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(pro hac vice to be filed)

Attorneys for Plaintiff

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

KEVIN BRANCA, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

NORDSTROM, INC.,

Defendant.

Case No. 3:14-cv-02062-MMA

**THIRD AMENDED CLASS
ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL**

1. Violation of the “Unfair” Prong of the UCL
2. Violation of the “Fraudulent” Prong of the UCL
3. Violation of the “Unlawful” Prong of the UCL
4. Violation of the California False Advertising Law, California Business & Professions Code Sections 17500, *et seq.*
5. Violation of the Consumers Legal Remedies Act, California Civil Code Sections 1750, *et seq.*

1 **CLASS ACTION COMPLAINT**

2 Plaintiff, KEVIN BRANCA (“Plaintiff”), on behalf of himself and all others
3 similarly situated, alleges the following based upon personal knowledge as to
4 allegations regarding Plaintiff and on information and belief as to other allegations:

5 **INTRODUCTION**

6 1. This is a civil class action seeking monetary damages, restitution,
7 injunctive and declaratory relief from Defendant, Nordstrom, Inc. (“Nordstrom”),
8 arising from its deceptive and misleading labeling and marketing of merchandise it
9 sells at its company-owned Nordstrom Rack stores.

10 2. This Second Amended Complaint (“SAC”) is offered to cure two
11 concerns the Court identified. *First*, the SAC contains concrete and specific factual
12 allegations establishing the basis for Nordstrom’s intent to deceive its customers. This
13 evidence includes (1) an admission by Nordstrom that its “Compare At” price is
14 meant to convey to the consumer an “original” price—and instructions to its suppliers
15 to arbitrarily invent this false “original” price, and (2) expert testimony from the
16 leading expert in consumer perceptions relating to price discounts that the only logical
17 reason for using a false “original” price is to deceive consumers and induce them to
18 buy a product. *Second*, the SAC contains more detailed allegations establishing that
19 Branca was, in fact, deceived by Nordstrom and that Branca’s reliance was
20 reasonable—for instance, research findings by one of Plaintiff’s experts, Dr. Larry
21 Compeau, shows that consumers reasonably rely on comparative price advertising
22 because they believe that they are getting a great value. Indeed, the results of a survey
23 conducted by another one of Plaintiff’s experts, Dr. Thomas Maronick, shows that
24 consumers almost uniformly (and incorrectly) believe that the “Compare At” price is a
25 price that the goods were previously sold at—either at Nordstrom’s main line stores,
26 Nordstrom Rack, or some other retail store.

27 3. During the Class Period (defined below), Nordstrom misrepresented the
28 existence, nature, and amount of price discounts on products sold in Nordstrom Rack

1 stores (collectively “Nordstrom Rack Products”) by purporting to offer discounts off
2 of a false “Compare At” former price. The term “Nordstrom Rack Products”
3 expressly excludes products sold at Nordstrom Rack stores that were actually
4 previously offered for sale at Nordstrom main line retail stores.

5 4. Specifically, Nordstrom represented—on the price tags of Nordstrom
6 Rack Products—“Compare At” prices that were overstated and did not represent a
7 bona fide price at which the Nordstrom Rack Products were previously sold. Nor
8 were the advertised “Compare At” prices prevailing market retail prices within three
9 months immediately preceding the publication of the advertised former prices, as
10 required by California law.

11 5. Having touted false “Compare At” prices, Nordstrom then stated, on the
12 same price tags, that the price represented a “% Savings”, often of 60% or more.
13 Nordstrom thus expressly advertised a deep percentage discount off of the false
14 former prices. As alleged later in this Complaint, at Nordstrom “Compare At” is
15 synonymous with a higher “original” price.

16 6. Based on the combination of the represented price reduction, combined
17 with the express percentage discount representation on every applicable price tag,
18 reasonable consumers would reasonably believe that Nordstrom is offering bona fide
19 discounts off of true former prices. Indeed, the “% Savings” representations on price
20 tags are nonsensical if no true former price existed, since “savings” necessarily
21 implies a true former price.

22 7. But the “Compare At” prices and supposed “savings” represented by
23 Nordstrom were a sham. In fact, Nordstrom sells certain goods manufactured by third-
24 party designers for *exclusive* sale at its Nordstrom Rack stores and other outlet stores,
25 which means that such items were never sold—or even intended to be sold—at the
26 “Compare At” prices advertised on the price tags. Nordstrom Rack Products were
27 never offered for sale in non-outlet retail stores in California, or in any other state.
28 Nordstrom Rack’s website, however, falsely suggests that the Nordstrom Rack

1 Products are equivalent to the products sold at Nordstrom’s main line retail stores:
2 “Why Shop the Rack? Because we have the most current trends and the brands you
3 love for 30-70% off *original* prices—each and every day” (emphasis added). The
4 truth is that the Nordstrom Rack Products are not discounted off “original prices.” The
5 Nordstrom Rack Products are *never* offered for sale at the Nordstrom main line retail
6 stores (or any other retail stores) and are typically of lesser quality than the goods sold
7 in those main line retail stores.

8 8. The “Compare At” prices listed on Nordstrom Rack Products’ tags did
9 not represent a former price at all—much less a former price in the preceding three
10 months. They are fictional amounts intentionally selected so that Nordstrom Rack
11 could advertise phantom markdowns and “% Savings.” The entire price tag – indeed
12 the entire “outlet store” motif – is designed to falsely convince consumers that they
13 are buying main line retail designer brand products at reduced prices. In fact,
14 consumers are buying lower quality goods that were never offered or sold as genuine
15 quality designer brand clothing and accessories. By designing its price tags in this
16 way, Nordstrom intended for reasonable consumers to understand as much.

17 9. The Federal Trade Commission (“FTC”) explicitly describes the
18 fictitious pricing scheme employed at Nordstrom Rack stores as deceptive:

19
20 One of the most commonly used forms of bargain advertising is to offer a
21 reduction from the advertiser’s own former price for an article. If the
22 former price is the actual, bona fide price at which the article was offered
23 to the public on a regular basis for a reasonably substantial period of
24 time, it provides a legitimate basis for the advertising of a price
25 comparison. Where the former price is genuine, the bargain being
26 advertised is a true one. If, on the other hand, the former price being
27 advertised is not bona fide but fictitious -- for example, where an
28 artificial, 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.
In such a case, the “reduced” price is, in reality, probably just the seller’s
regular price.

1 16 C.F.R. § 233.1.

2 10. Similarly, California statutory and regulatory law expressly prohibits
3 false pricing schemes. *Business & Professions Code* § 17501, entitled “*Value*
4 *determinations; Former price advertisements,*” states:

5
6 For the purpose of this article the worth or value of anything advertised is
7 the prevailing market price, wholesale if the offer is at wholesale, retail if
8 the offer at retail, at the time of publication of such advertisement in the
9 locality wherein the advertisement is published.

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

15 (emphasis added).

16 11. The Nordstrom Rack “Compare At” pricing scheme was prominently
17 displayed on all Nordstrom Rack Products available for sale at Nordstrom Rack stores
18 in California. To illustrate, a “Compare At” price tag for an item sold at Nordstrom
19 Rack is pictured below:



1 12. Upon information and belief, thousands of California consumers were
2 victims of Nordstrom’s deceptive, misleading, and unlawful false pricing scheme and
3 thousands more will be deceived if the practice continues.

4 13. Nordstrom fraudulently concealed from, and intentionally failed to
5 disclose to, Plaintiff, and others similarly situated, the truth about its “Compare At”
6 prices and advertised price tag discounts from those supposedly former prices.

7 14. Nordstrom’s false representations of original prices and false
8 representations of purported savings, discounts, and bargains are objectively material
9 to a reasonable consumer.

10 15. Plaintiff relied upon such false representations of “Compare At” prices
11 and “% Savings” when purchasing apparel from a Nordstrom Rack store in California.
12 Plaintiff would not have made such purchase, or would not have paid the amount he
13 did, but for Nordstrom’s false representations of the former price of the items he
14 purchased, as compared to the supposedly discounted “Compare At” price and
15 corresponding “savings” at which Nordstrom Rack offered the items for sale.

16 16. Plaintiff, in short, reasonably believed the truth of the price tags attached
17 to the products he purchased at Nordstrom Rack, which expressly advertised that he
18 was getting a significant percentage discount off the original price. When viewed in
19 light of the “% Savings” representations on the price tags of the Nordstrom Rack
20 Products he purchased, Plaintiff reasonably understood the “Compare At”
21 representation to indicate a true former price. Indeed, one cannot truly “save” off
22 anything other than a true former price on the identical product. Otherwise, one is not
23 “saving,” one is simply buying a different product than the one that bears a higher
24 price.

25 17. Nordstrom’s “% Savings” representation necessarily meant that savings
26 was off a former price for the identical product. It could not be reasonably understood
27 to refer to a comparison to *other* products because it does not specify that the savings
28 is in relation to anything but the same product.

1 18. To put it simply, one may pay \$30,000 for a Prius and \$100,000 for a
2 Tesla, but no reasonable consumer would understand himself to have “saved” \$70,000
3 by buying a Prius. Rather, he has simply chosen to buy a different car.

4 19. Reasonable consumers also understand Nordstrom Rack Products’ price
5 tags to indicate a true former price for another reason: many items in Nordstrom Rack
6 stores (and which are excluded from the definition of Nordstrom Rack Products) do
7 **not** carry “Compare At” or “% Savings” price tags. The following is an example of
8 such a price tag:



21 20. When, during a shopping experience, a consumer is confronted with
22 some items that bear prominent “Compare At” and “% Savings” representations, and
23 other items which do not advertise a former price reduction, it is reasonable for
24 consumers to understand the “Compare At” price tags to indicate a true savings off a
25 true former price. The consumer reasonably understands that the plain-price tags do
26 not offer a “savings” or a “bargain” compared to a higher former price.

27 21. In other words, if both types of products were only “bargains” due to
28 their actual sales price, the “Compare At” and “% Savings” representations would

1 have no additional meaning.

2 22. Through its false and deceptive advertising and pricing scheme,
3 Nordstrom violated (and continues to violate) California law prohibiting advertising
4 goods for sale as discounted from former prices which are false, and prohibiting
5 misleading statements about the existence and amount of price reductions.
6 Specifically, Nordstrom violated (and continues to violate) California's *Business &*
7 *Professions Code* §§ 17200, *et seq.* (the "UCL"), California's *Business and*
8 *Professions Code* §§ 17500, *et seq.* (the "FAL"), the California Consumers' Legal
9 Remedies Act, *Civil Code* §§1750, *et seq.* (the "CLRA"), and the Federal Trade
10 Commission Act ("FTCA"), which prohibits "unfair or deceptive acts or practices in
11 or affecting commerce" and specifically prohibits false advertisements. 15 U.S.C. §§
12 52(a) and 15 U.S.C. § 45(a)(1).

13 23. Plaintiff, individually and on behalf of all others similarly situated, seeks
14 restitution and other equitable remedies, including an injunction under the UCL, FAL
15 and CLRA.

16 **PARTIES**

17 24. Plaintiff, Kevin Branca, is an individual who is a citizen of the city of
18 San Marcos, in the county of San Diego, California. In reliance on Nordstrom's false
19 and deceptive advertising, marketing, and pricing schemes, Mr. Branca purchased
20 three items from Nordstrom Rack located in San Marcos, California, on July 12, 2013,
21 and as detailed herein, was damaged as a result thereof.

22 25. Defendant Nordstrom, Inc. is a corporation duly organized and existing
23 under the laws of the State of Washington, with its principal place of business at 1617
24 Sixth Avenue, Seattle, WA, 98101.

25 26. As of 2013, Nordstrom operates thirty seven (37) Nordstrom Rack stores
26 in California.

27 **JURISDICTION AND VENUE**

28 27. This Court has original jurisdiction of this action under the Class Action

1 Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has
2 original jurisdiction because the aggregate claims of the members of the putative Class
3 exceed \$5 million, exclusive of costs, and at least one of the members of the proposed
4 Class is a citizen of a different state than Nordstrom, Inc.

5 28. The Southern District of California has personal jurisdiction over
6 Nordstrom, Inc. because Nordstrom, Inc. is licensed and doing business in San Diego
7 County, State of California, authorized to do business in California and registered
8 with the California Secretary of State, and has sufficient minimum contacts with
9 California, having intentionally availed itself of the California market so as to render
10 the exercise of jurisdiction over it by this District Court consistent with traditional
11 notions of fair play and substantial justice.

12 29. Venue is proper in the United States District Court, Southern District of
13 California pursuant to 28 U.S.C. § 1391, because Plaintiff is a resident of San Diego
14 County, California; Defendant operates its stores in San Diego County, California and
15 because a the events giving rise to the claims occurred in San Diego County,
16 California.

17 **FACTUAL ALLEGATIONS**

18 30. Traditionally, retail outlet stores were located in remote areas and
19 typically maintained an inventory of defective and excess merchandise. Customers
20 often flocked to these outlets in hopes of finding steep discounts and bargains. *See*
21 *http://www.forbes.com/sites/investopedia/2012/12/29/7-tips-for-outlet-mall-shopping/*
22 (last visited August 11, 2014).

23 31. However, in an effort to increase profits, major retailers such as
24 Nordstrom Rack have, without notice to consumers, begun using company-owned
25 outlet stores to sell made-for-outlet goods that are never intended to be sold at non-
26 outlet stores: “Once a destination for out-of-season or damaged full-priced inventory,
27 *outlets have grown into a lucrative and somewhat deceptive place for retailers to*
28 *hawk an entirely new line of lower-quality goods* geared toward a different

1 customer.” [http://www.buzzfeed.com/sapna/customers-finally-aware-that-most-outlet-](http://www.buzzfeed.com/sapna/customers-finally-aware-that-most-outlet-merchandise-is-now)
2 [merchandise-is-now](http://www.buzzfeed.com/sapna/customers-finally-aware-that-most-outlet-merchandise-is-now) (last visited August 11, 2014) (emphasis added).

3 32. The very term “outlet” conveys to reasonable consumers that at least
4 some products are comprised of merchandise formerly offered for sale at full-price
5 retail locations. Similarly, the Nordstrom Rack name connotes a store selling at least
6 some truly discounted outlet clothing. Indeed, Nordstrom Rack’s website describes
7 Nordstrom Rack as “the off-price retail division of Nordstrom Inc., which was
8 founded in 1901 in Seattle, Washington by John W. Nordstrom.” Nordstrom exploits
9 this consumer perception by engaging in systemic advertising campaigns and
10 representations calling itself a destination for “brands you love up to 70% off every
11 day”:



24
25 33. Stating, “brands you love up to 70% off” indicates to reasonable
26 consumers that consumers are actually receiving reduced prices—not simply lower
27 prices based on the provision of a different good.

28 34. Instead, retailers like Nordstrom create the illusion of traditional outlet

1 discounts and bargains by offering the made-for-outlet goods at prices reduced from
2 fabricated, arbitrary, and false prices. In short, outlet stores such as Nordstrom Rack
3 are using false and fraudulent price comparison tactics. See
4 [http://www.buzzfeed.com/sapna/customers-finally-aware-that-most-outlet-](http://www.buzzfeed.com/sapna/customers-finally-aware-that-most-outlet-merchandise-is-now)
5 [merchandise-is-now](http://www.buzzfeed.com/sapna/customers-finally-aware-that-most-outlet-merchandise-is-now) (“While price tags on outlet goods may list a manufacturer-
6 suggested retail price (known as an MSRP) or, a ‘valued at’ price, that’s little more
7 than a number ascribed by the retailer and doesn’t mean it was ever sold for such a
8 sum in an actual full-price retail location. (Giant discounters like T.J. Maxx and
9 Nordstrom Rack also label prices this way.)”).

10 35. The intentional use of false and fraudulent price comparison tactics is
11 increasingly deceiving consumers in the market. To illustrate, on January 30, 2014,
12 four Members of Congress demanded an FTC investigation of misleading marketing
13 practices by outlet stores across the United States. The four Members of Congress
14 described a pricing scheme similar to the one implemented at Nordstrom Rack stores
15 and stated, “[i]t is a common practice at outlet stores to advertise a retail price
16 alongside the outlet store price—even on made-for-outlet merchandise that does not
17 sell at regular retail locations. Since the item was never sold in the regular retail store
18 or at the retail price, the retail price is impossible to substantiate. We believe this
19 practice may be a violation of the FTC’s Guides Against Deceptive Pricing (16 CFR
20 233).” See [http://www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-](http://www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-stores-may-be-misleading-consumers)
21 [stores-may-be-misleading-consumers](http://www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-stores-may-be-misleading-consumers) (last visited August 11, 2014).

22 36. This is precisely the practice used by Nordstrom in its Nordstrom Rack
23 stores. Indeed, the fact that Nordstrom offered some products with plain price tags
24 and others with “Compare At” and “% Savings” tags indicates that Nordstrom
25 intentionally sought to convey to consumers that they were receiving a true markdown
26 off the original price.

27 37. Similarly, the fact that Nordstrom expressly couples “Compare At” with
28 its touting of a “% Savings” on Nordstrom Rack Products indicates that Nordstrom

1 intentionally sought to convey to consumers that they were receiving a true discount
2 off a true former price.

3 38. Further, Nordstrom’s intent to convey to consumers, including Plaintiff,
4 that they were receiving a true discount off a true former price is illustrated in its
5 Nordstrom Full Line and Rack Compliance Manual (“Compliance Manual”), which is
6 attached hereto as *Exhibit A*.

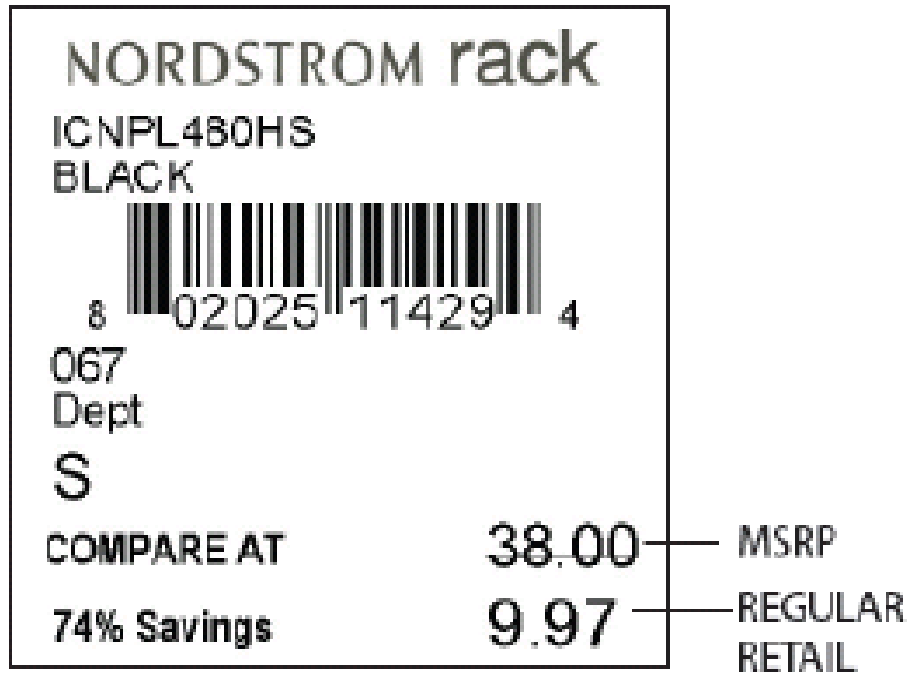
7 39. The Compliance Manual is “intended to outline the standards
8 vendor/supplier partners must follow when doing business with Nordstrom Inc.”
9 *Exhibit A* at pg. 5. On its own, this document establishes that Nordstrom has
10 intentionally and deliberately implemented a labeling scheme intentionally designed
11 to convey to its customers that the “Compare At” price is the same thing as an
12 “original” price.

13 40. The Compliance Manual dictates, among other things, how price tags
14 must be designed and printed for Nordstrom Rack Products. *Exhibit A* pg. 37-45.

15 41. Nordstrom defines the “Compare At” language found on the price tags of
16 Nordstrom Rack Products as: “**Higher (original) price** vs. selling price with XX %
17 Percent savings. Percent savings should be rounded to the nearest whole percent.”
18 *Exhibit A* at pg. 41 (emphasis added).

19 42. In addition, the Compliance Manual identifies the “Compare at” price as
20 an “MSRP.” Of course, this is not an actual MSRP (Manufacturers Suggested Retail
21 Price), since the Compliance Manual is being sent to manufacturers, who identify their
22 actual retail price as the purported sale price. The following example, contained in
23 Nordstrom’s Compliance Manual graphically illustrates how Nordstrom requires its
24 suppliers and vendors to (1) create a phony MSRP to include in the “COMPARE AT”
25 space on the hang tag, and (2) list the actual MSRP, or “REGULAR RETAIL” price,
26 in the purported sales price line:
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RL02 - Rack Compare at Item Label

Exhibit A at pg. 43.

43. Because Nordstrom has defined the “Compare At” price as the “Higher (original) price”, when Nordstrom has its vendors and suppliers of Nordstrom Rack Products print price tags showing false original prices, Nordstrom is intentionally making misrepresentations to its customers.

44. Indeed, the intentional nature of Nordstrom’s deception is further highlighted by the manner in which the Compliance Manual instructs its vendors to label items to be sold in its main line stores. With respect to such items, the vendors must provide three separate price tags. The first tag includes the “Regular Price MSRP”:

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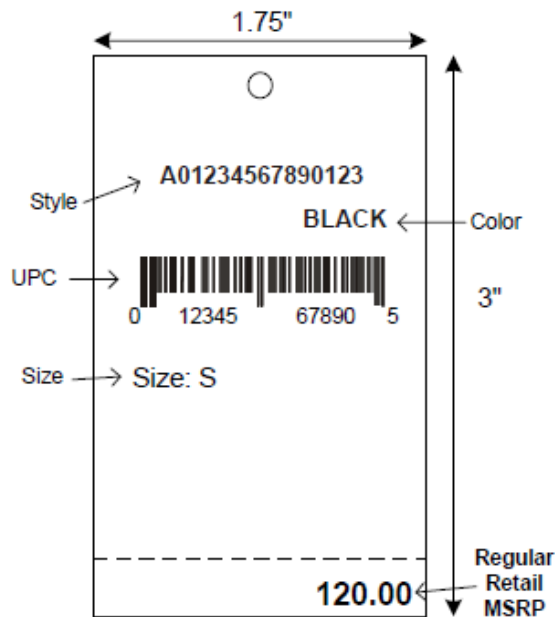


Exhibit A at pg. 29.

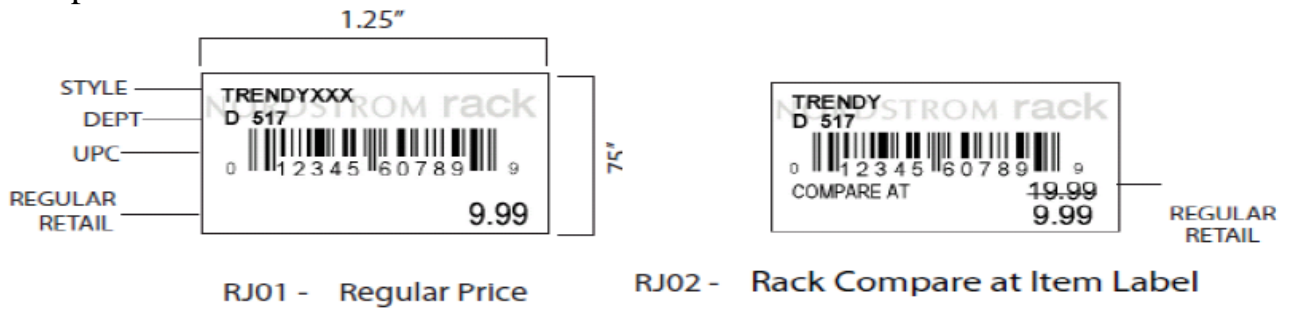
45. Nordstrom also requires its vendors to provide price tags for Nordstrom to use for its “Anniversary” sales and for its “Off-Price & Black Line” sales. Unlike the deceptive tags used at the Nordstrom Rack, the two sales tags used in main line stores include an actual (i.e. honest) retail price (“Regular Retail”) and sale price (“Special Retail”):



Exhibit A at pg. 29.

1 46. So, for the main line stores, the “Regular Retail” price (in the example
 2 above, \$120.00) is the actual price at which the item was previously sold. The sale
 3 price (in the example above, \$99.00) is the marked down price.

4 47. Compare this to the Nordstrom Rack examples included in the
 5 Compliance Manual:



13 *Exhibit A* at pg. 43.

14 48. For its Nordstrom Rack hang tags that include a “Compare At” price,
 15 Nordstrom instructs its vendors that the “Regular Retail” price is actually the
 16 discounted price, not “Compare At” price.

17 49. The example above (left) shows a price tag for an item to be sold with
 18 only a “Regular Price” (i.e., no compare at price) and, on the right, the tag to be used
 19 on items utilizing a “Rack Compare at Item Label.” In the RJ01- Regular Price tag
 20 (left), the “Regular Retail” price is \$9.99 and is listed on the bottom line. Yet, in the
 21 Rack Compare at Item Label (of the exact same item—bearing the same UPC Code),
 22 shown at right, the “Regular Retail” price of \$9.99 is depicted as the discounted price
 23 with a fictional price placed above it. The “Compare At’ price is represented as a
 24 false “original” or “MSRP” price.

25 50. To the extent that—in the “Compare At” Item Label on the right—it
 26 could appear that the “Regular Retail” caption is pointing to the “19.99” price and not
 27 the lower “9.99” price, another illustration from the same Compliance Manual makes
 28 it clear that Nordstrom considers the bottom line price (which looks like a sales price)
 to be the “Regular Retail” price:

MSRP	COMPARE AT	228.00
REGULAR RETAIL	47% Savings	119.97

RH02 - Rack Compare at HT

6 *Exhibit A* at pg. 42.

7 51. This document shows—through words and exemplary illustrations—how
8 Nordstrom has directed its suppliers to create intentionally deceptive hang tags. For
9 its Nordstrom Rack products, Nordstrom created hang tags that depict a fabricated
10 “original” or “MSRP” as the “Compare At” price placed above a steeply discounted
11 price—a price that Nordstrom admits in its own instructions to its vendor is not a real
12 sale price but, instead, is the “Regular Retail” price.

13 52. Although Nordstrom’s intentionally deceptive scheme is revealed in its
14 Compliance Manual, it is further evidenced by the opinion of Plaintiff’s expert, Dr.
15 Compeau.

16 53. Dr. Compeau is a Professor of Consumer/Organizational Studies at
17 Clarkson University who conducts extensive research regarding the behavioral and
18 strategic effects of comparative (reference) price advertising on consumers’
19 judgments, evaluations, perceptions, and purchase intentions. Dr. Compeau often
20 serves as an expert witness in litigation pertaining to comparative (reference) pricing
21 and was deemed, in a similar lawsuit held before by Judge Wayne S. Carvil of the
22 Superior Court of the State of California, Alameda County, a credible and reliable
23 expert witness. *People of the State of California v. Overstock.com, Inc.*, Case No.
24 RG10-546833.

25 54. According to Dr. Compeau’s research, companies like Nordstrom have a
26 monetary incentive to advertise false former prices and in fact use “Compare At”
27 advertisements, without more explanation, to mislead consumers. Dr. Compeau will
28 opine about the following:

1 (a) Consumers' perceptions of value influence their purchasing behavior. By
2 creating an impression of savings, the presence of a higher reference price
3 enhances subjects' perceived value and willingness to buy the product. *See*
4 Barnes, James G. (1975) "Factors Influencing Consumer Reaction to Retail
5 Newspaper 'Sale' Advertising," in *Proceedings*, Edward M. Mazze, ed. Fall
6 Educators' Conference, Chicago, Ill.: American Marketing Association, 37,
7 471-477; Bearden, William O., Donald R. Lichtenstein, and Jesse E. Teel
8 (1984), "Comparison Price, Coupon, and Brand Effects on Consumer
9 Reactions to Retail Newspaper Advertisements," *Journal of Retailing*, 60
10 (Summer), 11-36; Della Bitta, Albert J., Kent B. Monroe, and John M.
11 McGinnis (1981), "Consumer Perceptions of Comparative Price
12 Advertisements," *Journal of Marketing Research*, 18 (November), 416-427;
13 Friedman, Hershey H., Philip E. Weingaten, Linda W. Friedman, and Ralph
14 Gallay (1982), "The Effects of Various Price Markdowns on Consumers'
15 Ratings of a New Product," *Journal of the Academy of Marketing Science*,
16 10(Fall), 432-437; Inman, J. Jeffrey, Leigh McAlister, and Wayne Hoyer
17 (1990), "Promotion Signal: Proxy for a Price Cut?" *Journal of Public Policy*
18 & *Marketing*, 7, 1-10; Keiser, Stephen K. and James R. Krum (1976),
19 "Consumer Perceptions of Retail Advertising With Overstated Price
20 Savings," *Journal of Retailing*, 52 (Fall), 27-36; Urbany Joel E., William O.
21 Bearden, and Dan C. Weilbaker (1988) "The Effect of Plausible and
22 Exaggerated Reference Prices on Consumer Perceptions and Price Search,"
23 *Journal of Consumer Research*, 15 (June), 95-110; Varadarajan, P. Rajan
24 (1986), "Consumers' Behavioral Responses to Coupon Price Promotions:
25 An Empirical Inquiry," in *AMA Educators' Proceedings*, Terence A. Shimp
26 et al., eds. Chicago, Ill.: American Marketing Association, 52, 211.

19 (b) If the reference price is not truthful, a consumer may be encouraged to
20 purchase as a result of a false sense of value. In this situation the
21 advertisement is no longer informative but deceptive. In fact, empirical
22 studies indicate that as discount size increases, consumers' perceptions of
23 value and their willingness to buy the product increases, while their intention
24 to search for a lower price decreases. *See* Berkowitz, Eric N. and John R.
25 Walton (1980), "Contextual Influences on Consumer Price Responses: An
26 Experimental Analysis," *Journal of Marketing Research*, 17 (August), 349-
27 358; Burton, Scot and Donald R. Lichtenstein (1988), "The Effect of Ad
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8 and Manoj Hastak (1983), “Pre-Trial Cognitive Effects of Cents-Off
9 Coupons,” *Journal of Advertising*, 12 (2), 24-33.

10 (c) There is an incentive for outlet stores to advertise inflated reference prices.
11 Because retailers are not required by law to include a reference price on a
12 hang tag, they affirmatively choose to include this information due to its
13 effect on consumers. The retailer’s motivation for using false reference
14 prices is obvious: retailers knowingly use false reference prices to make
15 consumers believe that they are getting a better deal than they actually are
16 getting.

17 (d) Regarding “Compare At” language often used by advertisers, research
18 indicates that “‘Compare At’ is another semantic phrase that, in order to be
19 informative, requires more specific information.” *Consumers’*
20 *Interpretations of the Semantic Phrases Found in Reference Price*
21 *Advertisements*, Compeau, Lindsey-Mullikin, Grewal and Petty, *The Journal*
22 *of Consumer Affairs*, Volume 31, Issue 1, pages 178-187, Summer 2004.
23 Additionally, “It seems that to be informative, the seller should provide an
24 explanation to the consumer as to how the “Compare At” prices were
25 determined.” *Id.*

26 (e) Additionally, “both consumers and retail employees [report] that [a]
27 “Compare At” phrase refers to prices found in a ‘regular price’ department
28 store.” *Id.* at 184.

55. Tying the empirical research conducted by Compeau and others with
evidence of Nordstrom’s intent to use false original prices as illustrated in the
Compliance Manual, demonstrates that Nordstrom intentionally acted to deceive
reasonable consumers, including Plaintiff, into believing the “Compare At” and “%
Savings” price is the former price at which Nordstrom or other mainline retailers
previously sold the same merchandise.

Plaintiff's Purchase

1
2 56. On July 12, 2013, Plaintiff entered the Nordstrom Rack located in San
3 Marcos, California. He observed that merchandise was advertised with price tags that
4 represented “Compare At” prices that were directly on top of prices significantly
5 reduced by a percentage amount. He also observed that other items in the store did
6 not make these price-reduction representations on their price tags. Plaintiff believed
7 that the items with the “Compare At” and “% Savings” price tags represented a
8 discount off a former price, while the items with plain pricing did not. Enticed by the
9 idea of paying significantly less than the “Compare At” and “% Savings” price
10 charged outside of Nordstrom Rack, Plaintiff was induced to purchase one pair of
11 Tommy Hilfiger branded dress pants with a “Compare At” price of \$150.00 and an
12 actual price of \$79.97, which purportedly represented a “46% Savings.”

13 57. A copy of the price tag for the dress pants purchased by Plaintiff is as
14 follows:



25 58. When he purchased the dress pants for the \$79.97 instead of the
26 “Compare At” price of \$150.00, Plaintiff believed that he saved approximately 46%
27 on his purchase. Plaintiff understood the “Compare At” price to be a true former price
28 of the item, as sold at a mainline Nordstrom store or other non-outlet retailer. The

1 price tag also advertised a “% Savings.” Plaintiff understood that one cannot truly
2 “save” off anything other than a true former price on the identical product. He relied
3 on these false comparisons, which caused him to purchase the dress pants.

4 59. On the same date, Plaintiff made two other purchases at Nordstrom Rack.
5 Again, enticed by the idea of paying significantly less than the “Compare At” price
6 charged outside of Nordstrom Rack, Plaintiff purchased a pair of cargo shorts with a
7 “Compare At” price of \$49.50 and an actual price of \$29.97, as well as one pair of
8 herringbone pants with a “Compare At” price of \$65.00 and an actual price of \$29.97.

9 60. When he purchased the herringbone pants for the \$29.97 instead of the
10 “Compare At” price of \$65.00, Plaintiff relied on the price tag and believed that he
11 saved approximately 54% on his purchase. In reality, Nordstrom never intended, nor
12 did it ever, sell the pants at the represented “Compare At” price. Thus, Plaintiff was
13 deceived by the false price comparison into making a full retail purchase with no
14 discount.

15 61. Plaintiff purchased the cargo shorts for the \$29.97 instead of the
16 “Compare At” price of \$49.50, because he believed that he saved 40% on his
17 purchase. In reality, Nordstrom never intended, nor did it ever, sell the shorts at the
18 represented “Compare At” price. Thus, Branca was deceived by the false price
19 comparison into making a full retail purchase with no discount.

20 62. Branca did not understand the “Compare At” prices to indicate only a
21 comparison to a non-identical product because the price tag did not specify that the
22 savings was in relation to a different product, nor did it specify what that different
23 product might have been.

24 63. Branca also understood the Nordstrom Rack Product price tags to
25 indicate a true former price because many items in Nordstrom Rack stores (and which
26 are excluded from the definition of Nordstrom Rack Products) do not carry “Compare
27 At”/“% Savings” price tags. Branca understood that the plain-price tags did not offer
28 a “savings” or a “bargain” compared to a higher former price, but the “Compare

1 At”/“% Savings” price tags did.

2 64. Branca specifically selected certain products over other products because
3 the price tags represented price savings.

4 65. Branca would not have purchased the products, or would not have paid
5 the price he did, if he had known he was not truly receiving the “% Savings” off a true
6 former price, as stated. To be clear, Branca relied on both the “Compare at” and “%
7 Savings” representations, which induced him to buy all of the items identified herein.

8 66. In reality, Nordstrom never intended, nor did it ever, sell the items
9 Branca purchased at the represented “Compare At” price, and Branca did not actually
10 receive a “% Savings.”

11 67. Despite the “Compare At” scheme used at Nordstrom Rack stores,
12 Branca would purchase Nordstrom Rack Products in the future from Nordstrom Rack
13 stores and/or other retail establishments, if price tags accurately reflect “former”
14 prices and discounts. If the Court were to issue an injunction ordering Nordstrom to
15 comply with California’s comparative price advertising laws, and prohibiting
16 Nordstrom’s use of the deceptive practices discussed herein, Branca would likely shop
17 for Nordstrom Rack Products again in the near future at Nordstrom Rack stores.

18
19 **The “Compare At” Tag Claim Deceived Branca and Branca’s**
20 **Interpretation of the Claim was Objectively Reasonable**

21 68. As alleged above, Branca believed that that the “Compare At” and
22 “% Savings” price tag claim meant that the products he bought were previously sold at
23 the higher “Compare At” price.

24 69. Branca would not have purchased the Nordstrom Rack items but for the
25 “Compare At” and “% Savings” representation.

26 70. Branca’s and class members’ reliance on Nordstrom’s false price
27 comparison advertising was inherently reasonable. In fact, empirical marketing
28 studies establish beyond cavil that customers do indeed reasonably rely on such

1 comparative price advertising, which provides an incentive for retailers to engage in
2 this false and fraudulent behavior.

3 71. Plaintiff's expert, Dr. Compeau, has conducted research that shows, *inter*
4 *alia*, that consumers do rely on false former pricing in making purchasing decisions
5 because they think that they are getting a great value:

6
7 [c]omparative price advertising offers consumers a basis for comparing
8 the relative value of the product offering by suggesting a monetary worth
9 of the product and any potential savings...[A] comparative price
10 advertisement can be construed as deceptive if it makes any
11 representation, . . . or involves any practice that may materially mislead a
12 reasonable consumer.

13 *Comparative Price Advertising: Informative or Deceptive?*, Dhruv Grewal and Larry
14 D. Compeau, *Journal of Public Policy & Marketing* , Vol. 11, No. 1, at 52 (Spring
15 1992). In short:

16 [b]y creating an impression of savings, the presence of a higher reference
17 price enhances subjects' perceived value and willingness to buy the
18 product. . . . Thus, if the reference price is not truthful, a consumer may
19 be encouraged to purchase as a result of a false sense of value.

20 *Id.* at 55, 56.

21 72. A recent survey conducted by another one of Plaintiff's experts, Dr.
22 Thomas Maronick, is consistent with Dr. Compeau's research. In April, 2015,
23 Maronick, a Professor of Marketing at Towson University, conducted an online
24 survey of California consumers who have shopped at Nordstrom Rack to assess their
25 perception of the "Compare At" price tags.

26 73. Dr. Maronick holds a Doctorate in Business Administration from the
27 University of Kentucky and a Law Degree from the University of Baltimore School of
28 Law. Dr. Maronick is the former in-house marketing expert for the Bureau of
Consumer Protection at the Federal Trade Commission (FTC). Dr. Maronick has

1 designed and implemented over 400 surveys for the FTC and for litigation clients.

2 74. In the survey (hereafter “Maronick Survey”), 206 members of an online
3 consumer panel (all of whom were pre-cleared as having recently shopped at a
4 Nordstrom Rack store) who lived in California were shown a “Compare At” and “%
5 Savings” Nordstrom Rack price tag as follows:



18
19 75. The survey results demonstrate that Branca’s interpretation of the label
20 was objectively reasonable. According to the Maronick Survey, the overwhelming
21 majority of consumers—90%--believe that the price tag indicates the associated item
22 was previously sold for \$198. Indeed, most consumers (60%) believed that the price
23 tag indicates the item was sold at a main line Nordstrom store for \$198. The
24 remainder of the 90% believe the item was previously sold either at another retailer or
25 at Nordstrom Rack for this “Compare At” price.

26 76. Additionally, survey participants were asked to describe in their own
27 words what the price tag represented. Below are all of the verbatim responses to this
28 open-ended question:

1	the price is on sale about 60%	marked down	60% Savings off suggested retail
2	price is reduced	60% off regular price of 168.00 for 79.90 It's discounted That it is deeply discounted It suggests that it is 60% of it's regular price. It is a great deal!	deep discount
3			
4			
5			
6	huge savings	hugely discounted	It's over 50% off
7	name brands at a discounted price	it is on sale	That it is significantly discounted from original retail price, now it is I believe \$78 at 60% Off savings and the item is a black garment It has a large percentage taken off
8			
9			
10	That is 60% off from retail price.	It says that it's been heavily discounted 60% off Discount it is 60% off of regular price that if I buy this item I would be saving 60% it is %60 lss than in a regular department store	79.99
11			
12			
13			
14	Discounted by 60%	60% off the original price	that it is half off
15	that its 60% off ticket price	it is discounted from the regular price	its cheaper than other retailer
16			
17	a big discount from original price	what would cost you 60% more at a retail store price	198.00
18			
19	was very expensive	the item was marked down	discount price
20	It is greatly discounted, I think 60%	on sale	BARGAIN
21	it is a lot less than original price	The item was marked down 60%	on sale
22			
23	it show the original price and the discounted price it is 60% less than the suggested price That in a normal store, it would cost almost \$200, but the price at this store is almost \$80.	that it's a great deal	More than half off
24			
25			
26			
27	60% off	Sales	60% off
28	That it is reduced	That you will receive 60% off	a discount on the original price

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That it is deeply discounted from it's original price.	It's cheaper	you receive a great discount
it is discounted by 60 percent	the nordstrom rack price is \$79 and the item is black in color THAT THIS ITEM IS DISCOUNTED CONSIDERABLY it is \$80 It is deeply discounted, but is also better quality than what you are paying for it.	That it is a great deal at 60% off
60% off-\$79.00	That it's cheaper than the retail store.	It is 60% off the original price but it is still so expensive.
60% Off of original price	It was \$168, now \$79, 60% off	It's 60% off retail price. Retail price is inflated though.
sale	60% off from the original price	60% off
very big discount	you save money	That it is now drastically reduced to 79.99 big discount The tag suggests that item used to be sold for a lot more, but can be purchased for less at nordstrom's rack.
half price	it's on clearance	That it's a great bargain, and a lower price than you would find anywhere else. That it costs 60% less than its retail value.
It suggests that in a normal retail store that the price would be much higher and that the price is discounted for the rack.	It makes it seem like it's REALLY on sale, when actually it's just 80 bucks.	60% discounte [sic]
The price is on huge discount.	That is is [sic] a lower price than another store 60% discount the item is \$79.97 and 60% off the original value of almost \$200 Its suggest that the original price of the item is being sold at a 60 % reduction.	That it is deeply discounted
That it is 60% less than the regular retail price That it is 60% off full price (was \$198) Now \$79,9something That it is deeply discounted 60% off the normal Nordstrom price It was about	80	the price is discounted to \$79.97

<p>1 \$78 dollars and discounted 2 from ~180. Little bit less 3 than 50% off greatdeal 4 implied It is marked 60% cheaper than other retailers sell it Compare at \$198, Rack price \$69.98</p>		
<p>5 It is 60% off of retail price at 6 Nordstrom Rack.</p>		

7
 8 77. In light of the consumer feedback received through the survey, Branca’s
 9 understanding of the “Compare At” and “% Savings” price tags at Nordstrom Rack
 10 was objectively reasonable.

11 **CLASS ALLEGATIONS**

12 78. Branca incorporates and realleges by reference each and every allegation
 13 contained in the preceding paragraphs as if set forth herein in full.

14 79. Branca brings this action on behalf of himself and the members of the
 15 proposed Class. The proposed Class consists of:

16 All individuals residing in the State of California who, within the
 17 applicable statute of limitations preceding the filing of this action,
 18 purchased Nordstrom Rack Products with the “Compare At”/“%
 19 Savings” price tags.

20 80. Excluded from the Class are Nordstrom, its parents, subsidiaries,
 21 affiliates, officers and directors, any entity in which Nordstrom has a controlling
 22 interest, all customers who make a timely election to be excluded, governmental
 23 entities, all judges assigned to hear any aspect of this litigation, as well as their
 24 immediate family members, and employees of the Court who have any involvement in
 25 the handling of this matter

26 81. The members of the Class are so numerous that joinder is impractical.
 27 The Class consists of thousands of members, the precise number which is within the
 28 knowledge of and can be ascertained only by resort to Nordstrom’s records.

1 82. There are numerous questions of law and fact common to the Class
2 which predominate over any questions affecting only individual members of the Class.

3 Among the questions of law and fact common to the Class are:

- 4 (a) Whether, during the Class Period, Nordstrom used false price
5 representations and falsely advertised price discounts on Nordstrom Rack
6 Products;
- 7 (b) Whether Nordstrom intended its “Compare At” price to be synonymous
8 with item’s original price;
- 9 (c) Whether, during the Class Period, the “Compare At”/“% Savings” prices
10 advertised by Nordstrom were the prevailing market prices for the
11 Nordstrom Rack Products during the three month periods preceding the
12 dissemination and/or publication of the advertised former prices;
- 13 (d) Whether Nordstrom’s use of false or deceptive price advertising
14 constituted false advertising under California Law;
- 15 (e) Whether Nordstrom engaged in unfair, unlawful and/or fraudulent
16 business practices under California law;
- 17 (f) Whether Nordstrom misrepresented and/or failed to disclose material
18 facts about its product pricing and discounts.
- 19 (g) Whether Nordstrom made false or misleading statements of fact
20 concerning the reasons for, existence of, or amounts of price reductions;
- 21 (h) Whether Nordstrom’s conduct, as alleged herein, was intentional and
22 knowing;
- 23 (i) Whether Class members are entitled to damages and/or restitution, and in
24 what amount;
- 25 (j) Whether Nordstrom is likely to continue using false, misleading or illegal
26 price comparisons such that an injunction is necessary; and
- 27 (k) Whether Plaintiff and Class members are entitled to an award of
28 reasonable attorneys’ fees, pre-judgment interest and costs of suit.

1 83. Branca’s claims are typical of the claims of the members of the Class
2 and, like all members of the Class, purchased goods from a Nordstrom Rack store that
3 falsely conveyed a “Compare At”/“% Savings” price and a fictitious discount.
4 Accordingly, Branca has no interests antagonistic to the interests of any other member
5 of the Class.

6 84. Branca is a representative who will fully and adequately assert and
7 protect the interests of the Class, and has retained counsel who is experienced in
8 prosecuting class actions. Accordingly, Branca is an adequate representative and will
9 fairly and adequately protect the interests of the Class.

10 85. A class action is superior to all other available methods for the fair and
11 efficient adjudication of this lawsuit, because individual litigation of the claims of all
12 members of the Class is economically unfeasible and procedurally impracticable.
13 While the aggregate damages sustained by the Class are in the millions of dollars, the
14 individual damages incurred by each member of the Class resulting from Nordstrom’s
15 wrongful conduct are too small to warrant the expense of individual lawsuits. The
16 likelihood of individual Class members prosecuting their own separate claims is
17 remote, and, even if every member of the Class could afford individual litigation, the
18 court system would be unduly burdened by individual litigation of such cases.

19 86. The prosecution of separate actions by members of the Class would
20 create a risk of establishing inconsistent rulings and/or incompatible standards of
21 conduct for Nordstrom. For example, one court might enjoin Nordstrom from
22 performing the challenged acts, whereas another might not. Additionally, individual
23 actions may be dispositive of the interests of the Class, although certain class
24 members are not parties to such actions.

25 87. The conduct of Nordstrom is generally applicable to the Class as a whole
26 and Branca seeks, inter alia, equitable remedies with respect to the Class as a whole.
27 As such, the systematic policies and practices of Nordstrom make declaratory relief
28 with respect to the Nordstrom California class as a whole appropriate.

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COUNT I

(Violation of the “Unfair” Prong of the UCL)

88. Branca incorporates and realleges by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

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

90. A business act or practice is “unfair” under the UCL if the reasons, justifications and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.

91. Nordstrom has violated the “unfair” prong of the UCL by representing a false “Compare At” price and corresponding percentage discount price for Nordstrom Rack Products. As a result, the inflated “Compare At” price and corresponding percentage discount price was nothing more than a false, misleading and deceptive illusion of a discount.

92. These acts and practices are unfair because they caused Branca, and are likely to cause consumers, to falsely believe that Nordstrom Rack is offering value, discounts or bargains from the prevailing market worth of the products sold that did not, in fact, exist. For Nordstrom, “Compare At” is synonymous with a higher original price. As a result, purchasers, including Branca, reasonably perceived that they were receiving products that regularly sold in the non-outlet retail marketplace at substantially higher prices (and were, therefore, worth more) than what they paid. This perception has induced reasonable purchasers, including Branca, to buy Nordstrom Rack Products, which they otherwise would not have purchased.

93. The gravity of the harm to members of the Class resulting from these unfair acts and practices outweighed any conceivable reasons, justifications and/or motives of Nordstrom Rack for engaging in such deceptive acts and practices. By

1 committing the acts and practices alleged above, Nordstrom engages in unfair
2 business practices within the meaning of California Business & Professions Code §§
3 17200, et seq.

4 94. Through its unfair acts and practices, Nordstrom has improperly obtained
5 money from Branca and the Class. As such, Branca requests that this court cause
6 Nordstrom to restore this money to Branca and all Class members, and to enjoin
7 Nordstrom from continuing to violate the UCL as discussed herein and/or from
8 violating the UCL in the future. Otherwise, Branca and the Class may be irreparably
9 harmed and/or denied an effective and complete remedy if such an order is not
10 granted.

11 **COUNT II**

12 **(Violation of the “Fraudulent” Prong of the UCL)**

13 95. Branca incorporates and realleges by reference each and every allegation
14 contained in the preceding paragraphs as if fully set forth herein.

15 96. 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. & Pro. Code § 17200.

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

20 98. The labels on the Nordstrom Rack Products and advertising materials
21 concerning false former prices were fraudulent within the meaning of the UCL
22 because they deceived Branca, and were likely to deceive members of the class, into
23 believing that Nordstrom was offering value, discounts or bargains at Nordstrom Rack
24 stores from the prevailing market value or worth of the products sold that did not, in
25 fact, exist.

26 99. Nordstrom deceived consumers into believing that it was offering value,
27 discounts or bargains at Nordstrom Rack stores from the prevailing market value or
28 worth of the Nordstrom Rack products sold that did not, in fact, exist. For Nordstrom,

1 “Compare At” is synonymous with a higher original price.

2 100. As a result, purchasers, including Branca, reasonably perceived that they
3 were receiving products that regularly sold in the non-outlet retail marketplace at
4 substantially higher prices (and were, therefore, worth more) than what they paid.
5 This perception induced reasonable purchasers, including Branca, to buy Nordstrom
6 Rack Products, which they otherwise would not have purchased.

7 101. Nordstrom’s acts and practices as described herein have deceived Branca
8 and were highly likely to deceive members of the consuming public. Specifically, in
9 deciding to purchase Nordstrom Rack Products, Branca relied on Nordstrom’s
10 misleading and deceptive representations regarding its “Compare At” and percentage
11 discounted prices. Each of these factors played a substantial role in Branca’s decision
12 to purchase those products, and Branca would not have purchased those items in the
13 absence of Nordstrom’s misrepresentations. Accordingly, Branca suffered monetary
14 loss as a direct result of Nordstrom’s pricing practices described herein.

15 102. As a result of the conduct described above, Nordstrom has been unjustly
16 enriched at the expense of Branca and members of the proposed Class. Specifically,
17 Nordstrom has been unjustly enriched by obtaining revenues and profits that it would
18 not otherwise have obtained absent its false, misleading and deceptive conduct.

19 103. Through its unfair acts and practices, Nordstrom has improperly obtained
20 money from Branca and the Class. As such, Branca requests that this court cause
21 Nordstrom to restore this money to Branca and all Class members, and to enjoin
22 Nordstrom from continuing to violate the UCL as discussed herein and/or from
23 violating the UCL in the future. Otherwise, Branca and the Class may be irreparably
24 harmed and/or denied an effective and complete remedy if such an order is not
25 granted.

26 **COUNT III**

27 **(Violation of the “Unlawful” Prong of the UCL)**

28 104. Branca incorporates and realleges by reference each and every allegation

1 contained in the preceding paragraphs as if fully set forth herein.

2 105. The UCL defines unfair business competition to include any “unlawful,
3 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or
4 misleading” advertising. Business & Professions Code § 17200.

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

7 107. California statutory and regulatory law also expressly prohibits false
8 former pricing schemes. Business & Professions Code § 17501, entitled “Value
9 determinations; Former price advertisements,” states:

10 For the purpose of this article the worth or value of anything advertised is
11 the prevailing market price, wholesale if the offer is at wholesale, retail if
12 the offer at retail, at the time of publication of such advertisement in the
13 locality wherein the advertisement is published.

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

18 (Emphasis added).

19 108. Civil Code § 1770, subsection (a)(9), prohibits a business from
20 “[a]dvertising goods or services with intent not to sell them as advertised,” and
21 subsection (a)(13) prohibits a business from “[m]aking false or misleading statements
22 of fact concerning reasons for, existence of, or amounts of price reductions.”

23 109. Nordstrom also violated and continues to violate Business & Professions
24 Code § 17501, and Civil Code § 1770, sections (a)(9) and (a)(13) by advertising false
25 discounts from purported former prices that were, in fact, not the prevailing market
26 prices within three months next preceding the publication and dissemination of
27 advertisements containing the false former prices.

28 110. The FTCA prohibits “unfair or deceptive acts or practices in or affecting

1 commerce” and specifically prohibits false advertisements. (15 U.S.C. § 45(a)(1) and
2 15 U.S.C. § 52(a)). The FTC has established guidelines which prohibit false pricing
3 schemes, similar to Nordstrom’s “Compare At” and “% Savings” scheme in material
4 respects, as deceptive practices that would violate the FTCA:

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

18 16 C.F.R. § 233.1.

19 111. Nordstrom’s use of and reference to a materially false “Compare At”
20 price and “% Savings” representation in connection with its marketing and
21 advertisements concerning the Nordstrom Rack Products violated and continues to
22 violate the FTCA, 15 U.S.C. § 45(a)(1) and 15 U.S.C. § 52(a), as well as FTC
23 Guidelines published at 16 C.F.R. § 233.

24 112. As a result of the conduct described above, Nordstrom has been unjustly
25 enriched at the expense of Branca and members of the proposed Class. Specifically,
26 Nordstrom has been unjustly enriched by obtaining revenues and profits that it would
27 not otherwise have obtained absent its false, misleading and deceptive conduct.

28 113. Through its unlawful acts and practices, Nordstrom has improperly
obtained money from Branca and the Class. As such, Branca requests that this court
cause Nordstrom to restore this money to Branca and all Class members, and to enjoin
Nordstrom from continuing to violate the UCL as discussed herein and/or from

1 violating the UCL in the future. Otherwise, Branca and the Class may be irreparably
2 harmed and/or denied an effective and complete remedy if such an order is not
3 granted.

4 **COUNT IV**

5 **(Violation of the California False Advertising Law,**
6 **California Business & Professions Code Sections 17500, *et seq.*)**

7 114. Branca incorporates and realleges by reference each and every allegation
8 contained in the preceding paragraphs as if fully set forth herein.

9 115. California's Business and Professions Code §§ 17500, *et seq.* prohibits
10 unfair, deceptive, untrue, or misleading advertising, including, but not limited to, false
11 statements as to worth, value and former price.

12 116. Nordstrom's practice of advertising "Compare At" prices and "%
13 Savings" on price tags on Nordstrom Rack Products, which were materially greater
14 than the actual prices of those products was an unfair, deceptive and misleading
15 advertising practice because it gave the false impression that the Nordstrom Rack
16 Products were regularly sold in the non-outlet retail marketplace at substantially
17 higher prices (and were, therefore, worth more) than they actually were. In fact, the
18 exclusive, Nordstrom Rack Products did not have a prevailing market price anywhere
19 close to the "Compare At" price advertised because the merchandise was always sold
20 under the percentage discounted price when placed on sale at the Nordstrom Rack
21 stores.

22 117. Through its unfair acts and practices, Nordstrom has improperly obtained
23 money from Branca and the Class. As such, Branca requests that this court cause
24 Nordstrom to restore this money to Branca and all Class members, and to enjoin
25 Nordstrom from continuing to violate the FAL as discussed herein and/or from
26 violating the FAL in the future. Otherwise, Branca and the Class may be irreparably
27 harmed and/or denied an effective and complete remedy if such an order is not
28 granted.

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COUNT V

**(Violation of the Consumers Legal Remedies Act,
California Civil Code Sections 1750, et seq.: Injunctive Relief)**

118. Branca incorporates and realleges by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

119. This cause of action is brought pursuant to the CLRA.

120. Branca and each member of the proposed class are “consumers” within the meaning of California Civil Code § 1761(d).

121. Nordstrom’s selling of Nordstrom Rack Products to Branca and the Class were “transactions” within the meaning of California Civil Code § 1761(e). The Nordstrom Rack Products purchased by Branca and the Class are “goods” within the meaning of Civil Code §1761(a).

122. As described herein, Nordstrom violated the CLRA by falsely representing the nature, existence and amount of price discounts by fabricating inflated labeled “Compare At” prices and “% Savings.” Such a pricing scheme is in violation of Civ. Code § 1770, subsection (a)(9) (“[a]dvertising goods or services with intent not to sell them as advertised”) and subsection (a)(13) (“[m]aking false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions”).

123. Branca relied on Nordstrom’s false representations in deciding to purchase Nordstrom Rack Products. Branca would not have purchased Nordstrom Rack Products absent Nordstrom’s unlawful conduct.

124. On September 2, 2014, counsel for Branca provided proper notice of his intent to pursue claims under the CLRA and an opportunity to cure to Defendant via certified mail to their principal place of business at 1617 Sixth Avenue, Seattle, WA, 98101. Counsel for Nordstrom acknowledged receipt of the notice and rejected the opportunity to cure by letter dated October 7, 2014.

1 125. Branca requests this Court enjoin Nordstrom from continuing to violate
2 the CLRA as discussed herein and/or from violating the UCL in the future and to
3 order restitution to Branca and each member of the proposed class. Otherwise, Branca,
4 the Class and members of the general public may be irreparably harmed and/or denied
5 effective and complete remedy if such an order is not granted.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Branca and the members of the Class demand a jury trial on all
8 claims so triable and judgment against Defendant, Nordstrom, Inc., as follows:

9 A. An order certifying that this action may be maintained as a class action,
10 that Branca be appointed Class Representative and Branca's counsel be appointed
11 Class Counsel;

12 B. A judgment awarding Branca and all members of the Class restitution
13 and/or other equitable relief, including, without limitation, restitutionary disgorgement
14 of all profits and unjust enrichment that Nordstrom obtained from Branca and the
15 Class as a result of its unlawful, unfair and fraudulent business practices described
16 herein;

17 C. An order enjoining Nordstrom from continuing to violate the UCL, False
18 Advertising Law and CLRA as described herein.

19 D. A judgment awarding Branca his costs of suit; including reasonable
20 attorneys' fees pursuant to California Civil Code § 1780(d), Code of Civil Procedure §
21 1021.5 and as otherwise permitted by statute; and pre and post-judgment interest; and

22 E. Such other and further relief as may be deemed necessary or appropriate.

23 DATED: _____, 2015

24 TYCKO & ZAVAREEI LLP

25
26 By: /s/ Hassan A. Zavareei
27 Hassan A. Zavareei
28 Attorney for Plaintiff

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JURY TRIAL DEMANDED

PLAINTIFF demands a jury trial on all triable issues.

DATED: _____, 2015

TYCKO & ZAVAREEI LLP

By: /s/ Hassan A. Zavareei
Hassan A. Zavareei
Attorney for Plaintiff