

**CARLSON LYNCH SWEET KILPELA & CARPENTER, LLP**

Todd D. Carpenter (CA 234464)  
402 West Broadway, 29th Floor  
San Diego, California 92101  
Telephone: 619.756.6994  
Facsimile: 619.756.6991  
tcarpenter@carlsonlynch.com

Edwin J. Kilpela  
Gary F. Lynch  
1133 Penn Avenue, 5th Floor  
Pittsburgh, Pennsylvania 15222  
Telephone: (412) 322-9243  
Facsimile: (412) 231-0246  
ekilpela@carlsonlynch.com  
glynch@carlsonlynch.com

*Attorneys for Plaintiff and  
Proposed Class Counsel*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

SIOBHAN MORROW, on behalf of  
herself and all others similarly situated,

Plaintiff,

vs.

CARTER’S, INC, a Delaware  
corporation, THE WILLIAM CARTER  
COMPANY, a Massachusetts  
corporation, CARTER’S RETAIL, INC.,  
a Delaware corporation, OSHKOSH  
B’GOSH, INC., a Delaware Corporation,  
and DOES 1- 50, inclusive,

Defendants.

Case No. '16CV345 LAB JMA

**CLASS ACTION**

**COMPLAINT**

- 1. Violation of California’s Unfair Competition Laws (“UCL”); California Business & Professions Code Sections 17200, et seq.**
- 2. Violation of California’s False Advertising Laws (“FAL”); California Business & Professions Code Sections 17500, et seq.**
- 3. Violations of California Consumer Legal Remedies Act (“CLRA”); Civ. Code § 1750, et seq.**

**IDEMAND FOR JURY TRIAL**

1 Plaintiff SIOBHAN MORROW brings this action on behalf of herself and all others  
2 similarly situated against Defendants CARTER’S, INC., THE WILLIAM CARTER  
3 COMPANY, CARTER’S RETAIL, INC., and OSHKOSH B’GOSH, INC. (“Carter’s” or  
4 “Defendants”), and states:

5 **I. NATURE OF ACTION**

6 1. This is a class action regarding Defendants’ false and misleading  
7 advertisement of “market” prices, and corresponding phantom “savings” on clothing and  
8 children’s apparel and accessories sold in its Carter’s and OshKosh B’gosh branded retail  
9 and outlet stores. During the Class Period (defined below), Defendants advertised false  
10 price discounts for merchandise sold throughout its retail and outlet stores.

11 2. During the Class Period, Defendants continually misled consumers by  
12 advertising clothing and children’s apparel and accessories at discounted, “sale” prices.  
13 Defendants would compare the “sale” prices to false “market” prices, which were  
14 misrepresented as the “market” retail prices from which the “savings” was discounted.  
15 The advertised discounts were nothing more than mere phantom markdowns because the  
16 represented market prices were artificially inflated and were never the original prices for  
17 clothing and children’s apparel and accessories sold at Defendants’ retail and/or outlet  
18 stores. In addition, the represented “market” prices were not the prevailing marketing  
19 retail prices within three months next immediately preceding the publication of the  
20 advertised former prices, as required by California law.

21 3. Defendants convey their deceptive pricing scheme to consumers through  
22 promotional materials, in-store displays, and print advertisements. For example, in  
23 Defendants’ retail and/or outlet stores, the pricing scheme is prominently displayed,  
24 advertising deep discounts, including “50% off” various items throughout the store.

25 4. The “market price” never existed and/or did not constitute the prevailing  
26 market retail prices for such products within the three months immediately preceding the  
27 publication of the sales tag. Defendants sell their own, exclusive, branded products.  
28 There is no other “market price” for the products being sold other than the price set at

1 Defendants' Carter's and OshKosh B'gosh retail and/or outlet stores. The difference  
2 between the "sale" and "regular" prices is a false savings percentage used to lure  
3 consumers into purchasing products they believe are significantly discounted.

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

14 6. Plaintiff brings this action on behalf of herself and other similarly situated  
15 consumers who have purchased one or more items of clothing or children's apparel and  
16 accessories at Defendants' retail and/or outlet stores that were deceptively represented as  
17 discounted from false former prices in order to halt the dissemination of this false,  
18 misleading, and deceptive price scheme, correct the false and misleading perception it has  
19 created in the minds of consumers, and obtain redress for those who have purchased these  
20 products. Plaintiff seeks restitution and other equitable remedies, including an injunction  
21 under the UCL and FAL; and restitution, damages and an injunction under the CLRA.

## 22 **II. JURISDICTION AND VENUE**

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

27 8. The Southern District of California has personal jurisdiction over the  
28 Defendants named in this action because Defendants are corporations or other business

1 entities authorized to conduct and do conduct business in the State of California.  
2 Defendant The William Carter Company and Defendant Carter's Retail, Inc. are  
3 registered with the California Secretary of State to do sufficient business with sufficient  
4 minimum contacts in California. Defendants intentionally avail themselves of the  
5 California market through the ownership and operation of over 50 retail and/or outlet  
6 stores within the State of California.

7 9. Venue is proper under 18 U.S.C. §1965(a) because Defendants transact  
8 substantial business in this District. A substantial part of the events giving rise to  
9 Plaintiff's claims arose here.

### 10 **III. PARTIES**

#### 11 **Plaintiff**

12 10. SIOBHAN MORROW resides in San Diego, California. Plaintiff, in reliance  
13 on Defendants' false and deceptive advertising, marketing and "discount" pricing  
14 schemes, purchased several items for herself and family members, including three  
15 newborn baby sleep accessories and two pairs of girls denim jeans. On or around  
16 November 13, 2015, Ms. Morrow purchased three newborn baby sleep accessories for  
17 \$9.00, \$3.50, and \$3.50 at a Carter's retail store located in San Ysidro, California. On or  
18 around November 13, 2015, Ms. Morrow also purchased two pairs of girls denim jeans at  
19 an OshKosh B'gosh retail store also located in San Ysidro. Ms. Morrow purchased one  
20 pair of the denim jeans for \$13.60, and the other for \$12.00. The sale prices for all of the  
21 items purchased by Ms. Morrow at Carter's and OshKosh B'gosh were supposedly  
22 discounted, and were represented to Plaintiff as "50% off" according to the price tags and  
23 related signage. However, these products were never offered for sale at their full prices at  
24 Defendants' stores, nor were they offered at their full retail prices within the 90-day time  
25 period immediately preceding Plaintiff's purchase. Therefore, Ms. Morrow was damaged  
26 by her purchase of the products.

#### 27 **Defendants**

28 11. Plaintiff is informed and believes, and upon such information and belief

1 alleges, Defendant Carter's, Inc. is a Delaware corporation with its principal executive  
2 offices in Atlanta, Georgia. Defendant Carter's, Inc. is the parent company of wholly-  
3 owned subsidiaries Defendant The William Carter Company, Defendant Carter's Retail,  
4 Inc., and Defendant OshKosh B'gosh, Inc. Defendants operate Carter's and OshKosh  
5 B'gosh retail and outlet stores, as well as the carters.com and oshkosh.com websites.  
6 Defendants advertise, market, distribute, and/or sell clothing and clothing accessories in  
7 California and throughout the United States.

8 12. Defendant The William Carter Company is a Massachusetts corporation with  
9 its principal executive offices in Atlanta, Georgia.

10 13. Defendant Carter's Retail, Inc. is a Delaware Corporation with its principal  
11 executive offices in Atlanta, Georgia.

12 14. Defendant OshKosh B'gosh, Inc. is a Delaware Corporation with its principal  
13 executive offices in Atlanta, Georgia.

14 15. Plaintiff does not know the true names or capacities of the persons or entities  
15 sued herein as DOES 1-50, inclusive, and therefore sues such Defendants by such  
16 fictitious names. Plaintiff is informed and believes, and upon such information and belief  
17 alleges, that each of the DOE Defendants is in some manner legally responsible for the  
18 damages suffered by Plaintiff and the Class members as alleged herein. Plaintiff will  
19 amend this Complaint to set forth the true names and capacities of these Defendants when  
20 they have been ascertained, along with appropriate charging allegations, as may be  
21 necessary.

#### 22 **IV. FACTUAL BACKGROUND**

23 16. On or around November 13, 2015, Plaintiff went shopping to purchase  
24 clothing and related apparel and accessories for herself and her family. Upon examining  
25 the newborn baby clothing and accessories at a Carter's retail store, she observed that they  
26 were advertised as "50% off". Plaintiff observed signage within the store and the price  
27 tags on three newborn baby swaddlers which represented that the items were "50% off".  
28 Believing that she was receiving a significant value by purchasing them for \$9.00, \$3.50,

1 and \$3.50 when they were originally priced at approximately \$18.00, \$7.00, and, \$7.00  
2 respectively, Ms. Morrow decided to purchase the items and proceeded to the cash  
3 register where she did in fact purchase the three baby swaddlers.

4 17. On that same day, Plaintiff shopped immediately next door at Defendants'  
5 OshKosh B'gosh retail store. Upon examining the girls' clothing and accessories, she  
6 observed that the girls' denim jeans were advertised as "50% off". Plaintiff observed  
7 signage within the store and the price tags on the jeans which represented that the items  
8 were "50% off". Believing that she was receiving a significant value by purchasing them  
9 for \$13.60 and \$12.00, she purchased two pairs of denim jeans for her nieces for  
10 Christmas.

11 18. Specifically, relying upon Defendants' misrepresentations and false and  
12 deceptive advertising, Plaintiff purchased the items for what she believed was 50% off  
13 from the original retail prices. The price tags indicated the "Original" or "Market" price of  
14 the items was twice as much as the discounted price; each item was being offered at a  
15 discount, described as: "50% off." These purported "market" prices and corresponding  
16 price "discounts" and savings were false and misleading, as the prevailing retail price for  
17 the items during the three months immediately prior to Plaintiff's purchase was not the  
18 "original" or "market" price advertised by Defendants.

19 19. Plaintiff would not have purchased the items without the misrepresentations  
20 made by Defendants. As a result, Plaintiff has been personally victimized by and suffered  
21 economic injury as a direct result of Defendants' unlawful, unfair and fraudulent conduct.

22 20. Defendants know that their comparative price advertising is false, deceptive,  
23 misleading and unlawful under California law.

24 21. Defendants fraudulently concealed from and intentionally failed to disclose  
25 to Plaintiff and other members of the proposed class the truth about its advertised price  
26 and former prices.

27 22. At all relevant times, Defendants have been under a duty to Plaintiff and the  
28 proposed class to disclose the truth about its false discounts.

1 23. Plaintiff relied upon Defendants’ artificially inflated “market” prices and  
2 false discounts when purchasing the items at Defendants’ retail stores. Plaintiff would not  
3 have made such purchases but for Defendants’ representations of fabricated original  
4 “market” prices and false discounts.

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

10 25. Defendants intentionally concealed and failed to disclose material facts  
11 regarding the truth about false former price advertising in order to provoke Plaintiff and  
12 the proposed class to purchase Carter’s and OshKosh B’gosh branded products in their  
13 retail and/or outlet stores.

14 **V. CLASS ALLEGATIONS**

15 26. Plaintiff brings this action on behalf of herself and all other similarly situated  
16 Class members pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil  
17 Procedure and seeks certification of the following Class against Defendants for violations  
18 of California state laws:

19 All individuals in the State of California who, within the applicable statute of  
20 limitations preceding the filing of this action, purchased clothing, children’s  
21 apparel and/or accessories at a purported discount at one of Defendants’  
22 retail or outlet stores.

23 Excluded from the Class are Defendants, as well as their officers, employees,  
24 agents or affiliates, and any judge who presides over this action, as well as all past and  
25 present employees, officers and directors of any of the Defendants. Plaintiff reserves the  
26 right to expand, limit, modify, or amend this class definition, including the addition of one  
27 or more subclasses, in connection with her motion for class certification, or at any other  
28 time, based upon, *inter alia*, changing circumstances and/or new facts obtained during

1 discovery.

2 27. **Numerosity:** The class members are so numerous that joinder of all members  
3 is impracticable. Plaintiff is informed and believes that the proposed Class contains  
4 hundreds of thousands of individuals who have been damaged by Defendants' conduct as  
5 alleged herein. The precise number of Class members is unknown to Plaintiff.

6 28. **Existence and Predominance of Common Questions of Law and Fact:**  
7 This action involves common questions of law and fact, which predominate over any  
8 questions affecting individual Class members. These common legal and factual questions  
9 include, but are not limited to, the following:

- 10 a. Whether, during the Class Period, Defendants used false "market" or  
11 "original" price labels and falsely advertised price discounts on their  
12 Carter's and Osh Kosh B'gosh branded products they sold in their  
13 retail and/or outlet stores;
- 14 b. Whether, during the Class Period, the "original" or "market" prices  
15 advertised by Defendants were the prevailing market prices for the  
16 respective Carter's and OshKosh B'gosh branded products during the  
17 three months period preceding the dissemination and/or publication of  
18 the advertised former prices;
- 19 c. Whether Defendants' alleged conduct constitutes violations of the laws  
20 asserted;
- 21 d. Whether Defendants engaged in unfair, unlawful and/or fraudulent  
22 business practices under the laws asserted;
- 23 e. Whether Defendants engaged in false or misleading advertising;
- 24 f. Whether Plaintiff and Class members are entitled to damages and/or  
25 restitution and the proper measure of that loss; and
- 26 g. Whether an injunction is necessary to prevent Defendants from  
27 continuing to use false, misleading or illegal price comparison.

28 29. **Typicality:** Plaintiff's claims are typical of the claims of the members of the



1 Class because, *inter alia*, all Class members have been deceived (or were likely to be  
2 deceived) by Defendants’ false and deceptive price advertising scheme, as alleged herein.  
3 Plaintiff is advancing the same claims and legal theories on behalf of herself and all  
4 members of the class.

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

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

20 32. All Class members, including Plaintiff, were exposed to one or more of  
21 Defendants’ misrepresentations or omissions of material fact claiming that former  
22 “original” advertised prices were in existence. Due to the scope and extent of Defendants’  
23 consistent false “discount” price advertising scheme, disseminated in a years-long  
24 campaign to California consumers via a number of different platforms – in-store displays,  
25 print advertisements, etc. – it can be reasonably inferred that such misrepresentations or  
26 omissions of material fact were uniformly made to all members of the Class. In addition,  
27 it can be reasonably presumed that all Class members, including Plaintiff, affirmatively  
28 acted in response to the representations contained in Defendants’ false advertising scheme

1 when purchasing Carter’s and OshKosh B’gosh branded merchandise at Defendants’  
2 retail and/or outlet stores.

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

9 **VI. CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**  
11 **Violation Unfair Competition Law**  
12 **Business and Professions Code § 17200 et seq.**

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

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

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

21 37. A business act or practice is “unfair” under the UCL if it offends an  
22 established public policy or is immoral, unethical, oppressive, unscrupulous or  
23 substantially injurious to consumers, and that unfairness is determined by weighing the  
24 reasons, justifications and motives of the practice against the gravity of the harm to the  
25 alleged victims.

26 38. Defendants’ actions constitute “unfair” business acts or practices because, as  
27 alleged above, Defendants engaged in misleading and deceptive price comparison  
28 advertising that represented false “regular” prices and “discount” prices that were nothing

1 more than fabricated “regular” prices leading to phantom markdowns. Defendants’ acts  
2 and practices offended an established public policy, and engaged in immoral, unethical,  
3 oppressive, and unscrupulous activities that are substantially injurious to consumers.

4 39. The harm to Plaintiff and Class members outweighs the utility of  
5 Defendants’ practices. There were reasonably available alternatives to further  
6 Defendants’ legitimate business interests, other than the misleading and deceptive conduct  
7 described herein.

8 40. A business act or practice is “fraudulent” under the UCL if it is likely to  
9 deceive members of the consuming public.

10 41. A business act or practice is “unlawful” under the UCL if it violates any  
11 other law or regulation.

12 42. Defendants’ acts and practices alleged above have deceived Plaintiff and are  
13 highly likely to deceive members of the consuming public. Plaintiff relied on Defendants’  
14 fraudulent and deceptive representations regarding “market” prices for products which  
15 Defendants sell at their Carter’s and OshKosh B’gosh retail and/or outlet stores. These  
16 misrepresentations played a substantial role in Plaintiff’s decision to purchase products at  
17 steep discounts, and Plaintiff would not have purchased those products without  
18 Defendants’ misrepresentations.

19 43. The FTCA prohibits “unfair or deceptive acts or practices in or affecting  
20 commerce” (15 U.S.C. § 45(a)(1)) and prohibits the dissemination of any false  
21 advertisements. 15 U.S.C. § 52(a). Under the FTC false former pricing schemes, similar  
22 to the ones implemented by Carter’s are described as deceptive practices that would  
23 violate the FTCA:

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

1 the former price is genuine, the bargain being advertised is a true one. If, on  
2 the other hand, the former price being advertised is not bona fide but  
3 fictitious – for example, where an article price, inflated price was established  
4 for the 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  
6 unusual value he expects.

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

14 44. California law also expressly prohibits false former pricing schemes. Cal.  
15 Bus. & Prof. Code §17501, entitled “*Value determinations; Former price advertisement,*”  
16 states:

17 For the purpose of this article the worth or value of any thing advertised is  
18 the prevailing market price, wholesale if the offer is at wholesale, retail if the  
19 offer is at retail, at the time of publication of such advertisement in the  
20 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 above**  
23 **defined within three months next immediately preceding the publication**  
24 **of the advertisement** or unless the date when the alleged former price did  
25 prevail is clearly, exactly and conspicuously stated in the advertisement.  
26 [Emphasis added.]

27 45. As detailed in Plaintiff’s Third Cause of Action below, Cal. Civ. Code §  
28 1770(a)(9), prohibits a business from “[a]dvertising goods or services with intent not to

1 sell them as advertised,” and subsection (a)(13) prohibits a business from “[m]aking false  
2 or misleading statements of fact concerning reasons for, existence of, or amounts of price  
3 reductions.”

4 46. Defendants’ practices, as set forth above, have misled Plaintiff, the proposed  
5 class, and the general public in the past and will continue to mislead in the future.  
6 Consequently, Defendants’ practices constitute an unlawful an unfair business practice in  
7 within the meaning of the UCL.

8 47. Defendants’ violations of the UCL through their unlawful, unfair and  
9 fraudulent business practices are ongoing and present a continuing threat that members of  
10 the public will be deceived into purchasing products based on price comparisons of  
11 arbitrary and inflated “regular” prices to “sale” prices that created merely phantom  
12 markdowns and lead to financial damage for consumers, like Plaintiff and the proposed  
13 Class

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

19 **SECOND CAUSE OF ACTION**  
20 **Violation of the California False Advertising Law,**  
21 **California Business & Professions Code § 17500, *et seq.***

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

24 50. Cal. Bus. & Prof. Code § 17500 provides that “[i]t is unlawful for  
25 any...corporation...with intent...to dispose of...personal property...to induce the public  
26 to enter into any obligation relating thereto, to make or disseminate or cause to be made or  
27 disseminated...from this state before the public in any state, in any newspaper or other  
28 publication, or any advertising device, or by public outcry or proclamation, or in any other  
manner or means whatever, including over the Internet, any statement...which is untrue or

1 misleading, and which is known, or which by the exercise of reasonable care should be  
2 known, to be untrue or misleading...” [Emphasis added].

3 51. The “intent” required by Cal. Bus. & Prof. Code § 17500 is the intent to  
4 dispose of property, and not the intent to mislead the public in the disposition of such  
5 property.

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

11 53. Defendants’ routine of advertising discounted prices from false “market”  
12 prices associated with its Carter’s and Osh Kosh B’gosh branded products which were  
13 never the true prevailing “market” prices of those products and were materially greater  
14 than the true prevailing prices was an unfair, untrue and misleading practice. This  
15 deceptive marketing practice gave consumers the false impression that the products were  
16 regularly sold on the market for a substantially higher price than they actually were,  
17 therefore leading to the false impression that the Carter’s and Osh Kosh B’gosh branded  
18 products were worth more than they actually were.

19 54. Defendants misled consumers by making untrue and misleading statements  
20 and failing to disclose what is required as stated in the Code, as alleged above.

21 55. As a direct and proximate result of Defendants’ misleading and false  
22 advertisements Plaintiff and Class members have suffered injury in fact and have lost  
23 money. As such, Plaintiff requests that this Court order Defendants to restore this money  
24 to Plaintiff and all Class members, and to enjoin Defendants from continuing these unfair  
25 practices in violation of the UCL in the future. Otherwise, Plaintiff, Class members and  
26 the broader general public will be irreparably harmed and/or denied an effective and  
27 complete remedy.

28 **THIRD CAUSE OF ACTION**

**Violation of the Consumers Legal Remedies Act (“CLRA”),  
California Civil Code § 1750, et seq.**

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

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57. This cause of action is brought pursuant to the Consumers Legal Remedies Act (CLRA), California Civil Code § 1750, et seq. and similar laws in other states. Plaintiff and each member of the proposed class are “consumers” as defined by California Civil Code § 1761(d). Defendants’ sale of the Carter’s and OshKosh B’gosh branded products to Plaintiff and the Class were “transactions” within the meaning of California Civil Code § 1761(e). The products purchased by Plaintiff and the Class are “goods” within the meaning of California Civil Code § 1761(a).

58. Defendants violated and continue to violate the CLRA by engaging in the following practices proscribed by California Civil Code § 1770(a) in transactions with Plaintiff and the Class which were intended to result in, and did result in, the sale of Carter’s and Osh Kosh B’gosh branded products:

- a. Advertising goods or services with intent not to sell them as advertised;
- b. Making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.

59. Pursuant to § 1782(a) of the CLRA, on February 10, 2016, Plaintiff’s counsel notified Defendants in writing by certified mail of the particular violations of § 1770 of the CLRA and demanded that it rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendants’ intent to act. If Defendants fail to respond to Plaintiff’s letter or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice, as proscribed by § 1782, Plaintiff will move to amend her Complaint to pursue claims for actual, punitive and statutory damages, as appropriate against Defendants. As to this cause of action, at this time, Plaintiff seeks only injunctive

1 relief.

2 **VII. PRAYER FOR RELIEF**

3 60. Wherefore, Plaintiff, on behalf of herself and on behalf of the other members  
4 of the Class, requests that this Court award relief against Defendants. as follows:

- 5 a. An order certifying the class and designating SIOBHAN MORROW  
6 as the Class Representative and her counsel as Class Counsel;
- 7 b. Awarding Plaintiff and the proposed Class members damages;
- 8 c. Awarding restitution and disgorgement of all profits and unjust  
9 enrichment that Defendants obtained from Plaintiff and the Class  
10 members as a result of its unlawful, unfair and fraudulent business  
11 practices described herein;
- 12 d. Awarding declaratory and injunctive relief as permitted by law or  
13 equity, including: enjoining Defendants from continuing the unlawful  
14 practices as set forth herein, and directing Defendants to identify, with  
15 Court supervisions, victims of its misconduct and pay them all money  
16 they are required to pay;
- 17 e. Order Defendants to engage in a corrective advertising campaign;
- 18 f. Awarding attorneys' fees and costs; and
- 19 g. For such other and further relief as the Court may deem necessary or  
20 appropriate.

21 **VIII. DEMAND FOR JURY TRIAL**

22 61. Plaintiff hereby demands a jury trial for all of the claims so triable.  
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1 Dated: February 10, 2016  
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**CARLSON LYNCH SWEET  
KILPELA & CARPENTER, LLP**

4 /s/ Todd D. Carpenter

5 Todd D. Carpenter (CA 234464)  
6 402 West Broadway, 29th Floor  
7 San Diego, California 92101  
8 Telephone: (619) 347-3517  
9 Facsimile: (619) 756-6990  
10 tcarpenter@carlsonlynch.com

11 Edwin J. Kilpela  
12 Gary F. Lynch  
13 1133 Penn Avenue  
14 5th Floor  
15 Pittsburgh, Pennsylvania 15222  
16 Telephone: (412) 322-9243  
17 Facsimile: (412) 231-0246  
18 ekilpela@carlsonlynch.com  
19 glynch@carlsonlynch.com

20 *Attorneys for Plaintiff*  
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CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

SIOBHAN MORROW, on behalf of herself and all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Todd D. Carpenter (CA SBN 234464) 402 West Broadway 29th Floor, San Diego, California 92101 Telephone: 619-756-6994

DEFENDANTS

CARTER'S, INC, a Delaware corporation, THE WILLIAM CARTER COMPANY, a Massachusetts corporation, et al.

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

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

Attorneys (If Known)

'16CV345 LAB JMA

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

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

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. Sec 1332(d)(2), 15 U.S.C. Sec 45(a)(1) and 15 U.S.C. Sec 52(a)
Brief description of cause: False and Misleading Advertising

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 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 02/10/2016 SIGNATURE OF ATTORNEY OF RECORD s/ TODD D. CARPENTER

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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

Authority For Civil Cover Sheet

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

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

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

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*Attorney for Plaintiff*

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

SIOBHAN MORROW on behalf of  
herself and all others similarly situated,

Plaintiff,

v.

CARTER’S, INC, a Delaware  
corporation, THE WILLIAM CARTER  
COMPANY, a Massachusetts  
corporation, CARTER’S RETAIL,  
INC., a Delaware corporation,  
OSHKOSH B’GOSH, INC., a Delaware  
Corporation, and DOES 1- 50,  
inclusive,

Defendants.

Case No.: '16CV345 LAB JMA

**DECLARATION OF TODD D.  
CARPENTER RE: JURISDICTION**

I, Todd D. Carpenter, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of California. I am a Partner in the law firm of Carlson Lynch Sweet Kilpela & Carpenter, LLP, and the counsel of record for Plaintiff in the above-entitled action.

2. Defendant Carter’s, Inc. has done and is doing business in the

1 Southern District of California. Such business includes the marketing, distributing,  
2 and sale of clothing and children's accessories.

3 3. Furthermore, Plaintiff SIOBHAN MORROW purchased clothing  
4 from Defendant in the Southern District of California.

5 I declare under penalty of perjury under the laws of the State of California  
6 that  
7 the foregoing is true and correct.

8 Executed this Wednesday, February 10, 2016 in San Diego, California.

9  
10 Dated: February 10, 2016

**CARLSON LYNCH SWEET  
KILPELA & CARPENTER, LLP**

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12  
13 /s/ Todd D. Carpenter

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17 *Attorney for Plaintiff*

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*Attorney for Plaintiff*

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

SIOBHAN MORROW on behalf of  
herself and all others similarly situated,

Plaintiff,

v.

CARTER’S, INC, a Delaware  
corporation, THE WILLIAM CARTER  
COMPANY, a Massachusetts  
corporation, CARTER’S RETAIL,  
INC., a Delaware corporation,  
OSHKOSH B’GOSH, INC., a Delaware  
Corporation, and DOES 1- 50,  
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Defendants.

Case No.: '16CV345 LAB JMA

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2. Defendant Carter’s Retail, Inc. has done and is doing business in the

1 Southern District of California. Such business includes the marketing, distributing,  
2 and sale of clothing and children's accessories.

3 3. Furthermore, Plaintiff SIOBHAN MORROW purchased clothing  
4 from Defendant in the Southern District of California.

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17 *Attorney for Plaintiff*