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*Attorneys for Plaintiff, Donna Vandiver  
 [Application for pro hac vice to be filed]*

11 *Attorneys for Plaintiff Gaylia Pickles*

12 **UNITED STATES DISTRICT COURT**  
 13  
 14 **NORTHERN DISTRICT OF CALIFORNIA**

15 GAYLIA PICKLES & DONNA  
 VANDIVER, individually and on  
 16 behalf of all other similarly situated

Case No.

**CLASS ACTION**

COMPLAINT FOR:

17 Plaintiffs,

18 v.

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.; and,
6. Violations of the Deceptive Trade Practices Act; Tex. Bus. & Com Code §17.46 et seq.

20 KATE SPADE AND COMPANY, a  
 Delaware corporation; and DOES 1-  
 21 50, inclusive,

22 Defendant.  
 23  
 24  
 25  
 26  
 27

**DEMANDED FOR JURY TRIAL**

1 Plaintiffs GAYLIA PICKLES and DONNA VANDIVER (collectively  
2 “Plaintiffs”), by their undersigned attorneys, on behalf of themselves and upon  
3 information and belief as to all matters, bring this class action against Kate Spade and  
4 Company (“Kate Spade” or “Defendant”) individually and on behalf of all others  
5 similarly situated. Plaintiffs allege the following based upon personal knowledge as  
6 to the allegations regarding Plaintiffs and on information and belief as to other  
7 allegations:

### 8 I. INTRODUCTION

9 1. This is a civil class action filed under the 28 U.S.C. 1332(d)(2) and (6)  
10 seeking monetary damages (for all claims for relief except the Fifth and Sixth, as set  
11 forth below), restitution, injunctive and declaratory relief from Defendant, Kate  
12 Spade and Company, for falsely advertising original prices and corresponding price  
13 discounts for its Kate Spade Outlet Products (“Outlet Products”). During the Class  
14 Periods (defined below), Kate Spade advertised false former prices and false price  
15 discounts for its Kate Spade Outlet Products. The classes consist of a class  
16 of California consumers (Class 1) and a class of Texas consumers (Class 2).

17 2. As of 2015, Kate Spade operates 159 retail stores in North America  
18 comprising of 97 specialty boutique stores and 62 outlet stores in the United States.  
19 California and Texas represent the states having the most locations with eight (8)  
20 stores located in each state. Kate Spade’s in-store advertising scheme used in its  
21 outlet stores is the subject of this class action.

22 3. During the Class Periods, upon information and belief, Kate Spade  
23 misrepresented the existence, nature and amount of price discounts to consumers in  
24 its outlet stores by purporting to offer specific percentage discounts from expressly  
25 referenced former retail prices, which were represented as “our price” retail prices.  
26 Kate Spade’s in-store pricing scheme was prominently displayed directly above its  
27 products and on tags which made reference to former “our price” retail prices that  
28 never existed and/or did not constitute the prevailing market retail prices for such

1 products within the three months next immediately preceding the publication of the  
2 advertisement. Furthermore, upon check-out, Kate Spade provided consumers,  
3 including Plaintiffs, with sales receipts continuing the misrepresentations regarding  
4 false price reductions. For example, the stated discount from the false former price  
5 was listed for each item purchased. Below the original price is a line with large,  
6 upper case print stating “50%+20% OFF HANDBAG,” followed by the total amount  
7 of dollar savings.

8 4. The Federal Trade Commission (“FTC”) explicitly defines the fictitious  
9 pricing scheme employed at Kate Spade Outlet stores as deceptive:

10  
11 One of the most commonly used forms of bargain advertising is to  
12 offer a reduction from the advertiser’s own former price for an article.  
13 If the former price is the actual, bona fide price at which the article  
14 was offered to the public on a regular basis for a reasonably  
15 substantial period of time, it provides a legitimate basis for the  
16 advertising of a price comparison. Where the former price is genuine,  
17 the bargain being advertised is a true one. If, on the other hand, the  
18 former price being advertised is not bona fide but fictitious – for  
19 example, where an artificial, inflated price was established for the  
20 purpose of enabling the subsequent offer of a large reduction – the  
21 “bargain” being advertised is a false one; the purchaser is not  
22 receiving the unusual value he expects. In such a case, the “reduced”  
23 price is, in reality, probably just the seller’s regular price. 16 C.F.R. §  
24 233.1.

25 5. Similarly, California statutory and regulatory law expressly prohibits  
26 false pricing schemes. Business & Professions Code § 17501, entitled “Value  
27 determination; Former price advertisements,” states:

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

1            *No price shall be advertised as a former price of any advertised thing,*  
2            *unless the alleged former price was the prevailing market price as*  
3            *above defined within three months next immediately preceding*  
4            *publication of the advertisement or unless the date when the alleged*  
5            *former price did prevail is clearly, exactly and conspicuously stated in*  
6            *the advertisement. (emphasis added).*

7            6. Kate Spade's false price discounting scheme was disseminated to  
8 consumers via its in-store display advertising and was consistent across all of Kate  
9 Spade Outlet stores. Those purposed discounts were false, however, because the  
10 referenced former retail prices were fabricated and did not represent Kate Spade's  
11 true original retail prices for its Kate Spade Outlet Products. Furthermore, the  
12 advertised original "our price" prices for Kate Spade Outlet Products were not the  
13 prevailing market prices within three months next immediately preceding the  
14 publication of the advertised former prices, as required by California law.

15            7. Upon information and belief, thousands of consumers in California and  
16 Texas were victims of Kate Spade's deceptive, misleading and unlawful pricing  
17 scheme and thousands more will be deceived if Kate Spade's practices continue.

18            8. Kate Spade knew that its comparative price advertising was false,  
19 deceptive, and misleading as defined by state and federal statutory and regulatory  
20 laws.

21            9. Kate Spade fraudulently concealed from and intentionally failed to  
22 disclose to Plaintiffs and others similarly situated the truth about its advertised price  
23 discounts and former prices.

24            10. At all relevant times, Kate Spade has been under a duty to Plaintiffs and  
25 others similarly situated to disclose the truth about its reference "our price" prices and  
26 illusory discounts.

27            ///

28            ///

1           11. The facts which Kate Spade misrepresented and/or failed to disclose  
2 (and which Kate Spade continues to misrepresent and/or fail to disclose) are material  
3 facts that a reasonable person would consider material, i.e., facts which contribute to  
4 a reasonable person's decision to purchase apparel and accessories. Kate Spade's  
5 false representations about original "our price" prices and false representations about  
6 purported savings, discounts and bargains are objectively material to the reasonable  
7 consumer. Therefore reliance upon such representations may be presumed as a  
8 matter of law.

9           12. Plaintiffs relied upon such false representations of original "our price"  
10 prices and discounts when purchasing apparel at Kate Spade Outlets. Plaintiffs  
11 would not have made such purchases but for Kate Spade's false representations of  
12 original "our price" prices and illusory price discounts.

13           13. Plaintiffs reasonably and justifiably acted and relied to their detriment  
14 on Kate Spade's false original "our price" price representations and failure to  
15 disclose, and concealment of, the truth about Kate Spade's false price-comparison  
16 advertising scheme in purchasing apparel from Kate Spade Outlets.

17           14. Kate Spade intentionally concealed and failed to disclose the truth about  
18 its misrepresentations and false former price advertising scheme for the purpose of  
19 inducing Plaintiffs, and others similarly situated, to purchase apparel at Kate Spade  
20 Outlet stores.

21           15. Plaintiffs bring this action on behalf of themselves and other similarly  
22 situated consumers who purchased products at Kate Spade Outlet stores and seek to  
23 stop the dissemination of Kate Spade's false, deceptive and misleading advertising,  
24 correct the false and misleading perception that Kate Spade has created in the minds  
25 of consumers, and to obtain monetary redress for those who have purchased Kate  
26 Spade Outlet items. Herein, Plaintiffs allege violations of the consumer protection  
27 statutes of the states of California and Texas.

28



1 and markets accessories and apparel under three global, multichannel lifestyle brands:  
2 Kate Spade New York, KATE SPADE SATURDAY and JACK SPADE.” Kate  
3 Spade transacts domestic direct-to-consumer sales “through [its] own retail and outlet  
4 stores and e-commerce websites.”

5 20. Plaintiffs are informed and believe that each co-defendant, by and  
6 through its officers, directors or managing agents ratified, authorized and approved,  
7 expressly or implicitly, all of the conduct alleged herein.

8 21. When in this Complaint reference is made to any act of “Kate Spade” or  
9 “Defendant,” such shall be deemed to mean that officers, directors, agents,  
10 employees, or representatives of Defendant named in this lawsuit committed or  
11 authorized such acts, or failed and omitted to adequately supervise or properly control  
12 or direct their employees while engaged in the management, direction, operation or  
13 control of the affairs of the Defendant and did so while acting within the scope of  
14 their employment or agency.

15 **III. JURISDICTION AND VENUE**

16 22. This Court has original jurisdiction of this action under the Class Action  
17 Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has  
18 original jurisdiction because the aggregate claims of the members of the putative  
19 Class exceed \$5 million, exclusive of costs, and at least one of the members of the  
20 proposed classes is a citizen of a different state than Kate Spade and Company. The  
21 total number of members of the proposed classes is greater than one hundred (100).

22 23. The Northern District of California has personal jurisdiction over Kate  
23 Spade and Company because Kate Spade and Company is licensed and doing  
24 business in Alameda County, State of California, authorized to do business in  
25 California and registered with the California Secretary of State, has sufficient  
26 minimum contacts with California, having intentionally availed itself of the  
27 California market so as to render the exercise of jurisdiction over it by this District  
28 Court consistent with traditional notions of fair play and substantial justice.

1 24. Venue is proper in the United States District Court, Northern District of  
2 California pursuant to 28 U.S.C. § 1391, because the Defendant named in this action  
3 resides, transacts business, or is found within this District, and a substantial part of  
4 the events giving rise to Plaintiffs' claims arose here.

5 25. The misrepresentations and unfair business practices forming the basis  
6 of the claims of Plaintiffs and the classes emanated from California because Kate  
7 Spade regularly conducts business and a substantial number of Outlet stores are  
8 located in California. Furthermore, a significant number of Class Members are  
9 located in California.

#### 10 IV. FACTUAL ALLEGATIONS

11 26. Outlet malls have largely replaced warehouse stores – which typically  
12 maintained an inventory of defective and excess merchandise. Outlet malls have  
13 gained popularity amongst consumers for offering products at deep discounts, in  
14 some cases as much as 65% off the retail price.<sup>1</sup>

15 27. Whereas, traditionally, warehouse outlet stores carried merchandise that  
16 was intended for sale at their boutique store counterparts but were not purchased, in  
17 an effort to drive higher profit margins, retailers such as Kate Spade Outlet stores  
18 began using company-owned outlet stores to sell products that were made exclusively  
19 for sale at the outlets and never intended to be sold at non-outlet stores. In fact, 82%  
20 of products at outlet centers are made specifically for the outlets.<sup>2</sup>

21 28. On June 16, 2015, California Plaintiff, GAYLIA PICKLES entered the  
22 Kate Spade Outlet store located in Commerce, California. She observed that  
23 handbags were advertised with price tags that represented an “our price” value.  
24 Above the handbags she observed a sign indicating a 50% discount applicable to all

25 \_\_\_\_\_  
26 <sup>1</sup> See, e.g. <http://www.forbes.com/sites/investopedia/2012/12/29/7-tips-for-outlet-mall-shopping/>; last visited August  
27 28, 2015. “Although the sign says 65% off the retail price, it is likely that you would have never paid the retail price  
28 anyway.”

<sup>2</sup> See, e.g. <http://www.dailyfinance.com/2010/11/02/10-things-outlet-malls-wont-tell-you/>; last visited August 28, 2015.  
“These changes mean outlets are no longer a place to ‘dump the crummy stuff’... says Anne Coughlan, a marketing  
professor at Northwestern’s Kellogg School of Management. In fact, 82% of products at outlet centers are made  
specifically for the outlets, says NPD Group retail analyst Marshal Cohen.

1 merchandise and an additional 20% discount for handbags. Believing the “our price”  
2 to be an original price and that she could purchase a handbag for significantly less  
3 than what those products were worth and normally sell for in the retail marketplace,  
4 Ms. Pickles was induced to purchase a handbag which was offered at a price  
5 significantly lower than its stated original price. Plaintiffs purchased a handbag after  
6 relying on Kate Spade’s false discounts and false original or former “our price”  
7 designation for the product.

8 29. Specifically, relying on Kate Spade’s misrepresentations and false and  
9 deceptive advertising, Ms. Pickles purchased a handbag that contained a Kate Spade  
10 green price tag representing it to have an original price of \$355.00 and a discount of  
11 \$213.00, leaving a purchase price or “deal” at \$142.00. She believed and relied on  
12 the fact that she was obtaining the handbag at 70% off the original price and that it  
13 regularly sold in the retail marketplace for \$355.00. Upon information and belief,  
14 these purported original “our price” prices and corresponding price reductions and  
15 savings were false and deceptive, as the prevailing retail price for the handbag during  
16 the three months immediately prior to Plaintiff’s purchase of such item was no more  
17 than \$142.00, and not the \$355.00 original “our price” represented by Kate Spade.  
18 Plaintiff would not have purchased the handbag in the absence of Kate Spade’s  
19 misrepresentations. Consequently, Ms. Pickles and similar California consumers  
20 have been personally victimized by and suffered economic injury as a direct result of  
21 Kate Spade’s unlawful, unfair and fraudulent conduct.

22 30. Furthermore, upon check-out on June 11, 2015, Kate Spade provided  
23 Ms. Pickles with a sales receipt containing the same misrepresentation regarding the  
24 false original price and price reduction on the handbag she purchased. The false  
25 original price is set forth on the line item following the quantity count. Below the  
26 original price is a line with large, upper case print stating “50%+20% OFF  
27 HANDBAG,” followed by the promised savings of \$213.00.  
28

1           31. Plaintiff would not have purchased the handbag in the absence of Kate  
2 Spade's misrepresentations. Consequently, Ms. Pickles and similar California  
3 consumers have been personally victimized by and suffered economic injury as a  
4 direct result of Kate Spade's unlawful, unfair and fraudulent conduct.

5           32. On July 13, 2015, Texas Plaintiff, DONNA VANDIVER went to the  
6 Kate Spade Outlet located in New Braunfels, Texas. The bags were advertised with  
7 price tags that represented an "our price" value. Believing the "our price" to be an  
8 original price and that she could purchase a handbag for 50% less than what those  
9 products were worth and normally sell for in the retail marketplace, Ms. Vandiver,  
10 was induced to purchase a handbag and a wallet which was offered at a price  
11 significantly lower than its stated original price. She purchased a handbag after  
12 relying on Kate Spade's false discounts and false original or former "our price"  
13 designations for the products.

14           33. Specifically, relying on Kate Spade's misrepresentations and false and  
15 deceptive advertising, Ms. Vandiver purchased a handbag and wallet that had  
16 attached green Kate Spade price tags representing each to have original prices of  
17 \$275.00 and \$145.00 (respectively) that were advertised in the store at a discount of  
18 50%, leaving a purchase price or "deal" at \$137.50 for the handbag and \$72.50 for  
19 the wallet. Ms. Vandiver believed and relied on the fact that she was obtaining the  
20 handbag and wallet at 50% off the original price and that the handbag regularly sold  
21 for \$275.00 and the wallet for \$145.00 by Kate Spade.

22           34. Furthermore, upon check-out on July 13, 2015 Kate Spade provided her  
23 with a sales receipt containing the same misrepresentation regarding the false original  
24 price and price reduction on the handbag she purchased. The false original price is  
25 set forth on the line item following the quantity count. Below the original price is a  
26 line with large, upper case print stating "50% OFF HANDBAG," followed by the  
27 promised savings of \$137.50 for the handbag and \$72.50 for the wallet for a total  
28 savings of \$210.00.

1           35. Plaintiffs would not have purchased the handbags and wallet in the  
2 absence of Kate Spade's misrepresentations. Consequently, Plaintiffs have been  
3 personally victimized by and suffered economic injury as a direct result of Kate  
4 Spade's unlawful, unfair and fraudulent conduct.

5           36. Plaintiffs' and Class Members' reliance upon Kate Spade's false,  
6 illusory price comparison advertising was not only reasonable, but entirely intended  
7 by Kate Spade to drive sales and profit margins. Empirical marketing studies indicate  
8 retailers have an incentive to engage in this false and fraudulent behavior:

9  
10           [c]comparative price advertising offers consumers a basis for comparing the  
11 relative value of the product offering by suggesting a monetary worth of the  
12 product and any potential savings...[A] comparative price advertisement can be  
13 construed as deceptive if it makes any representation,...or involves any  
14 practice that may materially mislead a reasonable consumer.<sup>3</sup>

15           In sum:

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

20           37. Without tracking Kate Spade's advertisements on a daily basis for each  
21 and every item, Plaintiffs and all other consumers have no realistic way of knowing  
22 which of Kate Spade's current or future price comparisons are false or deceptive.  
23 The Court should issue injunctive relief ordering Kate Spade to comply with  
24 California's and Texas' comparative price advertising laws, and prohibiting Kate  
25 Spade from using the deceptive practices discussed herein.

26           ///

27           ///

28 <sup>3</sup> *Comparative Price Advertising: Informative or Deceptive?*, Dhruv Grewal and Larry D. Compeau, *Journal of Public Policy & Marketing*, Vol. 11, No. 1, at 52 (Spring 1992).



1 members of the classes in a single action will provide substantial benefits to all  
2 parties and to the Court.

3 44. Notice can be provided to the members of the California Class and all  
4 members of the Texas Class through publication or otherwise using techniques and a  
5 form of notice to those customarily used in consumer class actions arising under  
6 California and Texas state and federal law.

7 45. Excluded from members of the Class are Kate Spade, its parents,  
8 subsidiaries, affiliates, officers and directors, any entity in which Kate Spade has a  
9 controlling interest, all customers who make a timely election to be excluded,  
10 governmental entities, and all judges assigned to hear any aspect of this litigation, as  
11 well as their immediate family members.

12 46. *Numerosity*: The members of the California Class and Texas Class are  
13 so numerous that joinder is impractical. The California Class and Texas Class  
14 consists of thousands of members, the precise number which is within the knowledge  
15 of and can be ascertained by resort to Kate Spade's records. Therefore the classes  
16 are sufficiently numerous that joinder of all members of the California Class and  
17 Texas Class in a single action is impracticable under Federal Rule of Civil Procedure  
18 23(a)(1), and the resolutions of their claims through the procedure of a class action  
19 will be of benefit to the parties and the court.

20 47. *Existence and Predominance of Common Questions of Fact and Law*:  
21 This action involves numerous questions of law and fact common to members of the  
22 California Class and Texas Class which predominate over any questions affecting  
23 only individual members of the classes. These common questions of law and fact  
24 arise out of Kate Spade's practice and policy of engaging in false and deceptive and  
25 advertising and pricing schemes in its Outlet Stores include, but are not limited, to the  
26 following:

27  
28

- 1 a. Whether, during the Class Periods, Kate Spade used false  
2 regular or “our price” price tags and falsely advertised price  
3 discounts on Kate Spade Outlet Products;
- 4 b. Whether, during the Class Periods, the “our price” prices  
5 advertised by Kate Spade were the prevailing market prices for  
6 the Kate Spade Outlet Products during the three month periods  
7 preceding the dissemination and/or publication of the advertised  
8 former prices;
- 9 c. Whether Kate Spade’s use of false or deceptive price  
10 advertising constituted false advertising under California Law;
- 11 d. Whether Kate Spade engaged in unfair, unlawful and/or  
12 fraudulent business practices under California Law;
- 13 e. Whether Kate Spade’s use of false or deceptive price  
14 advertising constituted false advertising under Texas Law;
- 15 f. Whether Kate Spade engaged in unfair, unlawful and/or  
16 fraudulent business practices under Texas Law; and,
- 17 g. Whether Kate Spade made false and/or misleading statements  
18 of fact concerning the reasons for, existence of, or amounts of  
19 price reductions.

20 48. *Superiority*: A class action is superior to other available methods for the  
21 fair and efficient adjudication of this controversy because individual litigation of the  
22 claims of all members of the California Class and Texas Class is economically  
23 unfeasible and procedurally impracticable. Furthermore, although the aggregate  
24 damages sustained by the California Class and Texas Class may well be in the  
25 millions of dollars, the damages suffered by individual Class Members may be  
26 relatively small as compared to the cost of litigation, and the expense and burden of  
27 individual litigation would make it difficult or impossible for individual members of  
28 the California Class and Texas Class to address the wrongs done to them. The

1 likelihood of individual Class Members prosecuting their own separate claims is  
2 remote and, even if every member of the California Class and Texas Class could  
3 afford the cost of independently litigating its claim, the cost to the court system of  
4 adjudication of such litigation by individual Plaintiffs would be substantial and  
5 unduly burdensome. Individualized litigation would also present the potential for  
6 inconsistent or contradictory judgments and would magnify the delay and expense to  
7 all parties with multiple trials of complex factual issues of the case. By contrast, the  
8 conduct of this action as a class action presents fewer management difficulties,  
9 conserves the resources of the parties and the judicial system and protects the right of  
10 each member of the California Class and Texas Class.

11 49. *Typicality*: The Plaintiffs' claims are typical of the claims of the  
12 California Class and Texas Class whom they seek to represent because Plaintiffs and  
13 each member of the classes have suffered damages as a result of Kate Spade's  
14 wrongful pricing strategy when they purchased goods from Kate Spade Outlet stores  
15 that falsely conveyed a fictitious "our price" and purported discount. Accordingly,  
16 Plaintiffs have no interests antagonistic to the interests of any other member of the  
17 classes.

18 50. *Adequacy*: Plaintiffs are adequate representatives who will fully, fairly  
19 and adequately assert and protect the interests of the California Class and Texas  
20 Class. Plaintiffs have retained counsel competent and experienced in class action  
21 litigation who will zealously prosecute this matter on behalf of the classes to its  
22 conclusion.

23 51. *Ascertainability*: Kate Spade keeps extensive computerized records of  
24 its customers. Kate Spade has one or more databases through which a significant  
25 majority of Class Members may be identified and ascertained, and it maintains  
26 contact information, including email and home mailing addresses, through which  
27 notice of this action could be disseminated in accordance with due process  
28 requirements.



1 offering their products with values, discounts or bargains that exceed the prevailing  
2 values of other products sold on the marketplace. Consequently, purchasers,  
3 including Plaintiff, reasonably believed that they were obtaining products at a bargain  
4 that regularly sold in the non-outlet retail marketplace at substantially higher prices  
5 (and were, therefore, worth more) than what they paid. But for the fact that  
6 consumers ascribe an artificially higher value to the Kate Spade Outlet Products, they  
7 would not have purchased them.

8 58. The weight of the harm to members of the California Class that resulted  
9 from these unfair acts and practices outweighed any justifiable business reason of  
10 Kate Spade for engaging in such deceptive acts and practices. By committing the  
11 acts and practices alleged above, Kate Spade engaged in unfair business practices  
12 within the meaning of California Business and Professions Code §§ 17200, *et seq.*

13 59. Kate Spade's unfair acts and practices have enabled it to improperly  
14 obtain money from Plaintiff and the California Class. As a result of this unjust  
15 enrichment, Plaintiff requests that this Court cause Kate Spade to restore this money  
16 to Plaintiff and all Class Members, to enjoin Kate Spade from continuing to violate  
17 the UCL as discussed herein and/or from violating the UCL in the future. If such an  
18 order is not granted, Plaintiff, members of the Class, and of the general public may be  
19 irreparably harmed and/or denied an effective and complete remedy.

## 20 **SECOND CLAIM FOR RELIEF**

### 21 *(Violation of the "Fraudulent" Prong of the UCL)*

22 60. California Plaintiff incorporates and re alleges by reference each and  
23 every allegation contained in the preceding paragraphs as if fully set forth herein.

24 61. The UCL defines unfair business competition to include any "unlawful,  
25 unfair or fraudulent" act or practice, as well as any "unfair, deceptive, untrue or  
26 misleading" advertising. *Business and Professions Code § 17200.*

27 62. A business act or practice is "fraudulent" under the UCL if it is likely to  
28 deceive members of the consuming public.

1           63. The Kate Spade price tags on the Kate Spade Outlet Products and  
2 advertising materials concerning false former “our price” prices were “fraudulent”  
3 within the meaning of the UCL because they deceived Plaintiff, and were likely to  
4 deceive members of the Class, into believing that Kate Spade Outlets were offering  
5 products with value, discounts or bargains as distinct from the prevailing market  
6 value or worth of products sold on the market that did not, in fact, exist.

7           64. Kate Spade’s representation of an inflated “our price” price and  
8 corresponding percentage discount price deceived consumers into believing that it  
9 was offering value, discounts or bargains at Kate Spade Outlet stores as distinct from  
10 the prevailing market value or worth of products sold on the market that did not, in  
11 fact, exist. As a result, purchasers, including Plaintiff, reasonably perceived that  
12 they were receiving products that regularly sold in the non-outlet retail marketplace at  
13 substantially higher prices (and were, therefore, worth more) than what they paid.  
14 This perception induced reasonable purchasers, including Plaintiff and members of  
15 the Class, to buy Kate Spade Outlet Products, which they otherwise would not have  
16 purchased.

17           65. Kate Spade’s acts and practice as described herein have deceived  
18 Plaintiff and were highly likely to deceive members of the consuming public. In  
19 deciding to purchase Kate Spade Outlet Products, Plaintiff relied on Kate Spade’s  
20 misleading and deceptive representations regarding its original “our price” and  
21 percentage discount prices. Each of these factors contributed to Plaintiff’s decision to  
22 purchase those products, and Plaintiff and members of the Class would not have  
23 purchased those products but for Kate Spade’s misrepresentations. Accordingly,  
24 Plaintiff and members of the Class suffered monetary loss as a direct result of Kate  
25 Spade’s pricing practices described herein.

26           66. Kate Spade’s unfair acts and practices have enabled it to improperly  
27 obtain revenues and profits from the Plaintiff and the proposed Class that it would not  
28 otherwise have obtained but for its false, misleading and deceptive conduct. As a

1 result of this unjust enrichment, Plaintiff requests that this Court order that Kate  
 2 Spade restore this money to Plaintiff and all Class Members, to enjoin Kate Spade  
 3 from continuing to violate the UCL as discussed herein and/or from violating the  
 4 UCL in the future. If such an order is not granted, Plaintiff and the members of the  
 5 Class may be irreparably harmed and/or denied an effective and complete remedy.

### 6 **THIRD CLAIM FOR RELIEF**

#### 7 *(Violation of the “Unlawful” Prong of the UCL)*

8 67. California Plaintiff incorporates and re alleges by reference each and  
 9 every allegation contained in the preceding paragraphs as if fully set forth herein.

10 68. The UCL defines unfair business competition to include any “unlawful,  
 11 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or  
 12 misleading” advertising. *Business and Professions Code § 17200.*

13 69. A business act or practice is “unlawful” under the UCL if it violates any  
 14 law or regulation. California Business & Professions Code § 17501, entitled “*Value*  
 15 *determinations; Former price advertisements,*” expressly prohibits false former  
 16 pricing schemes, and states:

17  
 18 For the purpose of this article the worth or value of anything  
 19 advertised is the prevailing market price, wholesale if the offer is at  
 20 wholesale, retail if the offer at retail, at the time of publication of such  
 advertisement in the locality wherein the advertisement is published.

21 *No price shall be advertised as a former price of any advertised thing,*  
 22 *unless the alleged former price was the prevailing market price as*  
 23 *above defined within three months next immediately preceding the*  
 24 *publication of the advertisement or unless the date when the alleged*  
 25 *former price did prevail is clearly, exactly and conspicuously stated in*  
*the advertisement. (emphasis added).*

26 70. Kate Spade also violated and continues to violate Business &  
 27 Professions Code § 17501 by advertising false discounts from purported former  
 28 prices that were, in fact, not the prevailing market prices within three months next

1 preceding the publication and dissemination of advertisements containing the false  
2 former prices.

3 71. The FTCA prohibits “unfair or deceptive acts or practices in or affecting  
4 commerce” and specifically prohibits false advertisements. (15 U.S.C. § 45(a)(1) and  
5 15 U.S.C. § 52(a)). The FTC has established guidelines which prohibit false former  
6 pricing schemes, similar to Kate Spade’s in all material respects, as deceptive  
7 practices that would violate the FTCA:

8  
9 (a) One of the most commonly used forms of bargain advertising is  
10 to offer a reduction from the advertiser’s own former price for an  
11 article. If the former price is the actual, bona fide price at which the  
12 article was offered to the public on a regular basis for a reasonably  
13 substantial period of time, it provides a legitimate basis for the  
14 advertising of a price comparison. Where the former price is genuine,  
15 the bargain being advertised is a true one. If, on the other hand, the  
16 former price being advertised is not bona fide but fictitious – for  
17 example, where an 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 original price.

18 (b) A former price is not necessarily fictitious merely because no  
19 sales at the advertised price were made. The advertiser should be  
20 especially careful, however, in such a case, that the price is one at  
21 which the product was openly and actively offered for sale, for a  
22 reasonably substantial period of time, in 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. 16 C.F.R. § 233.1.

24  
25 72. Kate Spade’s use of and reference to a materially false “our price” price  
26 and purported discounts of “\_\_% off,” in connection with its marketing and  
27 advertisements concerning the Kate Spade Outlet Products violated and continues to  
28 violate the FTCA, 15. U.S.C. § 45(a)(1) and 15 U.S.C. § 52(a), as well as FTC

1 Guidelines published at Title 16, C.F.R. § 233. Kate Spade also violated and  
2 continues to violate Cal. Bus. & Prof. Code § 17501, and Cal. Civ. Code § 1770,  
3 sections (a)(9) and (a)(13) by advertising false discounts from purported former  
4 prices that were, in fact, not the prevailing market prices within three months next  
5 preceding the publication and dissemination of advertisements containing the false  
6 former prices.

7 73. Kate Spade's unfair acts and practices have enabled it to improperly  
8 obtain revenues and profits from the Plaintiff and the proposed Class Members that it  
9 would not otherwise have obtained but for its false, misleading and deceptive  
10 conduct. As a result of this unjust enrichment, Plaintiff requests that this Court cause  
11 Kate Spade to restore this money to Plaintiff and all Class Members and to enjoin  
12 Kate Spade from continuing to violate the UCL as discussed herein and/or from  
13 violating the UCL in the future. If such an order is not granted, Plaintiff and the  
14 Class Members may be irreparably harmed and/or denied an effective and complete  
15 remedy.

16 **FOURTH CLAIM FOR RELIEF**

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

19 74. California Plaintiff incorporates and re allege by reference each and  
20 every allegation contained in the preceding paragraphs as if fully set forth herein.

21 75. The California False Advertising Law prohibits unfair, deceptive, untrue,  
22 or misleading advertising, including, but not limited to, false statements as to worth,  
23 value and former price.

24 76. Kate Spade's practice of advertising original "our price" sales prices  
25 associated with its Kate Spade Outlet Products, which were materially greater than  
26 the true prevailing prices of those products was an unfair, deceptive and misleading  
27 advertising practice because it gave the reasonable consumer the false impression that  
28 the products sold by Kate Spade regularly sold in the retail market price at

1 substantially higher prices (and were, therefore, worth more) than they actually were.  
2 In fact, Kate Spade Outlet Products never had a prevailing market price anywhere  
3 close to the original “our price” price advertised.

4 77. Kate Spade’s unfair acts and practices have enabled it to improperly  
5 obtain revenues and profits from the Plaintiff and the proposed Class that it would not  
6 otherwise have obtained but for its false, misleading and deceptive conduct. As a  
7 result of this unjust enrichment, Plaintiff requests that this Court cause Kate Spade to  
8 restore this money to Plaintiff and all Class Members and to enjoin Kate Spade from  
9 continuing to violate the False Advertising Law as discussed herein and/or from  
10 violating the UCL in the future. If such an order is not granted, Plaintiff and the  
11 Class Members may be irreparably harmed and/or denied an effective and complete  
12 remedy.

13 **FIFTH CLAIM FOR RELIEF**

14 *(Violation of the Consumers Legal Remedies Act,*

15 *California Civil Code Sections 1750, et seq.: Injunctive Relief)*

16 78. California Plaintiff incorporates and re alleges by reference each and  
17 every allegation contained in the preceding paragraphs as if fully set forth herein.

18 79. This claim for relief is brought pursuant to the CLRA.

19 80. Kate Spade’s sales of Kate Spade Outlet Products to Plaintiff and to  
20 members of the Class were “transactions” within the meaning of California Civil  
21 Code § 1761(e). The products purchased by Plaintiff and members of the Class are  
22 “goods” within the meaning of California Civil Code § 1761(a).

23 81. As described herein, Kate Spade violated the CLRA by falsely  
24 representing the nature, existence and amount of price discounts from reference or  
25 purported original “our price” sales prices of its Kate Spade Outlet Products where  
26 Kate Spade artificially inflated the purported original “our price” prices such that the  
27 promised discount, value or bargain was false, in violation of the following prohibited  
28 types of conduct articulated in Cal. Civ. Code § 1770, subsections:

1 (a)(5) “Representing that goods or services have...characteristics...which they  
2 do not have.”

3 (a)(7) “Representing that goods or services are of a particular standard, quality,  
4 or grade...if they are of another.”

5 (a)(9) “Advertising goods or services with intent not to sell them as  
6 advertised.”

7 (a)(13) “Making false or misleading statements of fact concerning reasons for,  
8 existence of, or amounts of price reductions.”

9  
10 Kate Spade also violated the CLRA by leading consumers to believe that they were  
11 purchasing goods that had characteristics, standards, qualities and grades which they  
12 did not possess where Kate Spade represented the nature of its Kate Spade Outlet  
13 Products as being designed and manufactured for sale in its retail stores.

14 82. Plaintiff relied on Kate Spade’s false representations and advertising  
15 regarding original prices and discount prices on Kate Spade handbags and wallets  
16 offered for sale in its’ outlet stores. Plaintiff would not have purchased such items  
17 absent Kate Spade’s unlawful conduct.

18 83. Pursuant to California Civil Code § 1780(a)(2), Plaintiff, on behalf of  
19 herself and members of the Class, requests that this Court enjoin Kate Spade from  
20 continuing to engage in the unlawful and deceptive methods, acts and practices  
21 alleged above. Unless Kate Spade is permanently enjoined from continuing to  
22 engage in such violations of the CLRA, future consumers will be damaged by its acts  
23 and practices in the same way as have Plaintiff and the members of the proposed  
24 Class.

25 84. Pursuant to Section 1782(a) of the CLRA, on September 10, 2015,  
26 Plaintiff’s counsel, on behalf of Plaintiff Pickles, served Kate Spade by United States  
27 certified mail, return receipt requested, with notice of Kate Spade’s violations of the  
28 CLRA and requested that Kate Spade identify victims and remedy its illegal conduct

1 within 30 days.

2 85. Plaintiff Pickles has requested that Kate Spade timely respond to the  
 3 CLRA demand notice and presently seeks only injunctive relief pursuant to the  
 4 CLRA. If Kate Spade fails to fully, completely and timely comply with Plaintiff's  
 5 demand letter, Plaintiff will amend this complaint to seek damages under the CLRA.  
 6 Under California Civil Code § 1782(d), after the commencement of an action for  
 7 injunctive relief, and after compliance with the provisions of Section 1782(a),  
 8 Plaintiff may amend her complaint without leave of court to include a request for  
 9 damages.

### 10 **SIXTH CLAIM FOR RELIEF**

11 *(Violation of the Texas DTPA, Tex. Bus. & Com. Code Sections 17.50 et seq.)*

12 86. Texas Plaintiff incorporates and re alleges by reference each and every  
 13 allegation contained in the preceding paragraphs as if fully set forth herein.

14 87. The Texas Plaintiff brings this cause of action on behalf of the Texas  
 15 Class.

16 88. The Texas Plaintiff and the Texas Class are consumers as defined by the  
 17 Texas Deceptive Trade Practices and Consumer Protection Act ("DTPA"), Tex. Bus.  
 18 & Com. Code Ann. §17.50, et seq. Kate Spade may be sued under the DTPA. At all  
 19 times relevant, Kate Spade was a "seller" of goods to Texas consumers.

20 89. Texas Business and Commerce Code §§ 17.50, et seq., is part of Texas'  
 21 Deceptive Trade Practices-Consumer Protection Act ("DTPA") and provides in  
 22 relevant part:

23 (a) A consumer may maintain an action where any of the following  
 24 constitute a producing cause of economic damages or damages  
 for mental anguish:

- 25 (1) The use or employment by any person of a false,  
 26 misleading, or deceptive act or practice;  
 27 (2) breach of an express or implied warranty; [or]  
 28 (3) any unconscionable action or course of action by any  
 person.....

1           90. The DTPA prohibits conduct directed toward consumers, who in this  
2 case were led to believe that they were receiving discounts on Kate Spade products,  
3 when in fact those discounts were illusory. Tex. Bus. & Com. Code §17.46(b)(1) (k)  
4 prohibits:

5           *Making false or misleading statements of fact concerning the reason*  
6           *for, existence of, or amount of price reductions.*  
7

8           91. Further, under the Texas DTPA, any act or practice prohibited by the  
9 Federal Trade Commission pursuant to the Federal Trade Commission Act (FTCA)  
10 (15 U.S.C. 45(a)) is also prohibited act under the DTPA. Tex. Bus. & Com Code  
11 §17.49(b) provides the following:

12           Nothing in this subchapter shall apply to acts or practices authorized  
13 under specific rules or regulations promulgated by the Federal Trade  
14 Commission under Section 5(a)(1) of the Federal Trade Commission  
15 Act [15 U.S.C.A. 45(a)(1) ]. The provisions of this subchapter do  
16 apply to any act or practice prohibited or not specifically authorized  
17 by a rule or regulation of the Federal Trade Commission. An act or  
18 practice is not specifically authorized if no rule or regulation has been  
19 issued on the act or practice. (emphasis added)

20           92. The FTCA prohibits “unfair or deceptive acts or practices in or affecting  
21 commerce” and specifically prohibits false advertisements. (15 U.S.C. § 45(a)(1) and  
22 15 U.S.C. § 52(a)). The FTC has established guidelines which prohibit false former  
23 pricing schemes, similar to Kate Spade’s, in all material respects, as deceptive  
24 practices that would violate the FTCA:

25           (a) One of the most commonly used forms of bargain advertising is  
26 to offer a reduction from the advertiser’s own former price for an  
27 article. If the former price is the actual, bona fide price at which the  
28 article was offered to the public on a regular basis for a reasonably  
substantial period of time, it provides a legitimate basis for the  
advertising of a price comparison. Where the former price is genuine,

1 the bargain being advertised is a true one. If, on the other hand, the  
2 former price being advertised is not bona fide but fictitious – for  
3 example, where an artificial, inflated price was established for the  
4 purpose of enabling the subsequent offer of a large reduction – the  
5 “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 original price.

6 (b) A former price is not necessarily fictitious merely because no  
7 sales at the advertised price were made. The advertiser should be  
8 especially careful, however, in such a case, that the price is one at  
9 which the product was openly and actively offered for sale, for a  
10 reasonably substantial period of time, in 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. 16 C.F.R. § 233.1.

11  
12 93. The DTPA prohibits conduct directed toward consumers, who in this  
13 case, were led to believe that they were receiving discounts on Kate Spade products,  
14 when in fact those discounts were illusory. Tex. Bus. & Com. Code §17.46(b)(1) (k)  
15 prohibits:

16 *Making false or misleading statements of fact concerning the reason*  
17 *for, existence of, or amount of price reductions.*

18  
19 94. Kate Spade violated the provisions of the DTPA contained in Tex. Bus.  
20 & Com. Code § 17.46(b) which prohibit the following practices:

21  
22 (a) Causing confusion or misunderstanding about the source,  
23 sponsorship, approval or certification of good or services.  
(Tex. Bus. & Com. Code §17.46(b)(2));

24  
25 (b) Representing that goods or services have sponsorship,  
26 approval, characteristics, ingredients, uses, benefits or  
27 quantities that they do not have. (Tex. Bus. & Com. Code  
§17.46(b)(5));

28 ///

- 1 (c) Representing that goods or services are of a particular  
2 standard, quality or, grade or that goods are of a  
3 particular style or model, if they are not. (Tex. Bus. &  
4 Com. Code §17.46(b)(7));
- 5 (d) Advertising goods or services with intent not to sell them  
6 as advertised. (Tex. Bus. & Com. Code § 17.46(b)(9));
- 7 (e) Making false or misleading statements of fact concerning  
8 the reason for, existence of, or amount of price  
9 reductions. (Tex. Bus. & Com. Code § 17.46(b)(11));  
and,
- 10 (f) Failing to disclose information about goods or services  
11 that was known at the time of the transaction if the failure  
12 to disclose was intended to induce the consumer into a  
13 transaction that the consumer would not have entered  
14 into if the information had been disclosed. (Tex. Bus. &  
Com. Code § 17.46(b)(24)).

15 95. Kate Spade & Company violated the DTPA by falsely representing the  
16 nature, existence and amount of price discounts from referenced or purported original  
17 sales prices of its Kate Spade Outlet Products where Kate Spade artificially inflated  
18 the purported original prices such that the promised discount, value or bargain was  
19 false. Kate Spade & Company also made misrepresentations about the standards,  
20 qualities and grades of its Kate Spade Outlet Products.

21 96. Kate Spade knew at the time that it made its representations and  
22 omissions that they were false. Nevertheless, Defendant took advantage of the Texas  
23 Plaintiff and members of the Texas Class by making false and misleading statements  
24 about the original price of the goods purchased which were not offered at the original  
25 price.

26 97. Kate Spade & Company has engaged and continues to engage in conduct  
27 in violation of Tex. Bus. & Com Code §17.46 *et seq.* by falsely advertising its  
28 products at Kate Spade stores located in outlet malls as on “sale” with % discounts

1 where the products, namely handbags and wallets, had never been offered by Kate  
2 Spade at the “our price” amount, thereby misleading and inducing consumers to  
3 purchase handbags believing that they were getting Kate Spade designer handbags at  
4 a deeply discounted rate. Kate Spade also advertised and displayed handbags and  
5 wallets at its outlet stores which were manufactured only for outlets without  
6 disclosing that the merchandise included products that had not been manufactured  
7 for, marketed for, or sold at Kate Spade designer boutiques.

8 98. Kate Spade further acted unconscionably by committing acts or practices  
9 that were to the Texas Plaintiff and the Texas Class’ detriments and took advantage  
10 of the Texas Plaintiff and the Texas Class’ lack of knowledge, ability, experience, or  
11 capacity to a grossly unfair degree.

12 99. Kate Spade's violations of the DTPA were committed knowingly and  
13 intentionally.

14 100. The Texas Plaintiff and Texas Class Members have sustained “economic  
15 damages” as defined in the DTPA as a result of Defendant’s violations of the DTPA.

16 101. The Texas Plaintiff served notice of her allegations under the DTPA via  
17 certified mail return receipt requested pursuant to §17.505 of the Texas Business and  
18 Commerce Code, which was received by Kate Spade on September 26, 2015. The  
19 Texas Plaintiff agrees to abate this cause of action for sixty days after notice was  
20 received.

21 102. The Texas Plaintiff and Texas Class Members are entitled to restitution  
22 of the money that Kate Spade acquired in violation of the DTPA. Defendant’s  
23 conduct was committed “knowingly” as that term is defined in section 17.45(9) in  
24 that Kate Spade had actual awareness, at the time of the act or practice complained of,  
25 of the falsity, deception, or unfairness of the act or practice giving rise to the Texas  
26 Plaintiff’s and Class Members’ claims.

27 103. Kate Spade’s conduct was committed “intentionally” as that term is  
28 defined in section 17.45(13) in that Defendant had an actual awareness of the falsity,

1 deception, or unfairness of the act or practice, or the condition, defect, or failure  
2 constituting a breach of warranty giving rise to the Texas Plaintiff's and Class  
3 Members' claims.

4 104. The Texas Plaintiff and Class Members are entitled to injunctive and  
5 other appropriate relief as a result of Kate Spade's violations of the §17.50 *et seq.* of  
6 the Texas Business and Commerce Code, including without limitation, an order for  
7 restitution, attorneys' fees and costs.

8 **VI. PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs on behalf of themselves and on behalf of the  
10 members of the California Class and Texas Class request that this Court award relief  
11 against Kate Spade and Company, as follows:

12 1. For an order certifying that this action may be maintained as a class  
13 action, that Plaintiffs be appointed Class Representatives and Plaintiffs' counsel be  
14 appointed Class Counsel for the California Class and Texas Class;

15 2. On the First, Second, Third, and Fourth Claims for Relief:

16 (a) For an order enjoining Kate Spade from continuing to violate the  
17 UCL and the False Advertising Law as described herein;

18 (b) For general damages, according to proof;

19 (c) For restitution and disgorgement, according to proof;

20 (d) For an award of interest, including prejudgment interest at the  
21 legal rate; and,

22 (e) For statutory damages, including reasonable attorneys' fees and  
23 costs of suit pursuant to California Civil Code § 1780(d) and Code  
24 of Civil Procedure § 1021.5.

25 3. On the Fifth and Sixth Claims for Relief:

26 (a) For injunctive relief only.

27 4. For such other and further relief as the Court may deem just and proper.

28 ///

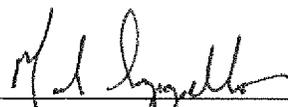
**VII. DEMAND FOR JURY TRIAL**

Pursuant to Federal Rules of Civil Procedure, Rule 38(b), Plaintiffs hereby demands a trial by jury on all issues so triable.

Date: November 20, 2015

**MARKUN ZUSMAN FRENIERE &  
COMPTON LLP**

By:

  
\_\_\_\_\_  
Mark A. Ozzello, Esq.

*Attorneys for Plaintiffs Gaylia Pickles and the  
putative classes*

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JS 44 (Rev. 12/12)

### 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.)

<p><b>I. (a) PLAINTIFFS</b> Gaylia Pickles and Donna Vandiver, individually and on behalf of all other similarly situated</p> <p>(b) County of Residence of First Listed Plaintiff <u>Los Angeles, CA</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Markun Zuzman Friere &amp; Compton LLP 17383 Sunset Boulevard, Suite A-380 Pacific Palisades, California 90272 Tel: (310) 454-5900</p>	<p><b>DEFENDANTS</b> Kate Spade and Company, a Delaware corporation; and DOES 1-50, inclusive</p> <p>County of Residence of First Listed Defendant <u>New York, NY</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known) Sheppard, Mullin, Richter &amp; Hampton LLP 1901 Avenue of the Stars, Suite 1600 Los Angeles, California 90067 Tel: (310) 228-3749</p>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p><i>(For Diversity Cases Only)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)									
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES					
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<p><b>LABOR</b></p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p><b>LABOR</b></p> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS							
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p><b>Other:</b></p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement							

**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 (specify)     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:  
Consumer class action for false advertising.

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ Over \$5,000,000.00    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions):    JUDGE \_\_\_\_\_    DOCKET NUMBER \_\_\_\_\_

DATE: 11/20/2015    SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING JFP \_\_\_\_\_ 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.