions  
13 include, but are not limited to, the following:

- 14 a. whether, during the Class Period, Sears used false "regular" or "original"  
15 price labels and falsely advertised price discounts on merchandise it sold in  
16 its retail stores and/or on its Internet website;
- 17 b. whether, during the Class Period, the "original" prices advertised by Sears  
18 were the prevailing market prices for the respective merchandise during the  
19 three months period preceding the dissemination and/or publication of the  
20 advertised former prices;
- 21 c. whether Sears alleged conduct constitutes violations of the laws asserted;
- 22 d. whether Sears engaged in unfair, unlawful, and/or fraudulent business  
23 practices under the laws asserted;
- 24 e. whether Sears engaged in false or misleading advertising;
- 25 f. whether Plaintiff and the Classes are entitled to damages and/or restitution  
26 and the proper measure of that loss; and
- 27 g. whether an injunction is necessary to prevent Sears from continuing to use  
28 false, misleading, or illegal price comparison.

1           36. **Typicality:** Plaintiff's claims are typical of the claims of the members of the  
2 Classes because, *inter alia*, all Class members have been deceived (or were likely to be  
3 deceived) by Sears' false and deceptive price advertising scheme, as alleged herein.  
4 Plaintiff is advancing the same claims and legal theories on behalf of himself and all  
5 members of the Classes.

6           37. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the  
7 members of the Classes. Plaintiff has retained counsel experienced in complex consumer  
8 class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff  
9 has no antagonistic or adverse interest to those of the Classes.

10           38. **Superiority:** The nature of this action and the nature of laws available to  
11 Teperson and the Classes make the use of the class action format a particularly efficient  
12 and appropriate procedure to afford relief to him and the class for the wrongs alleged.  
13 The damages or other financial detriment suffered by individual Class members is  
14 relatively modest compared to the burden and expense that would be entailed by  
15 individual litigation of their claims against Sears. It would thus be virtually impossible  
16 for Plaintiff and Class members, on an individual basis, to obtain effective redress for the  
17 wrongs done to them. Absent the class action, Class members and the general public  
18 would not likely recover, or would not likely have the chance to recover, damages or  
19 restitution, and Sears will be permitted to retain the proceeds of its fraudulent and  
20 deceptive misdeeds.

21           39. All Class members, including Plaintiff, were exposed to one or more of  
22 Sears' misrepresentations or omissions of material fact claiming that former "original"  
23 advertised prices were in existence. Due to the scope and extend of Sears' consistent false  
24 "discount" price advertising scheme, disseminated in a years-long campaign to consumers  
25 via a number of different platforms – in-store displays, Internet advertisements, print  
26 advertisements, etc. – it can be reasonably inferred that such misrepresentations or  
27 omissions of material fact were uniformly made to all members of the Classes. In  
28 addition, it can be reasonably presumed that all Class members, including Teperson,

1 affirmatively acted in response to the representations contained in Sears’ false advertising  
2 scheme when purchasing merchandise through Sears’ Internet website.

3 40. Sears keeps extensive computerized records of its customers through, *inter*  
4 *alia*, customer loyalty programs, co-branded credit cards, and general marketing  
5 programs. Sears has one or more databases through which a significant majority of Class  
6 members may be identified and ascertained, and it maintains contact information,  
7 including email and home addresses, through which notice of this action could be  
8 disseminated in accordance with due process requirements.

9 **CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **Violation of Unfair Competition Law – Fraudulent Acts**  
12 **Business and Professions Code § 17200, *et seq.***  
**on Behalf of the California Class**

13 41. Plaintiff repeats and re-alleges the allegations contained in every preceding  
14 paragraph as if fully set forth herein.

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

18 43. The UCL imposes strict liability. Plaintiff need not prove that Defendant  
19 intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices –  
20 but only that such practices occurred.

21 44. The harm to Plaintiff and California Class members outweighs the utility of  
22 Defendant’s practices. There were reasonably available alternatives to further  
23 Defendant’s legitimate business interests, other than the misleading and deceptive conduct  
24 described herein.

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

27 46. Defendant’s acts and practices alleged above have deceived Plaintiff and are  
28 highly likely to deceive members of the consuming public. Plaintiff relied on Defendant’s

1 fraudulent and deceptive representations regarding its “regular” and “discount” prices.  
2 These misrepresentations played a substantial role in Plaintiff’s decision to purchase those  
3 products, and Plaintiff would not have purchased those products without Defendant’s  
4 misrepresentations.

5 47. Defendant’s violation of the UCL through its fraudulent business practices  
6 are ongoing and present a continuing threat that members of the public will be deceived  
7 into purchasing products based on price comparisons of arbitrary and inflated “regular”  
8 prices to “discount prices” that created merely phantom markdowns and lead to financial  
9 damage for consumers, like Plaintiff and the proposed California Class.

10 48. In accordance with California Business & Professions Code §17203, Plaintiff  
11 seeks an order: (1) enjoining Defendant from continuing to conduct business through its  
12 fraudulent conduct; and (2) requiring Defendant to conduct a corrective advertising  
13 campaign.

14 49. As a result of Defendant’s conduct, Plaintiff seeks injunctive and  
15 restitutionary relief under California Business & Professions Code §17203.

16  
17 **SECOND CAUSE OF ACTION**  
18 **Violation of Unfair Competition Law – Unlawful Acts**  
19 **Business and Professions Code §17200, *et seq.***  
20 **on Behalf of the California Class**

21 50. Plaintiff repeats and re-alleges the allegations contained in every preceding  
22 paragraph as if fully set forth herein.

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

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

28 53. The FTCA prohibits “unfair or deceptive acts or practices in or affecting  
commerce” (15 U.S.C. §45(a)(1)) and prohibits the dissemination of any false

1 advertisements. 15 U.S.C. §52(a). Under the FTC, false former pricing schemes similar  
2 to the ones implemented by Sears are described as deceptive practices that would violate  
3 the FTCA:

4 (a) One of the most commonly used forms of bargain advertising is to offer a  
5 reduction from the advertiser's own former price for an article. If the former  
6 price is the actual, bona fide price at which the article was offered to the  
7 public on a regular basis for a reasonably substantial period of time, it  
8 provides a legitimate basis for the advertising of a price comparison. Where  
9 the former price is genuine, the bargain being advertised is a true one. If, on  
10 the other hand, the former price being advertised is not bona fide but  
11 fictitious – for example, where an article price, inflated price was established  
for the purpose of enabling the subsequent offer of a large reduction – the  
“bargain” being advertised is a false one; the purchaser is not receiving the  
unusual value he expects.

12 (b) A former price is not necessarily fictitious merely because no sales at the  
13 advertised price were made. The advertiser should be especially careful,  
14 however, in such a case, that the price is one at which the product was openly  
15 and actively offered for sale, for a reasonably substantial period of time, in  
16 the recent, regular course of her business, honestly and in good faith – and, of  
course, not for the purpose of establishing a fictitious higher price on which a  
deceptive comparison might be based.

17 16 C.F.R. §233.1.

18 54. California law also expressly prohibits false former pricing schemes. Cal.  
19 Bus. & Prof. Code §17501, entitled “*Value determinations; Former price advertisement,*”  
20 states:

21 For the purpose of this article the worth or value of any thing advertised is  
22 the prevailing market price, wholesale if the offer is at wholesale, retail if the  
23 offer is at retail, at the time of publication of such advertisement in the  
24 locality wherein the advertisement is published.

25 ***No price shall be advertised as a former price of any advertised thing,***  
26 ***unless the alleged former price was the prevailing market price as above***  
27 ***defined within three months next immediately preceding the publication of***  
28 ***the advertisement*** or unless the date when the alleged former price did  
prevail is clearly, exactly and conspicuously stated in the advertisement.

1 [Emphasis added.]

2 55. As detailed below, Cal. Civil Code §1770(a)(9) prohibits a business from  
3 “[a]dvertising goods or services with intent not to sell them as advertised,” and subsection  
4 (a)(13) prohibits a business from “[m]aking false or misleading statements of fact  
5 concerning reasons for, existence of, or amounts of price reductions.”

6 56. Defendant’s practices, as set forth above, have misled Plaintiff, the proposed  
7 class, and the general public in the past and will continue to mislead in the future.  
8 Consequently, Defendant’s practices constitute an unlawful business practice within the  
9 meaning of the UCL.

10 57. Defendant’s violations of the UCL through its unlawful business practices  
11 are ongoing and present a continuing threat that members of the public will be deceived  
12 into purchasing products based on price comparisons of arbitrary and inflated “regular”  
13 prices to “discount prices” that created merely phantom markdowns and lead to financial  
14 damage for consumers, like Plaintiff and the proposed California Class.

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

20  
21 **THIRD CAUSE OF ACTION**  
22 **Violation of Unfair Competition Law – Unfair Acts**  
23 **Business and Professions Code §17200, *et seq.***  
24 **on Behalf of the California Class**

25 59. Plaintiff repeats and re-alleges the allegations contained in every preceding  
26 paragraph as if fully set forth herein.

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

1           61. A business act or practice is “unfair” under the UCL if it offends an  
2 established public policy or is immoral, unethical, oppressive, unscrupulous or  
3 substantially injurious to consumers, and that unfairness is determined by weighing the  
4 reasons, justifications, and motives of the practice against the gravity of the harm to the  
5 alleged victims.

6           62. Defendant’s actions constitute “unfair” business acts or practices because, as  
7 alleged above, Defendant engaged in misleading and deceptive price comparison  
8 advertising that represented false “regular” prices and “discount” prices that were nothing  
9 more than fabricated “regular” prices leading to phantom markdowns. Defendant’s acts  
10 and practices offended an established public policy, and engaged in immoral, unethical,  
11 oppressive, and unscrupulous activities that are substantially injurious to consumers.

12           63. Defendant engaged, and continues to engage, in conduct that violates the  
13 legislatively declared policies of: (1) California Civil Code §§1572, 1573, 1709, 1710,  
14 1711 against committing fraud and deceit; (2) California Civil Code §1770 against  
15 committing acts and practices intended to deceive consumers regarding the representation  
16 of goods in certain particulars; (3) 15 U.S.C. §45(a)(1) and 52(a) against unfair or  
17 deceptive practices and false advertising; and (4) California Business & Professions Code  
18 §17500 against false advertising. Defendant gains an unfair advantage over their  
19 competitors, whose labeling, advertising, and marketing for other similar products must  
20 comply with these laws.

21           64. Defendant’s conduct, including misrepresenting the pricing of their  
22 merchandise, is substantially injurious to consumers. Such conduct has caused, and  
23 continues to cause, substantial injury to consumers because consumers would not have  
24 purchased their merchandise at all but for Defendant’s false promotion of its merchandise  
25 as, among other things, being offered at a significant discount. Consumers have thus  
26 overpaid for Sears merchandise. Such injury is not outweighed by any countervailing  
27 benefits to consumers or competition. Indeed, no benefit to consumers or competition  
28 results from Defendant’s conduct. Since consumers reasonably rely on Defendant’s



1 representations of its merchandise and injury results from ordinary use of its merchandise,  
2 consumers could not have reasonably avoided such injury. *Davis v. Ford Motor Credit*  
3 *Co.*, 179 Cal. App. 4th 581, 597-98 (2009); *see also Drum v. San Fernando Valley Bar*  
4 *Ass'n*, 182 Cal. App. 4th 247, 257 (2010) (outlining the third test based on the definition  
5 of “unfair” in Section 5 of the FTCA).

6 65. By committing the acts alleged above, Defendant has engaged in unfair  
7 business acts and practices which constitute unfair competition within the meaning of  
8 Business & Professions Code §17200.

9 66. Plaintiff purchased Sears merchandise in reliance on Defendant’s  
10 representations that its merchandise is, among other things, being offered at a significant  
11 discount. Plaintiff would not have purchased its merchandise at all but for Defendant’s  
12 false promotion that its merchandise is, among other things, being offered at a significant  
13 discount. Plaintiff and the California Class have all paid money for Sears merchandise.  
14 However, Plaintiff and the California Class did not obtain the full value of the advertised  
15 product due to Defendant’s misrepresentations regarding the nature of said products.  
16 Accordingly, Plaintiff and the California Class have suffered injury in fact and lost money  
17 or property as a direct result of Defendant’s misrepresentations and material omissions.

18 67. In accordance with California Business & Professions Code §17203, Plaintiff  
19 seeks an order enjoining Defendant from continuing to conduct business through its  
20 fraudulent conduct and further seeks an order requiring Defendant to conduct a corrective  
21 advertising campaign.

22 68. As a result of Defendant’s conduct, Plaintiff seeks injunctive and  
23 restitutionary relief under California Business & Professions Code §17203.

24 **FOURTH CAUSE OF ACTION**  
25 **Violation of the California False Advertising Law,**  
26 **California Business & Professions Code §17500, *et seq.***  
27 **on Behalf of the California Class**

28 69. Plaintiff repeats and re-alleges the allegations contained in every preceding  
paragraph as if fully set forth herein.

1 70. Cal. Bus. & Prof. Code § 17500 provides that:

2 [i]t is unlawful for any . . . corporation . . . with intent . . . to dispose of . . . personal  
3 property . . . to induce the public to enter into any obligation relating thereto, to  
4 make or disseminate or cause to be made or disseminated . . . from this state before  
5 the public in any state, in any newspaper or other publication, or any advertising  
6 device, or by public outcry or proclamation, or in any other manner or means  
7 whatever, including over the Internet, any statement . . . which is *untrue* or  
*misleading*, and which is known, or which by the exercise of reasonable care  
should be known, to be untrue or misleading . . . .

8 [Emphasis added.]

9 71. The “intent” required by Cal. Bus. & Prof. Code §17500 is the intent to  
10 dispose of property, and not the intent to mislead the public in the disposition of such  
11 property.

12 72. Similarly, this section provides, “no price shall be advertised as a former  
13 price of any advertised thing, unless the alleged former price was the prevailing market  
14 price . . . within three months next immediately preceding the publication of the  
15 advertisement or unless the date when the alleged former price did prevail is clearly,  
16 exactly and conspicuously stated in the advertisement.” Cal Bus. & Prof. Code §17501.

17 73. Defendant’s routine of advertising “regular” sales prices associated with its  
18 merchandise, which were never the true prevailing prices of those products and were  
19 materially greater than the true prevailing prices was an unfair, untrue, and misleading  
20 practice. This deceptive marketing practice gave consumers the false impression that the  
21 products were regularly sold on the market for a substantially higher price than they  
22 actually were. Therefore, leading to the false impression that the merchandise was worth  
23 more than it actually was.

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

26 75. As a direct and proximate result of Defendant’s misleading and false  
27 advertisements Plaintiff and California Class members have suffered injury in fact and  
28

1 have lost money. As such, Plaintiff requests that this Court order Defendant to restore this  
2 money to Plaintiff and all California Class members, and to enjoin Defendant from  
3 continuing these unfair practices in violation of the UCL in the future. Otherwise,  
4 Plaintiff, California Class members, and the broader general public will be irreparably  
5 harmed and/or denied an effective and complete remedy.

6 **FIFTH CAUSE OF ACTION**  
7 **Violation of the Consumers Legal Remedies Act (“CLRA”),**  
8 **California Civil Code §1750, *et seq.***  
9 **on Behalf of the California Class**

10 76. Plaintiff repeats and re-alleges the allegations contained in every preceding  
11 paragraph as if fully set forth herein.

12 77. This cause of action is brought pursuant to the Consumers Legal Remedies  
13 Act (“CLRA”), California Civil Code §1750, *et seq.*, and similar laws in other states.  
14 Plaintiff and each member of the proposed class are “consumers” as defined by California  
15 Civil Code §1761(d). Defendant’s sale of merchandise to Plaintiff and the California  
16 Class were “transactions” within the meaning of California Civil Code §1761(e). The  
17 products purchased by Plaintiff and the California Class are “goods” within the meaning  
18 of California Civil Code §1761(a).

19 78. Defendant violated, and continues to violate, the CLRA by engaging in the  
20 following practices proscribed by California Civil Code §1770(a) in transactions with  
21 Plaintiff and the California Class which were intended to result in, and did result in, the  
22 sale of merchandise:

- 23 a. representing that its merchandise has characteristics, uses, and/or benefits,  
24 which they do not;
- 25 b. advertising goods or services with intent not to sell them as advertised;
- 26 c. making false or misleading statements of fact concerning reasons for,  
27 existence of, or amounts of price reductions.

28 79. Pursuant to §1782(a) of the CLRA, on August 26, 2015, Plaintiff’s counsel  
notified Defendant in writing by certified mail of the particular violations of §1770 of the

1 and demanded that it rectify the problems associated with the actions detailed above and  
2 give notice to all affected consumers of Defendant's intent to act. Defendant failed to  
3 respond to Plaintiff's letter or agree to rectify the problems associated with the actions  
4 detailed above and give notice to all affected consumers within 30 days of the date of  
5 written notice, as proscribed by §1782.

6 80. Plaintiff and the California Class suffered injuries caused by Defendant's  
7 misrepresentations because: (a) they were induced to purchase a product they would not  
8 have otherwise purchased if they had known that Sears merchandise was not, among other  
9 things, being offered at a significant discount; and/or (b) they paid a price premium due to  
10 the false and misleading pricing, advertising, and marketing of Sears merchandise.

11 81. Plaintiff and the California Class are entitled to, pursuant to California Civil  
12 Code §1780, an order enjoining the above-described wrongful acts and practices of  
13 Defendant, the payment of costs and attorneys' fees, and any other relief deemed  
14 appropriate and proper by the Court under California Civil Code §1780.

15  
16 **SIXTH CAUSE OF ACTION**  
17 **Unjust Enrichment on Behalf of the Classes,**  
18 **or in the Alternative, on Behalf of the California Class**

19 82. Plaintiff repeats and re-alleges the allegations contained in every preceding  
20 paragraph as if fully set forth herein.

21 83. Plaintiff brings this claim individually, as well as on behalf of members of  
22 the Classes, under California law. Although there are numerous permutations of the  
23 elements of the unjust enrichment cause of action in the various states, there are few real  
24 differences. In all states, the focus of an unjust enrichment claim is whether the defendant  
25 was unjustly enriched. At the core of each state's law are two fundamental elements – the  
26 defendant received a benefit from the plaintiff and it would be inequitable for the  
27 defendant to retain that benefit without compensating the plaintiff. The focus of the  
28 inquiry is the same in each state. Since there is no material conflict relating to the

1 elements of unjust enrichment between the different jurisdictions from which Class  
2 members will be drawn, California law applies to the claims of the Classes.

3 84. In the alternative, Plaintiff brings this claim individually as well as on behalf  
4 of the California Class.

5 85. At all times relevant hereto, Defendant deceptively priced, marketed,  
6 advertised, and sold merchandise to Plaintiff and the Classes.

7 86. Plaintiff and members of the Classes conferred upon Defendant non-  
8 gratuitous payments for merchandise that they would not have if not for Defendant's  
9 deceptive pricing, advertising, and marketing. Defendant accepted or retained the non-  
10 gratuitous benefits conferred by Plaintiff and members of the Classes, with full knowledge  
11 and awareness that, as a result of Defendant's deception, Plaintiff and members of the  
12 Classes were not receiving a product of the quality, nature, fitness, or value that had been  
13 represented by Defendant and reasonable consumers would have expected.

14 87. Defendant has been unjustly enriched in retaining the revenues derived from  
15 purchases of merchandise by Plaintiff and members of the Classes, which retention under  
16 these circumstances is unjust and inequitable because Defendant misrepresented, among  
17 other things, that its merchandise was being offered at a significant discount, which  
18 caused injuries to Plaintiff and members of the Classes because they paid for, and/or paid  
19 a price premium due to the misleading pricing and advertising.

20 88. Retaining the non-gratuitous benefits conferred upon Defendant by Plaintiff  
21 and members of the Classes under these circumstances made Defendant's retention of the  
22 non-gratuitous benefits unjust and inequitable. Thus, Defendant must pay restitution to  
23 Plaintiff and members of the Classes for unjust enrichment, as ordered by the Court.

24  
25 **SEVENTH CAUSE OF ACTION**  
26 **Violations of the Consumer Protection Laws on Behalf**  
27 **of Classes in the States with Similar Laws**

28 89. Plaintiff repeats and re-alleges the allegations contained in every preceding  
paragraph as if fully set forth herein.

1 90. Plaintiff brings this Count individually under the laws of California and on  
2 behalf of all other persons who purchased merchandise in states having similar laws  
3 regarding consumer fraud and deceptive trade practices.

4 91. Plaintiff and each of the other members of the Classes are consumers,  
5 purchasers, or other persons entitled to the protection of the consumer protection laws of  
6 the state in which they purchased merchandise from Sears.

7 92. The consumer protection laws of the state in which Plaintiff and the other  
8 members of the Classes purchased Sears merchandise declare that unfair or deceptive acts  
9 or practices, in the conduct of trade or commerce, are unlawful.

10 93. Forty states and the District of Columbia have enacted statutes designed to  
11 protect consumers against unfair, deceptive, fraudulent, and unconscionable trade and  
12 business practices and false advertising that allow consumers to bring private and/or class  
13 actions. These statutes are found at:

- 14 a. Alabama Deceptive Trade Practices Act, Ala. Code §8-19-1 *et seq.*;
- 15 b. Alaska Unfair Trade Practices and Consumer Protection Act, Alaska Code  
16 §45.50.471 *et seq.*;
- 17 c. Arkansas Deceptive Trade Practices Act, Ark. Code Ann. §4-88-101 *et*  
18 *seq.*;
- 19 d. California Consumers Legal Remedies Act, Cal. Civ. Code §1750 *et seq.*,  
20 and California's Unfair Competition Law, Cal. Bus. & Prof. Code §17200  
21 *et seq.*;
- 22 e. Colorado Consumer Protection Act, Colo. Rev. Stat. §6-1-101 *et seq.*;
- 23 f. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. §42-110a *et seq.*;
- 24 g. Delaware Deceptive Trade Practices Act, Del. Code tit. 6§2511 *et seq.*;
- 25 h. District of Columbia Consumer Protection Procedures Act, D.C. Code §28  
26 3901 *et seq.*;
- 27 i. Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. §501.201  
28 *et seq.*;

- 1 j. Georgia Fair Business Practices Act, Ga. Code Ann. §10-1-390 *et seq.*;
- 2 k. Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statutes §480-1
- 3 *et seq.*, and Hawaii Uniform Deceptive Trade Practices Act, Haw. Rev.
- 4 Stat. §481A-1 *et seq.*;
- 5 l. Idaho Consumer Protection Act, Idaho Code Ann. §48-601 *et seq.*;
- 6 m. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill.
- 7 Comp. Stat. Ann. 505/1 *et seq.*;
- 8 n. Kansas Consumer Protection Act, Kan. Stat. Ann §50 626 *et seq.*;
- 9 o. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §367.110 *et seq.*,
- 10 and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann §365.020
- 11 *et seq.*;
- 12 p. Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev.
- 13 Stat. Ann. §51:1401 *et seq.*;
- 14 q. Maine Unfair Trade Practices Act, Me. Rev. Stat. tit. 5 §205A *et seq.*, and
- 15 Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. tit. 10,
- 16 §1211 *et seq.*;
- 17 r. Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch.
- 18 93A;
- 19 s. Michigan Consumer Protection Act, Mich. Comp. Laws §445.901 *et seq.*;
- 20 t. Minnesota Prevention of Consumer Fraud Act, Minn. Stat. Ann. §325F.68
- 21 *et seq.*, and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat.
- 22 §325D.43 *et seq.*;
- 23 u. Mississippi Consumer Protection Act, Miss. Code Ann. §§75-24-1 *et seq.*;
- 24 v. Missouri Merchandising Practices Act, Mo. Rev. Stat. §407.010 *et seq.*;
- 25 w. Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code
- 26 Ann. §30-14-101 *et seq.*;
- 27
- 28

- x. Nebraska Consumer Protection Act, Neb. Rev. Stat. §59-1601 *et seq.*, and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. §87-301 *et seq.*;
- y. Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §598.0903 *et seq.*;
- z. New Hampshire Consumer Protection Act, N.H. Rev. Stat. §358-A:1 *et seq.*;
- aa. New Jersey Consumer Fraud Act, N.J. Stat. Ann. §56:8 1 *et seq.*;
- bb. New Mexico Unfair Practices Act, N.M. Stat. Ann. §57 12 1 *et seq.*;
- cc. New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §349 *et seq.*;
- dd. North Dakota Consumer Fraud Act, N.D. Cent. Code §51 15 01 *et seq.*;
- ee. Ohio Consumer Sales Practices Act, Ohio Rev. Code Ann. §1345.02 and 1345.03; Ohio Admin. Code §109:4-3-02, 109:4-3-03, and 109:4-3-10;
- ff. Oklahoma Consumer Protection Act, Okla. Stat. tit. 15 §751 *et seq.*;
- gg. Oregon Unfair Trade Practices Act, Ore. Rev. Stat §646.608(e) & (g);
- hh. Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen. Laws §6-13.1-1 *et seq.*;
- ii. South Carolina Unfair Trade Practices Act, S.C. Code Ann. §39-5-10 *et seq.*;
- jj. South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws §§37 24 1 *et seq.*;
- kk. Tennessee Consumer Protection Act, Tenn. Code Ann. §47-18-101 *et seq.*;
- ll. Vermont Consumer Fraud Act, Vt. Stat. Ann. tit. 9, §2451 *et seq.*;
- mm. Washington Consumer Fraud Act, Wash. Rev. Code §19.86.010 *et seq.*;
- nn. West Virginia Consumer Credit and Protection Act, West Virginia Code §46A-6-101 *et seq.*; and
- oo. Wisconsin Deceptive Trade Practices Act, Wis. Stat. §100.18 *et seq.*



1 94. Defendant's merchandise constitutes products to which these consumer  
2 protection laws apply.

3 95. In the conduct of trade or commerce regarding the pricing, advertising,  
4 marketing, and sale of their merchandise, Defendant engaged in one or more unfair or  
5 deceptive acts or practices, including, but not limited to, uniformly representing to  
6 Plaintiff and each member of the Classes by means of the pricing and advertising of their  
7 merchandise that it was, among other things, being offered at a discount, as described  
8 herein.

9 96. Defendant's representations and omissions were false, untrue, misleading,  
10 deceptive, and/or likely to deceive.

11 97. Defendant knew, or should have known, that its representations and  
12 omissions were false, untrue, misleading, deceptive, and/or likely to deceive.

13 98. Defendant used or employed such deceptive and unlawful acts or practices  
14 with the intent that Plaintiff and members of the Classes rely thereon.

15 99. Plaintiff and the other members of the Classes did so rely.

16 100. Plaintiff and the other members of the Classes purchased merchandise sold  
17 by Defendant which misrepresented the magnitude of the price discounts offered for the  
18 merchandise.

19 101. Plaintiff and the other members of the Classes would not have purchased  
20 Sears merchandise but for Defendant's deceptive and unlawful acts.

21 102. As a result of Defendant's conduct, Plaintiff and the other members of the  
22 Classes sustained damages in amounts to be proven at trial.

23 103. Defendant's conduct showed complete indifference to, or conscious  
24 disregard for, the rights and safety of others such that an award of punitive and/or  
25 statutory damages is appropriate under the consumer protection laws of those states that  
26 permit such damages to be sought and recovered.

27

28

1 **VI. PRAYER FOR RELIEF**

2 Wherefore, Plaintiff, on behalf of himself and on behalf of the other members of the  
3 Class, requests that this Court award relief against Sears as follows:

4 A. An order certifying the class and designating Plaintiff Teperson as the  
5 Class Representative and his counsel as Class Counsel;

6 B. Awarding Plaintiff and the proposed Class members damages;

7 C. Awarding restitution and disgorgement of all profits and unjust  
8 enrichment that Defendant obtained from Plaintiff and the Class members as a result of its  
9 unlawful, unfair and fraudulent business practices described herein;

10 D. Awarding declaratory and injunctive relief as permitted by law or  
11 equity, including: enjoining Defendant from continuing the unlawful practices as set forth  
12 herein, and directing Defendant to identify, with Court supervisions, victims of its  
13 misconduct and pay them all money they are required to pay;

14 E. Order Defendant to engage in a corrective advertising campaign;

15 F. Awarding attorneys' fees and costs; and

16 G. For such other and further relief as the Court may deem necessary or  
17 appropriate.

18 **VIII. DEMAND FOR JURY TRIAL**

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

20 Dated: August 26, 2015

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*Attorneys for Plaintiff*

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Joshua Teperson

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

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

John T. Jasnoch, SCOTT+SCOTT, ATTORNEYS AT LAW, LLP 707 Broadway, Suite 1000, San Diego, CA 92101

DEFENDANTS

Sears Roebuck & Company

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

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

Attorneys (If Known)

'15CV1892 L DHB

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

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

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

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

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

Brief description of cause: Violations of Unfair Competition Law, Cal. False Advertising Law, and California Bus. & Prof. Code

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 08/26/2015 SIGNATURE OF ATTORNEY OF RECORD s/ John T. Jasnoch

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.