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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

13 KRISTIN HALEY, et al.,
14 individually and on behalf of all others
15 similarly situated,

16 Plaintiffs,

17 vs.

18 MACY’S, INC., et al.

19 Defendants.
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21
22
23

Case No. 3:15-cv-06033-HSG

(Consolidated with:
3:16-cv-01252-HSG,
3:16-cv-02850-HSG,
and 3:16-cv-03341-HSG)

CLASS ACTION

CONSOLIDATED COMPLAINT FOR:

1. Violation of the UCL;
2. False Advertising; and
3. Violation of the Consumers Legal Remedies Act

DEMAND FOR JURY TRIAL

1 Plaintiffs Kristen Haley, Todd Benson, Zohreh Farhang, Job Carder and Erica Vinci, on
2 behalf of themselves and all others similarly situated, allege the following based upon personal
3 knowledge as to allegations regarding themselves, and on information and belief and the
4 investigation of counsel as to all other allegations:

5 **I. INTRODUCTION**

6 1. This is a class action seeking monetary damages, restitution, injunctive and
7 declaratory relief from Defendants Macy's, Inc. and Macy's West Stores, Inc. (collectively
8 "Macy's") and its wholly-owned division, Bloomingdale's, Inc. ("Bloomingdale's") arising
9 from their deceptive and misleading labeling and marketing of merchandise they sell at their
10 retail stores, including outlet stores, in California and throughout the United States.

11 2. During the Class Period (defined below), Defendants (hereinafter "Macy's" or
12 "Defendants") misrepresented the nature and amount of price discounts on products sold in
13 their regular and outlet Macy's and Bloomingdale's stores (the "Stores") by purporting to offer
14 steep discounts off of fabricated and false former or purported "original" or "regular" prices.

15 3. Specifically, Defendants represented on price tags, sales labels or on signs above
16 the merchandise (hereinafter "product price tags") of their products, both those sold under the
17 Macy's or Bloomingdale's labels and those manufactured by other designers or companies sold
18 in Macy's and Bloomingdale's stores, prices that were artificially inflated and did not represent
19 a bona fide price at which they previously sold such products. Defendants then offered, on the
20 same price tags, to sell the items for a purportedly reduced or discounted sale price, which
21 supposedly represented a significant discount off of the false original or regular price. In some
22 instances, they represented that the listed or original price was two or more times the
23 manufacturer's suggested retail price ("MSRP"), and then offered the item at a purported 50%
24 or more discount price which was in fact the original MSRP.

25 4. However, the original or regular prices utilized by Defendants, which
26 represented to consumers the purported actual sales price of Defendants' products, whether
27 manufactured under their label or the label of other designers or companies, were a sham. In
28 fact, such items were not generally sold at the "original" or "regular" price listed on their labels

1 in a substantial number, on a regular basis for a reasonable period, or within 90 days of the
2 advertised or represented original or regular price. The original or regular price listed on
3 Defendants' products were and are prices chosen by Defendants to enable them to engage in
4 their phantom markdown scheme.

5 5. The Federal Trade Commission ("FTC") has described the fictitious pricing
6 scheme such as that employed at Defendants' stores as deceptive:

- 7 (a) Many members of the purchasing public believe that a manufacturer's
8 list price, or suggested retail price, is the price at which an article is
9 generally sold. Therefore, if a reduction from this price is advertised,
10 many people will believe that they are being offered a genuine bargain.
11 To the extent that list or suggested retail prices do not in fact correspond
12 to prices at which a substantial number of sales of the article in question
13 are made, the advertisement of a reduction may mislead the consumer.
- 14 (i) It bears repeating that the manufacturer, distributor or retailer must in
15 every case act honestly and in good faith in advertising a list price, and
16 not with the intention of establishing a basis, or creating an
17 instrumentality, for a deceptive comparison in any local or other trade
18 area. For instance, a manufacturer may not affix price tickets containing
19 inflated prices as an accommodation to particular retailers who intend to
20 use such prices as the basis for advertising fictitious price reductions.

21 16 C.F.R. § 233.3 (emphasis added).

6. Macy's pricing scheme was effectuated in several systemic ways as reflected on the following sales tags and signs prominently displayed for products available for sale at its stores:



Estate Lux Collection
Stearns & Foster
 Gotland Luxury Cushion Firm Ept
 Queen Set
2699.00
 reg. 4909.00

mattress height: 16.5"
 silk infused cover, 2" primasense™ gel foam advanced adapt™ foam, 1/2" primacore™ gel foam

	reg.	sale
standard set		
full set	4819.00	2649.00
queen set	4909.00	2699.00
king set	6179.00	3399.00
reflections 7 adjustable base set		
twin extra-long set	7879.00	4498.00
full set	8259.00	4678.00
queen set	8319.00	4718.00
king set	12419.00	7297.00

king set requires 2 foundations

web id #2823358

see associate about our worrynomore program and warranty information available with an adjustable base option
 knickerbocker embrace bedframe recommended for this style

710609362 HSWRS15S 01/31/2015 01/30/2016 0.891

1 7. Thousands of Defendants’ consumers, including Plaintiffs, were victims of
2 Defendants’ deceptive, misleading and unlawful false pricing scheme. This deception will
3 continue if Defendants are not enjoined from continuing to effectuate their pricing scheme.

4 8. Defendants fraudulently concealed from, and intentionally failed to disclose to,
5 Plaintiffs and Class members, the true facts about its product prices and falsely advertised price
6 discounts from those purported original or regular prices. Defendants’ false representations of
7 prices and false representations of purported savings, discounts and bargains are objectively
8 material to a reasonable consumer.

9 9. Defendants’ false pricing scheme has and will continue to impact the essence of
10 each transaction and precludes Plaintiffs and Class members from making fully informed
11 purchase decisions based upon the actual bona fide price for a product.

12 10. Plaintiffs objectively relied upon such false representations of original or regular
13 prices and discounts when purchasing merchandise from Macy’s Stores. Plaintiffs would not
14 have made such purchases, or would not have paid the amounts they did, but for the false
15 representations of the original or regular price of the item purchased, as compared with the
16 supposedly discounted or sale price at which Plaintiffs purchased the items.

17 11. Plaintiffs believed the truth of the represented prices attached to, or in
18 advertisements or on signage regarding, products purchased at Defendants’ Stores, which
19 expressly represented that Plaintiffs were getting discounts. In fact, however, they were not
20 getting the represented discounts. Plaintiffs would not have purchased the items but for the
21 “discounted” pricing represented by Defendants.

22 12. Through their false and deceptive marketing, advertising and pricing scheme,
23 Defendants violated and continue to violate laws prohibiting advertising goods for sale as
24 discounted from purported former prices that are false. The Defendants used fabricated original
25 or regular prices which did not reflect a price at which the Defendants’ products are routinely, if
26 ever, sold to retail customers.

1 13. As a result of the Defendants’ misconduct, they should be enjoined from
2 continuing to make misleading statements concerning the existence and amount of price
3 reductions.

4 **II. PARTIES**

5 **A. Individual and Representative Plaintiffs**

6 14. Plaintiff Kristin Haley is a citizen, who at all times material, was a resident of
7 Somona County, California.

8 15. Plaintiff Todd Benson is a citizen, who at all times material, was a resident of
9 San Diego, California.

10 16. Plaintiff Zohreh Farhang is a citizen, who at all times material, was a resident of
11 California.

12 17. Plaintiff Job Carder is a citizen, who at all times material, was a resident of
13 California.

14 18. Plaintiff Erica Vinci is a citizen, who at all times material, was a resident of
15 California.

16 **B. Defendants**

17 19. Defendant Macy’s, Inc., is a Delaware corporation with its principal place of
18 business in Cincinnati, Ohio.

19 20. Defendant Macy’s West Stores, Inc., is an Ohio corporation with its principal
20 place of business in Cincinnati, Ohio.

21 21. Defendant Macy’s operates 900 stores in 45 states under names including
22 Macy’s, Bloomingdale’s and Bloomingdale’s Outlets, with approximately 132 stores in
23 California.

24 22. Defendant Bloomingdale’s is a wholly-owned subsidiary of Macy’s, Inc. and a
25 division of Macy’s with its principal place of business in New York, New York. Defendant
26 Bloomingdale’s, at the direction and control of Defendant Macy’s, operates 45 Bloomingdale’s
27 stores throughout the U.S (the “Bloomingdale’s Stores”), including 13 Bloomingdale’s Outlet
28 stores (the “Bloomingdale’s Outlets”).

1 23. At all times material, Macy's has sold in its Stores men's, women's and
2 children's apparel, accessories and home furnishings. Macy's has engaged in a program of
3 deceptive marketing, sales and pricing practices throughout its Stores including in its Macy's
4 division, Bloomingdale's.

5 **III. JURISDICTION AND VENUE**

6 24. This Court has original jurisdiction of this action under the Class Action Fairness
7 Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has original jurisdiction
8 because the aggregate claims of the members of the putative Class exceed \$5 million, exclusive
9 of costs, and at least one of the members of the proposed Class, Plaintiffs, are citizens of a
10 different state than each Defendant.

11 25. The Northern District of California has personal jurisdiction over Defendants
12 Macy's and Bloomingdale's because they are authorized or registered to do business and
13 operate stores in this District where Defendants employed, and continue to employ, the sale
14 tactics detailed herein.

15 26. Venue is proper in this District pursuant to 28 U.S.C. § 1391, because
16 Defendants operate many stores and thus transact substantial business within this District.

17 **IV. ADDITIONAL SUBSTANTIVE ALLEGATIONS**

18 27. On January 22, 2016, Plaintiff Farhang entered a Macy's store in Century City,
19 California to look for an area rug. She saw merchandise advertised with price tags that
20 represented an original price next to a significantly reduced sale price. Enticed by the idea of
21 paying significantly less than the original prices charged by Macy's, Plaintiff was induced to
22 purchase an area rug with a reported \$12,000 original price. She paid \$3,825, plus tax for the
23 rug (a total of \$4,169.25).

24 28. By purchasing the area rug at significantly less than the purported original price,
25 Plaintiff was led to believe that she saved over \$8,000, or 75% of the purported "original price."
26 In reality, Macy's did not sell the area rug at the represented original price in a substantial
27 number on a regular basis for a reasonable period, and \$12,000 was not the prevailing price of
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1 that item within the three month period immediately preceding January 22, 2016. Plaintiff
2 Farhang was deceived by the false price comparison into making her purchase.

3 29. Two days after she purchased the rug from Macy's, Plaintiff Farhang took the
4 rug to a rug store where she learned that the actual retail market value of the rug was
5 approximately \$700 to \$800, rather than the \$12,000 represented by Macy's. But for Macy's
6 misrepresentations about the pricing of the rug, Plaintiff would not have purchased it. Plaintiff
7 contacted Macy's through its website and by bringing the rug back to the store for a refund, but
8 was rebuffed or ignored in each instance. Plaintiff disputed the charge for the rug through the
9 American Express system, and Macy's rejected the dispute demanding that Plaintiff pay the full
10 amount.

11 30. In December 2015, Plaintiff Haley purchased products, including a Lenox
12 holiday ornament that Macy's claimed was originally priced at \$60.00 for \$17.99 from a Macy's
13 store located in San Rafael, California. According to Macy's advertising, Ms. Haley received a
14 purported savings of approximately 70% off the original price. However, the product purchased
15 by Ms. Haley was not previously sold in a substantial number or on a regular basis for a
16 reasonable period at Macy's for \$60.00. Additionally, the original price was not the prevailing
17 market price within the three months preceding the date of Ms. Haley's purchase. In 2014, Ms.
18 Haley also purchased a dress based upon Macy's deceptive scheme of selling prices based upon
19 discounts from a fictitious advertised original price. Ms. Haley did not use her Macy's credit
20 card to make said purchase. Ms. Haley has also purchased other products which were
21 represented to be sold at a discount of the "original" price listed on their labels, but were not
22 actually sold at the "original" price within ninety days of the advertised or represented
23 "original" price.

24 31. Plaintiff Benson is a regular shopper at Macy's and has been for several years.
25 Mr. Benson has been induced to purchase items from Macy's because of purported in-store
26 "discounts." On one such occasion, in February of 2015, Mr. Benson was shopping at Macy's
27 in the Westfield Mission Valley mall in San Diego. There, enticed by the idea of paying
28 significantly less than the represented "original" price, Mr. Benson was induced to purchase an

1 INC International Concepts Men's V-Neck Multi-Media Long-Sleeve Shirt. Macy's
2 represented that this shirt was "originally" priced at \$39.50, but that the in-store price was
3 \$29.62, a purported 25% discount. However, based on information and belief, the product
4 purchased by Mr. Benson was not previously, or at least not in a substantial number, or on a
5 regular basis for a reasonable period, sold at Macy's for \$39.50. Additionally, the "original"
6 price was not the prevailing market price within the three months preceding the date of Mr.
7 Benson's purchase. In fact, the product that Mr. Benson purchased, continued to be offered at a
8 25% "discount" more than a year after his purchase. Plaintiff Benson was deceived by and
9 relied on Macy's false price comparison, as reflected on the sales tag and in-store signage, and
10 was damaged as a result. Plaintiff Benson would not have purchased the shirt had he known the
11 shirt was not actually priced at a discount.

12 32. In reliance on Macy's false and deceptive advertising, marketing and pricing
13 schemes, Plaintiff Carder purchased products including several Maison Jules and Club Room
14 items, including items purchased May 4, 2016 at Macy's Pasadena Plaza on Lake Avenue. For
15 example, Macy's advertised the original price of one Maison Jules item as \$89.50 (the same
16 price was memorialized on Mr. Carder's purchase receipt). Based on the representations and
17 advertisement of the original price of \$89.50, Mr. Carder was induced to make his purchase. He
18 paid \$42.96 believing the original price represented and marketed by Macy's was \$89.50 and
19 that this was a time sensitive substantial price reduction. Indeed, Mr. Carder's receipt reflects
20 the original price, the "Today's Price." Macy's advertising and representations misled Mr.
21 Carder into believing that Macy's price was significantly lower than the prices at which Macy's
22 regularly offered the items Mr. Carder purchased. The actual price of the item, as well as the
23 prevailing market price, in the example provided was not \$89.50 during the three months
24 preceding its purchase by Mr. Carder. Macy's advertised "original," or "regular" prices do not
25 reflect the price at which Macy's products are routinely, if ever, sold to retail customers, nor do
26 they reflect the prevailing market price within the three-month period preceding the purchase.
27 But for Macy's false and misleading statements, Mr. Carder would not have purchased the
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1 Maison Jules item or other seemingly drastically reduced items that day. Mr. Carder was
2 damaged as a result thereof.

3 33. In reliance on Macy's deceptive advertising, marketing, sales tactics and pricing
4 schemes, and unfair business practices, Plaintiff Vinci was induced to purchase numerous
5 clothing items represented to be upwards of over 70% off the "original" or "regular" prices. For
6 example, in or about February 2015, Macy's indicated that the "original" price of a sports
7 clothing item Ms. Vinci purchased was \$130.00, but it was purported reduced to "Today's Price"
8 of \$56.00, and an additional 25% coupon discount was offered on the date of purchase to bring
9 the price down to \$42.00 before taxes. The prevailing market price for the item, in the example
10 provided, was not \$130.00 during the three months preceding its purchase by Ms. Vinci.

11 Macy's advertised "original," or "regular" prices do not reflect the price at which Macy's
12 products are routinely, if ever, sold to retail customers, nor do they reflect the prevailing market
13 price within the three-month period preceding the purchase. Ms. Vinci was damaged as a result
14 thereof.

15 34. California statutory and regulatory law expressly prohibits false former pricing
16 schemes. Cal. Bus. & Prof. Code § 17501, entitled "Value determinations; Former price
17 advertisements," states: "For the purpose of this article the worth or value of anything advertised
18 is the prevailing market price, wholesale if the offer is at wholesale, retail if the offer is at retail,
19 at the time of publication of such advertisement in the locality wherein the advertisement is
20 published. No price shall be advertised as a former price of any advertised thing, unless the
21 alleged former price was the prevailing market price as above defined within three months next
22 immediately preceding the publication of the advertisement or unless the date when the alleged
23 former price did prevail is clearly, exactly and conspicuously stated in the advertisement."

24 35. The Defendants' false pricing scheme was objectively material to Plaintiffs and
25 to Class members and affected all of their purchase transactions. Marketing studies have noted
26 that retailers are incentivized to engage in this false and fraudulent behavior:

27 Comparative price advertising offers consumers a basis for comparing the
28 relative value of the product offering by suggesting a monetary worth of the
product and any potential savings...[A] comparative price advertisement can

1 be construed as deceptive if it makes any representation,... or involves any
2 practice that may materially mislead a reasonable consumer.

3 By creating an impression of savings, the presence of a higher reference price
4 enhances subjects' perceived value and willingness to buy the product... Thus,
5 if the reference price is not truthful, a consumer may be encouraged to
6 purchase as a result of a false sense of value.

7 *Comparative Price Advertising: Informative or Deceptive?*, Dhruv Grewal and Larry D.
8 Compeau, *Journal of Public Policy & Marketing*, Vol. 11, No. 1, at 52, 55-56 (Spring 1992).

9 36. Plaintiffs would purchase Defendants' products in the future from Defendants'
10 Stores and/or other retail establishments, if product labels accurately reflect original or regular
11 prices and discounts. Currently, however, Plaintiffs and other consumers have no realistic way
12 to know which—if any—of Defendants' label price comparisons are not false or deceptive. If
13 the Court were to issue an injunction ordering Defendants to comply with comparative price
14 advertising laws, and prohibiting use of the deceptive practices discussed herein, Plaintiffs
15 would be able to make informed purchase decisions for Defendants' products at Defendants'
16 Stores.

17 **CLASS ALLEGATIONS**

18 37. Plaintiffs bring this action on behalf of themselves and the members of the
19 proposed Class under Rule 23(a), (b)(2), (b)(3), and/or (c)(4) of the Federal Rules of Civil
20 Procedure. The proposed Class consists of the following:

21 All individuals residing in California who, within the Class Period, purchased
22 from one of Defendants' Stores one or more products advertised at a discount off
23 of the stated "original" or "regular" price, and who have not received a refund or
24 credit for their purchases.

25 38. The Class Period is January 1, 2012 through the date of judgment. Plaintiffs
26 reserve the right to redefine the Class prior to certification after having the opportunity to
27 conduct discovery.

28 39. Excluded from the Class are Defendants, their parents, subsidiaries, affiliates,
officers and directors, any entity in which Defendants have a controlling interest, and all judges
assigned to hear any aspect of this litigation, as well as their immediate family members.

1 40. Numerosity. Fed. R. Civ. P. 23(a)(1). The members of the Class are so numerous
2 that joinder is impractical. The Class consists of thousands of members, the precise number
3 which is within the knowledge of and can be ascertained only by resort to Defendants' records.

4 41. Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3). There are numerous
5 questions of law and fact common to the Class which predominate over any questions affecting
6 only individual members of the Class. Among the questions of law and fact common to the
7 Class are:

- 8 (a) Whether, during the Class Period, Defendants used false price representations
9 and falsely advertised price discounts on their merchandise sold at Defendants'
10 stores;
- 11 (b) Whether Defendants' use of false or deceptive price advertising constituted
12 false advertising under California law;
- 13 (c) Whether Defendants engaged in deceptive, unfair, unlawful and/or fraudulent
14 business practices under California law;
- 15 (d) Whether Defendants misrepresented and/or failed to disclose material facts
16 about their product pricing and discounts;
- 17 (e) Whether Defendants have made false or misleading statements of fact
18 concerning the reasons for, existence of, or amounts of price reductions;
- 19 (f) Whether Class members are entitled to restitution, and in what amount; and
- 20 (g) Whether Defendants are likely to continue using false, misleading or illegal
21 price comparisons such that an injunction is necessary.

22 42. Typicality. Fed. R. Civ. P. 23(a)(3). Plaintiffs' claims are typical of the claims
23 of the members of the Class and, like all members of the Class, Plaintiffs purchased goods from
24 one of Defendants' Stores that falsely conveyed an original or regular price and a fictitious
25 discount. Accordingly, Plaintiffs have no interests antagonistic to the interests of any other
26 member of the Class.

27 43. Adequacy. Fed. R. Civ. P. 23(a)(4). Plaintiffs are representatives who will fairly
28 and adequately assert and protect the interests of the Class, and retained counsel experienced in

1 prosecuting class actions. Accordingly, Plaintiffs are adequate representatives and will fairly
2 and adequately protect the interests of the Class.

3 44. Superiority of Class Action. Fed. R. Civ. P. 23(b)(3). A class action is superior
4 to all other available methods for the fair and efficient adjudication of this lawsuit, because
5 individual litigation of the claims of all members of the Class is economically unfeasible and
6 procedurally impracticable. While the aggregate damages sustained by the Class are in the
7 millions of dollars, the individual damages incurred by each member of the Class resulting from
8 Defendants' wrongful conduct are too small to warrant the expense of individual lawsuits. The
9 likelihood of individual Class members prosecuting their own separate claims is remote, and,
10 even if every member of the Class could afford individual litigation, the court system would be
11 unduly burdened by individual litigation of such cases.

12 45. The prosecution of separate actions by members of the Class would create a risk
13 of establishing inconsistent rulings and/or incompatible standards of conduct for Defendants.
14 Additionally, individual actions may be dispositive of the interests of the Class, although certain
15 class members are not parties to such actions.

16 46. Injunctive and Declaratory Relief. Fed. R. Civ. P. 23(b)(2). The conduct of
17 Defendants is generally applicable to the Class as a whole and Plaintiffs seek equitable remedies
18 with respect to the Class as a whole. As such, the systematic policies and practices of
19 Defendants make declaratory or equitable relief with respect to the Class as a whole appropriate.

20 47. Issue Certification. Fed. R. Civ. P. 23(c)(4). In the alternative, the common
21 questions of law and fact, set forth in Paragraph 41, are appropriate for issue certification on
22 behalf of the proposed Class.

23 **COUNT I**

24 ***Unfair Business Practices***

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

25 Unfair Competition Law ("UCL"))

26 48. Plaintiffs incorporate and reallege by reference each and every allegation above
27 as if set forth herein in full.

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

4 50. Advertising or promotional practices are unlawful under the UCL if a reasonable
5 consumer is likely to be deceived by them.

6 51. Defendants violated the “unfair” prong of the UCL by representing false,
7 deceptive, or misleading original and regular prices and corresponding price discounts or
8 savings for merchandise where Defendants, inflated and fabricated the purported original and
9 regular prices for such products, and failed to disclose to consumers that such original and
10 regular prices were inflated or fabricated, such that the promised discount or saving was false,
11 misleading or deceptive.

12 52. These acts and practices were unfair because they caused Plaintiffs, and were
13 likely to cause reasonable consumers, to falsely believe that Defendants are, and have been
14 throughout the Class Period, offering discounts or bargains from the actual, bonafide former or
15 original price. As a result, purchasers, including Plaintiffs, reasonably perceived that they were
16 receiving products that regularly sold in the retail marketplace at substantially higher prices (and
17 were, therefore, worth more) than what they paid. This perception has induced reasonable
18 purchasers, including Plaintiffs, to buy such products which otherwise they would not have
19 purchased.

20 53. Plaintiffs and Class Members are likely to be deceived by Defendants’ use of
21 fictitious original or regular prices on the price tags of merchandise at Stores in California.

22 54. In deciding to purchase merchandise at Defendants’ stores, Plaintiffs were
23 unaware of Defendants’ misleading and deceptive representations regarding original or regular
24 prices. These prices placed by Defendants on the price tags of merchandise at their California
25 stores played a substantial role in Plaintiffs’ decisions to purchase the products they purchased
26 from Defendants, and Plaintiffs would not have purchased those items in the absence of
27 Defendants’ unfair practices.

28

1 55. The gravity of the harm to Class Members resulting from these unfair acts and
2 practices outweighs any conceivable reasons, justifications or motives of Defendants for
3 engaging in such deceptive acts and practices. By committing the acts and practices alleged
4 above, Defendants engaged in unfair business practices within the meaning of the UCL.

5 56. Through their unfair acts and practices, Defendants improperly obtained money
6 from Plaintiffs and all other Class Members. As such, Plaintiffs request that this Court cause
7 Defendants to restore this money to Plaintiffs and all Class Members, and to enjoin Defendants
8 from continuing to violate the UCL as discussed herein and from violating the UCL in the
9 future. Otherwise, Plaintiffs, Class Members, and members of the general public may be
10 irreparably harmed or denied an effective and complete remedy if such an order is not granted.

11 **COUNT II**

12 ***Fraudulent Business Practices***

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

14 57. Plaintiffs incorporate and by reference each and every allegation above as if fully
15 set forth herein.

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

18 59. Defendants’ false prices, including their original or regular prices placed on the
19 price tags of the products sold in their Stores, were “fraudulent” within the meaning of the UCL
20 because they deceived Plaintiffs, and were likely to deceive reasonable consumers and Class
21 Members, into believing that Defendants were offering discounts or bargains from bona fide
22 original and regular prices. As a result, purchasers, including Plaintiffs, reasonably perceived
23 that they were receiving products that regularly sold in those stores or the retail marketplace at
24 substantially higher prices (and were, therefore, worth more) than what they paid. This
25 perception induced reasonable purchasers, including Plaintiffs, to buy such products from
26 Defendants’ Stores in California, which they otherwise would not have purchased.

1 65. The Federal Trade Commission Act prohibits “unfair or deceptive acts or
2 practices in or affecting commerce” and specifically prohibits false advertisements. (15 U.S.C.
3 §45(a)(1) and 15 U.S.C. § 52(a)). The FTCA has established Guidelines which prohibit false
4 pricing schemes, similar to Defendants’ pricing scheme in material respects, as deceptive
5 practices that would violate the FTCA quoted in paragraph 5.

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

9 67. Defendants’ use of and reference to materially misleading, deceptive, and/or
10 false original or regular prices on the price tags of merchandise sold to consumers in
11 Defendants’ California stores violated and continues to violate the FTCA, 15 U.S.C. §45(a)(1)
12 and 15 U.S.C. §52(a), as well as FTC Pricing Guides. It also violated and continues to violate
13 Cal. Bus. & Prof. Code §§17200 and 17501, and Cal. Civ. Code §1770(a)(13), by advertising
14 false comparative prices that were, in fact, not the prevailing market prices at other retailers in
15 the marketplace at the time of the publication.

16 68. As a result of the conduct described above, Defendants have been unjustly
17 enriched at the expense of Plaintiffs and other Class Members. Specifically, Defendants have
18 been unjustly enriched by obtaining revenues and profits that they would not otherwise have
19 obtained absent their false, misleading and deceptive conduct.

20 69. Through their unfair acts and practices, Defendants fraudulently obtained money
21 from Plaintiffs and all other respective Class Members. Plaintiffs request that this Court cause
22 Defendants to restore this money to Plaintiffs and all respective Class Members they seek to
23 represent, and to enjoin Defendants from continuing to violate the UCL, or from violating the
24 UCL in the future. Otherwise, Plaintiffs, the Class they represent, and members of the general
25 public may be irreparably harmed or denied an effective and complete remedy if such an order
26 is not granted.

COUNT IV

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

1
2
3 70. Plaintiffs incorporate and reallege by reference each and every allegation above
4 as if fully set forth herein.

5 71. California's False Advertising Law ("FAL") prohibits unfair, deceptive, untrue,
6 or misleading advertising, including false statements as to worth, value and former price.

7 72. The FAL makes it unlawful for a business to disseminate any statement which is
8 untrue or misleading, and which is known, or which by the exercise of reasonable care should
9 be known, to be untrue or misleading.

10 73. Defendants' practice of disseminating allegedly original or regular prices
11 associated with their merchandise, which were materially greater than the prices they were sold
12 at or the true prevailing prices of those products, as alleged more fully herein, was an unfair,
13 deceptive or misleading advertising practice because it gave the false impression that the
14 products were sold by Defendants in a substantial amount sold or on a regular basis for a
15 reasonable period, at those prices or in the retail marketplace at substantially higher prices (and
16 were, therefore, worth more) than they actually were.

17 74. On each day throughout the Class Period, Defendants, with the intent to induce
18 members of the public to purchase products offered at their respective California stores, made or
19 caused to be made each of the untrue or misleading statements, claims, or representations
20 described herein.

21 75. On each day throughout the Class Period, Defendants, with the intent to induce
22 members of the public to purchase products offered at their respective California stores, made or
23 caused to be made untrue or misleading claims to consumers throughout California.

24 76. Defendants knew, or by the exercise of reasonable care should have known, that
25 these claims were untrue, deceptive, or misleading.

26 77. When Defendants made or caused to be made the untrue or misleading claims,
27 statements, or misrepresentations described herein to consumers in California, Defendants failed
28 to adequately disclose the facts pleaded herein. Plaintiffs request that this Court cause

1 Defendants to restore this money to Plaintiffs and all other respective Class Members, and to
2 enjoin Defendants from continuing to violate the FAL, or from violating the FAL in the future.
3 Otherwise, Plaintiffs, the Class they seek to represent, and members of the general public may
4 be irreparably harmed and/or denied an effective and complete remedy if such an order is not
5 granted.

6 **COUNT V**

7 ***Violation of the California Consumers Legal Remedies Act***
8 **(California Civil Code § 1750, *et seq.*)**

9 78. Plaintiffs incorporate and reallege by reference each and every allegation above
10 as if fully set forth herein.

11 79. Defendants, with the intent to induce members of the public to purchase
12 products, offered at their respective California Stores, made or caused to be made false or
13 misleading claims to consumers throughout California.

14 80. Plaintiffs and Class Members are “consumers” within the meaning of California
15 Civil Code §1761(d).

16 81. Defendants’ sale of merchandise at its respective Stores in California to Plaintiffs
17 and other Class Members are “transactions” within the meaning of California Civil Code
18 §1761(e).

19 82. The merchandise purchased by Plaintiffs and other Class Members at
20 Defendants’ respective stores in California throughout the Class Period are “goods” within the
21 meaning of California Civil Code §1761(a).

22 83. Defendants engaged in unfair methods of competition, or unfair or deceptive acts
23 or practices against Plaintiffs and Class Members in violation of the California Consumers
24 Legal Remedies Act (the “CLRA”), by making false or misleading statements of fact
25 concerning the reasons for, the existence of, or the amount of price reductions for products sold
26 to Plaintiffs and Class Members at Defendants’ California Stores throughout the Class Period.
27 Defendants provided false, deceptive, or misleading “original” or “regular” prices on the price
28 tags of the merchandise sold in their respective California Stores, and compared those false or

1 misleading comparative prices to the prices at which Defendants sold their merchandise, to give
2 the illusion to consumers that they were receiving a discount, or achieving a saving or bargain.
3 The promised discounts, savings, or bargains, however, were deceptive, misleading, or false.

4 84. The price reductions alleged by Defendants and Defendants' sale prices did not
5 exist, and were false, deceptive, or misleading.

6 85. Defendants' acts or practices described herein are in violation of California Civil
7 Code §1770(a)(13).

8 86. As a result of Defendants' acts or practices described herein, Plaintiffs and other
9 respective Class Members have been harmed in that Defendants' unlawful, false or misleading
10 acts or practices described herein played a substantial and material role in each respective
11 Plaintiffs' and Class Members' decisions to purchase products at Defendants' Stores in
12 California. Absent these acts or practices, Plaintiffs and Class Members would not have
13 purchased the products that they did from Defendants.

14 87. Pursuant to California Civil Code §1780(a)(2), Plaintiffs, on behalf of themselves
15 and all Class Members, request that this Court enjoin Defendants from continuing to engage in
16 the unlawful and deceptive methods, acts or practices alleged herein. Unless Defendants are
17 permanently enjoined from continuing to engage in such violations of the CLRA, California
18 consumers will continue to be harmed by Defendants' acts or practices in the same way as those
19 acts or practices have harmed Plaintiffs and Class Members.

20 88. Plaintiffs provided notice to Defendants of the alleged violations of the CLRA
21 and the UCL.

22 89. Plaintiffs are entitled to damages, equitable and injunctive relief, punitive
23 damages and costs and attorneys' fees.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs and the Class demand judgment against Macy's, Inc., Macy's
26 West Stores, Inc. and Bloomingdale's, Inc., as follows:
27
28

1 A. An order certifying that this action may be maintained as a class action, that
2 Plaintiffs be appointed Class Representatives and Plaintiffs' counsel be appointed Class
3 Counsel;

4 B. A judgment awarding Plaintiffs and all members of the Class damages as alleged
5 above incurred by Plaintiffs and Class members as a result of Defendants' unlawful, deceptive,
6 unfair and fraudulent business and trade practices described herein;

7 C. A judgment awarding Plaintiffs and all members of the Class restitution or other
8 equitable relief, including, without limitation, disgorgement of all profits and unjust enrichment
9 that Defendants obtained from Plaintiffs and the Class as a result of their unlawful, unfair and
10 fraudulent business practices described herein;

11 D. An order enjoining Defendants from continuing to violate the laws as described
12 herein.

13 E. A judgment awarding Plaintiffs the costs of suit, including reasonable attorneys'
14 fees, and pre and post-judgment interest; and

15
16 F. Such other and further relief as may be deemed necessary or appropriate.

17 **JURY DEMAND**

18 Plaintiffs demand trial by jury.

19
20 DATED: October 26, 2016

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ATTESTATION PURSUANT TO LOCAL RULE 5-1(i)(3)

This certifies, pursuant to Local Rule 5-1(i)(3), that all signatories to this document concur in its content and have authorized this filing.