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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.

PVH CORP., a Delaware corporation,
PVH RETAIL STORES, LLC, a
Delaware corporation, CALVIN KLEIN,
INC, a New York corporation, TOMMY
HILFINGER WHOLESALE, INC., a
California corporation, and DOES 1- 50,
inclusive,

Defendants.

Case No. '16CV348 L RBB

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.**

DEMAND FOR JURY TRIAL

1 Plaintiff SIOBHAN MORROW brings this action on behalf of herself and all others
2 similarly situated against Defendants PVH CORP., PVH RETAIL STORES, LLC,
3 CALVIN KLEIN, INC., and TOMMY HILFINGER WHOLESALE, INC. (collectively
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,
8 clothing accessories and other fashion apparel sold in its retail “Outlet” or “Factory”
9 stores. During the Class Period (defined below), Defendants advertised false price
10 discounts for merchandise sold throughout their retail outlet stores.

11 2. During the Class Period, Defendants continually mislead consumers by
12 advertising clothing, clothing accessories and other fashion apparel at discounted,
13 “savings” prices. Defendants would compare the “sale” prices to false “market” prices,
14 which were misrepresented as the “market” retail prices from which the “savings” were
15 discounted. The advertised discounts were nothing more than mere phantom markdowns
16 because the represented market prices were artificially inflated and were never the
17 original prices for clothing, clothing accessories and other fashion apparel sold at
18 Defendants’ retail outlet stores. In addition, the represented “market” prices were not the
19 prevailing marketing retail prices within three months next immediately preceding the
20 publication of the 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 outlets, the pricing scheme is prominently displayed, advertising deep
24 discounts on 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 next immediately preceding
27 the publication of the sales tag. Defendants sell their own, exclusive branded Calvin Klein
28 and Tommy Hilfiger products. There is no other “market price” for the products being

1 sold other than the price set at Defendants' retail outlet stores. The difference between the
2 "sale" and "regular" prices is a false savings percentage used to lure consumers into
3 purchasing products they believe are significantly discounted.

4 5. Through its false and misleading marketing, advertising and pricing scheme,
5 Defendants violated, and continue to violate California law prohibiting advertising goods
6 for sale as discounted from former prices which are false, and prohibiting misleading
7 statements about the existence and amount of price reductions. Specifically, Defendants
8 violated, and continue to violate, California's Business & Professions Code §§ 17200, *et*
9 *seq* (the "UCL"), California's Business & Professions Code §§ 17500, *et seq* (the "FAL"),
10 the California Consumers' Legal Remedies Act, California Civil Code §§ 1750, *et seq*
11 (the "CLRA"), and the Federal Trade Commission Act ("FTCA"), which prohibits "unfair
12 or deceptive acts or practices in or affecting commerce" (15 U.S.C. § 45(a)(1)) and false
13 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 clothing, clothing accessories and other
16 fashion apparel at Defendants' retail 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 pricing scheme, correct the false and misleading perception it
19 has created in the minds of consumers, and obtain redress for those who have purchased
20 deceptively priced products. Plaintiff seeks restitution and other equitable remedies,
21 including an injunction under the UCL and FAL; and restitution, damages and an
22 injunction under the CLRA.

23 **II. JURISDICTION AND VENUE**

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

28 8. The Southern District of California has personal jurisdiction over the

Defendants named in this action because Defendants are corporations or other business entities conducting business in the State of California. Defendants' either have sufficient minimum contacts in California as a result of their business activities, and/or otherwise intentionally avail themselves of the California market through the ownership, operation, and/or control of retail stores and/or marketing, advertisement and/or sale of products within the State of California.

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

III. PARTIES

Plaintiff

10. SIOBHAN MORROW resides in San Diego, California. Plaintiff, in reliance on Defendants' false and deceptive advertising, marketing and "discount" pricing schemes, purchased a sweater for herself for approximately \$39.75 on or around November 13, 2015 at a Calvin Klein retail outlet store, located in San Ysidro, California. The sweater was advertised as having an original price of approximately "\$79.50". That price was discounted and represented to Plaintiff as "50% off" according to the price tag and related signage. However, this product was never offered for sale at approximately \$79.50 at Defendants' retail store, nor was it offered at that price within the 90 day time period immediately preceding Plaintiff's purchase. Therefore, Ms. Morrow was damaged by her purchase of the product.

11. On the same day, Plaintiff visited a Tommy Hilfiger outlet store located in San Ysidro, California, and, in reliance on Defendants' false and deceptive advertising, marketing and "discount" pricing schemes, purchased a black tee shirt for approximately \$16.99 and a black polo shirt for approximately \$29.70, totaling for both approximately \$50.43. The black tee shirt was advertised as having an original price of approximately "\$33.99," and the black polo shirt was advertised as having an original price of approximately "\$59.40". Those prices were discounted and represented to Plaintiff as

1 approximately “50% off” according to the price tag and related signage. However, these
2 products were never offered for sale at approximately \$33.99 or \$ 59.40 at Defendants’
3 retail store, nor were they offered at those prices within the 90 day time period
4 immediately preceding Plaintiff’s purchase. Therefore, Ms. Morrow was damaged by her
5 purchase of the products.

6 **Defendants**

7 12. Plaintiff is informed and believes, and upon such information and belief
8 alleges, Defendant PVH Corp. is a Delaware corporation with its principal executive
9 offices in New York, New York. Defendant operates Calvin Klein and Tommy Hilfiger
10 outlet stores as well as the calvinklein.com and usa.tommy.com websites, and advertises,
11 markets, distributes, and/or sells clothing and clothing accessories in California and
12 throughout the United States.

13 13. Plaintiff is informed and believes, and upon such information and belief
14 alleges, Defendant PVH Retail Stores, LLC, is a Delaware corporation with is principal
15 executive offices in New York, New York. Defendant operates Calvin Klein and Tommy
16 Hilfiger outlet stores as well as the calvinklein.com and usa.tommy.com websites, and
17 advertises, markets, distributes, and/or sells clothing and clothing accessories in California
18 and throughout the United States.

19 14. Plaintiff is informed and believes, and upon such information and belief
20 alleges, Defendant Calvin Klein, Inc. is a New York corporation with its principal
21 executive offices in New York, New York. Defendant operates Calvin Klein outlet stores
22 as well as the calvinklein.com website, and advertises, markets, distributes, and/or sells
23 clothing and clothing accessories in California and throughout the United States.

24 15. Plaintiff is informed and believes, and upon such information and belief
25 alleges, Defendant Tommy Hilfiger Wholesale, Inc., is a California corporation with its
26 principal executive offices in New York, New York. Defendant operates Tommy Hilfiger
27 outlet stores as well as the usa.tommy.com website, and advertises, markets, distributes,
28 and/or sells clothing and clothing accessories in California and throughout the United

1 States.

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

10 **IV. FACTUAL BACKGROUND**

11 17. On or around November 13, 2015, Plaintiff went shopping at the outlet mall
12 to purchase clothing and related apparel for herself and her family.

13 18. Upon examining a women's sweater at the Calvin Klein outlet store, she
14 observed that it was advertised at 50% off. Plaintiff observed signage within the store and
15 the price tag on the sweater which represented that the sweater was "50% off." Believing
16 that she was receiving a significant value by purchasing the sweater for \$39.75 that was
17 originally priced at approximately \$79.50, she decided to purchase the sweater and
18 proceeded to the cash register where she did in fact purchase the sweater.

19 19. Specifically, relying upon Defendants' misrepresentations and false and
20 deceptive advertising, Plaintiff purchased the sweater for \$39.75. The price tag indicated
21 the "Original" or "Market" price of the sweater was, "\$79.50," and that it was being
22 offered at a discount, described as "50% off." The purported "market" price and
23 corresponding price "discount" and saving were false and misleading, as the prevailing
24 retail price for the sweater during the three months immediately prior to Plaintiff's
25 purchase was not the \$79.50 "market" price advertised by Defendants.

26 20. Upon examining a black tee shirt and a black polo shirt at the Tommy
27 Hilfiger outlet store, Plaintiff observed that both were advertised at approximately 50%
28 off. Plaintiff observed signage within the store and the price tag on both items, which

1 represented that the shirts were approximately “50% off.” Believing that she was
2 receiving a significant value by purchasing the black tee shirt for \$16.99 when it
3 originally was priced at approximately \$33.99, and by purchasing the black polo shirt for
4 \$29.70 when it originally was priced at approximately \$59.40, she decided to purchase the
5 shirts and proceeded to the cash register where she did in fact purchase the shirts.

6 21. Specifically, relying upon Defendants’ misrepresentations and false and
7 deceptive advertising, Plaintiff purchased both shirts for a total of \$50.43. The price tags
8 indicated the “Original” or “Market” price of the black tee shirt was approximately
9 “\$33.99” and that the “Original” or “Market” price of the black polo shirt was
10 approximately “\$59.40,” and that both were being offered at a discount of approximately
11 “50% off.” These purported “market” prices and corresponding price “discounts” and
12 savings were false and misleading, as the prevailing retail price for the shirts during the
13 three months immediately prior to Plaintiff’s purchase were not the \$33.99, or \$59.40,
14 “market” price advertised by Defendants.

15 22. Plaintiff would not have purchased the sweater or the shirts without the
16 misrepresentations made by Defendants. As a result, Plaintiff has been personally
17 victimized by and suffered economic injury as a direct result of Defendants’ unlawful,
18 unfair and fraudulent conduct.

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

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

24 25. At all relevant times, Defendants have been under a duty to Plaintiff and the
25 proposed class to disclose the truth about the false discounts.

26 26. Plaintiff relied upon Defendants’ artificially inflated “market” price and false
27 discounts when purchasing her sweater and shirts at Defendants’ retail stores. Plaintiff
28 would not have made such purchases but for Defendants’ representations of fabricated

original “market” prices and false discounts.

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

28. Defendants intentionally concealed and failed to disclose material facts regarding the truth about false former price advertising in order to provoke Plaintiff and the proposed class to purchase Calvin Klein and Tommy Hilfiger branded products in their retail outlet stores and/or on their Internet websites.

V. CLASS ALLEGATIONS

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

All individuals in the State of California who, within the applicable statute of limitations preceding the filing of this action, purchased purportedly discounted clothing, clothing accessories and/or other fashion apparel at one of Defendants’ outlet or factory stores.

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

30. **Numerosity:** The class members are so numerous that joinder of all members is impracticable. Plaintiff is informed and believes that the proposed Class contains

hundreds of thousands of individuals who have been damaged by Defendants' conduct as alleged herein. The precise number of Class members is unknown to Plaintiff.

31. ***Existence and Predominance of Common Questions of Law and Fact:***

This action involves common questions of law and fact, which predominate over any questions affecting individual Class members. These common legal and factual questions include, but are not limited to, the following:

- a. Whether, during the Class Period, Defendants' used false "market" or "original" price labels and falsely advertised price discounts on their Calvin Klein and Tommy Hilfiger branded products sold in their retail outlet stores;
- b. Whether, during the Class Period, the "original" or "market" prices advertised by Defendants were the prevailing market prices for the respective Calvin Klein and Tommy Hilfiger branded products during the three months period preceding the dissemination and/or publication of the advertised former prices;
- c. Whether Defendants' alleged conduct constitutes violations of the laws asserted;
- d. Whether Defendants engaged in unfair, unlawful and/or fraudulent business practices under the laws asserted;
- e. Whether Defendants engaged in false or misleading advertising;
- f. Whether Plaintiff and Class members are entitled to damages and/or restitution and the proper measure of that loss; and
- g. Whether an injunction is necessary to prevent Defendants from continuing to use false, misleading or illegal price comparisons.

32. ***Typicality:*** Plaintiff's claims are typical of the claims of the members of the Class because, *inter alia*, all Class members have been deceived (or were likely to be deceived) by Defendants' false and deceptive price advertising scheme, as alleged herein. Plaintiff is advancing the same claims and legal theories on behalf of herself and all

1 members of the class.

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

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

17 35. All Class members, including Plaintiff, were exposed to one or more of
18 Defendants' misrepresentations or omissions of material fact claiming that former
19 "original" advertised prices were in existence. Due to the scope and extent of Defendants'
20 consistent false "discount" price advertising scheme, disseminated in a years-long
21 campaign to California consumers via a number of different platforms – in-store displays,
22 print advertisements, etc. – it can be reasonably inferred that such misrepresentations or
23 omissions of material fact were uniformly made to all members of the Class. In addition,
24 it can be reasonably presumed that all Class members, including, Plaintiff, affirmatively
25 acted in response to the representations contained in Defendants' false advertising scheme
26 when purchasing Calvin Klein and Tommy Hilfiger branded merchandise at the Calvin
27 Klein and Tommy Hilfiger outlet stores.

28 36. Defendants keep extensive computerized records of its customers through,

1 *inter alia*, customer loyalty programs, co-branded credit cards and general marketing
 2 programs. Defendants have one or more databases through which a significant majority of
 3 Class members may be identified and ascertained, and they maintain contact information,
 4 including email and home addresses, through which notice of this action could be
 5 disseminated in accordance with due process requirements.

6 **VI. CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION** 8 **Violation Unfair Competition Law** 9 **Business and Professions Code § 17200 et seq.**

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

11 38. The UCL defines unfair business competition to include any “unlawful,
 12 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or
 13 misleading” advertising. Cal. Bus. Prof. Code § 17200.

14 39. The UCL imposes strict liability. Plaintiff need not prove that Defendants
 15 intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices –
 16 but only that such practices occurred.

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

22 41. Defendants’ actions constitute “unfair” business acts or practices because, as
 23 alleged above, Defendants engaged in misleading and deceptive price comparison
 24 advertising that represented false “regular” prices and “discount” prices that were nothing
 25 more than fabricated “regular” prices leading to phantom markdowns. Defendants’ acts
 26 and practices offended an established public policy, and engaged in immoral, unethical,
 27 oppressive, and unscrupulous activities that are substantially injurious to consumers.
 28

1 42. The harm to Plaintiff and Class members outweighs the utility of
2 Defendants' practices. There were reasonably available alternatives to further Defendants'
3 legitimate business interests, other than the misleading and deceptive conduct described
4 herein.

5 43. A business act or practice is "fraudulent" under the UCL if it is likely to
6 deceive members of the consuming public.

7 44. A business act or practice is "unlawful" under the UCL if it violates any
8 other law or regulation.

9 45. Defendants' acts and practices alleged above have deceived Plaintiff and are
10 highly likely to deceive members of the consuming public. Plaintiff relied on Defendants'
11 fraudulent and deceptive representations regarding its "market" prices, the corresponding
12 discounts for the Calvin Klein and Tommy Hilfiger branded products which Defendants
13 sell at their retail outlet stores and on their websites. These misrepresentations played a
14 substantial role in Plaintiff's decision and that of the proposed class to purchase the
15 products at steep discounts, and Plaintiff would not have purchased her sweater and shirts
16 without Defendants' misrepresentations.

17 46. The FTCA prohibits "unfair or deceptive acts or practices in or affecting
18 commerce" (15 U.S.C. § 45(a)(1)) and prohibits the dissemination of any false
19 advertisements. 15 U.S.C. § 52(a). Under the FTC false former pricing schemes, similar
20 to the ones implemented by Defendants, are described as deceptive practices that would
21 violate the FTCA:

22 (a) One of the most commonly used forms of bargain advertising is to offer a
23 reduction from the advertiser's own former price for an article. If the former
24 price is the actual, bona fide price at which the article was offered to the
25 public on a regular basis for a reasonably substantial period of time, it
26 provides a legitimate basis for the advertising of a price comparison. Where
27 the former price is genuine, the bargain being advertised is a true one. If, on
28 the other hand, the former price being advertised is not bona fide but

fictitious – for example, where an article price, inflated price was established for the purpose of enabling the subsequent offer of a large reduction – the “bargain” being advertised is a false one; the purchaser is not receiving the unusual value he expects.

(b) A former price is not necessarily fictitious merely because no sales at the advertised price were made. The advertiser should be especially careful, however, in such a case, that the price is one at which the product was openly and actively offered for sale, for a 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.

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

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

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

[Emphasis added.]

48. As detailed in Plaintiff’s Third Cause of Action below, Cal. Civ. Code § 1770(a)(9), prohibits a business from “[a]dvertising goods or services with intent not to sell them as advertised,” and subsection (a)(13) prohibits a business from “[m]aking false or misleading statements of fact concerning reasons for, existence of, or amounts of price

1 reductions.”

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

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

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

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

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

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

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

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

56. Defendants’ routine of advertising discounted prices from false “market” prices associated with their Calvin Klein and Tommy Hilfiger branded outlet store products which were never the true prevailing “market” prices of those products and were materially greater than the true prevailing prices was an unfair, untrue and misleading practice. This deceptive marketing practice gave consumers the false impression that the products were regularly sold on the market for a substantially higher price than they actually were. Therefore, leading to the false impression that the Calvin Klein and Tommy Hilfiger branded products were worth more than they actually were.

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

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

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

59. Plaintiff repeats and re-alleges the allegations contained in every preceding

1 paragraph as if fully set forth herein.

2 60. This cause of action is brought pursuant to the Consumers Legal Remedies
3 Act (CLRA), California Civil Code § 1750, et seq. and similar laws in other states.
4 Plaintiff and each member of the proposed class are “consumers” as defined by California
5 Civil Code § 1761(d). Defendants’ sale of the Calvin Klein and Tommy Hilfiger branded
6 products at its factory outlet stores and online to Plaintiff and the Class were
7 “transactions” within the meaning of California Civil Code § 1761(e). The products
8 purchased by Plaintiff and the Class are “goods” within the meaning of California Civil
9 Code § 1761(a).

10 61. Defendants violated and continue to violate the CLRA by engaging in the
11 following practices proscribed by California Civil Code § 1770(a) in transactions with
12 Plaintiff and the Class which were intended to result in, and did result in, the sale of name
13 branded products:

14 a. Advertising goods or services with intent not to sell them as
15 advertised;

16 b. Making false or misleading statements of fact concerning reasons for,
17 existence of, or amounts of price reductions.

18 62. Pursuant to § 1782(a) of the CLRA, on February 10, 2016, Plaintiff’s counsel
19 notified Defendants in writing by certified mail of the particular violations of § 1770 of
20 the CLRA and demanded that it rectify the problems associated with the actions detailed
21 above and give notice to all affected consumers of Defendants’ intent to act. If
22 Defendants fails to respond to Plaintiff’s letter or agree to rectify the problems associated
23 with the actions detailed above and give notice to all affected consumers within 30 days of
24 the date of written notice, as proscribed by § 1782, Plaintiff will move to amend her
25 Complaint to pursue claims for actual, punitive and statutory damages, as appropriate
26 against Defendants. As to this cause of action, at this time, Plaintiff seeks only injunctive
27 relief.
28

PRAYER FOR RELIEF

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

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

VIII. DEMAND FOR JURY TRIAL

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

1 Dated: February 10, 2016

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

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4 /s/ Todd D. Carpenter

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14 *Attorneys for Plaintiff*

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

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

PVH CORP., a Delaware corporation, PVH RETAIL STORES, LLC, a Delaware 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)

'16CV348 L RBB

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)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| 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 |

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 type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <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 PERSONAL INJURY <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 PERSONAL PROPERTY <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 LABOR <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 IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <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)) FEDERAL TAX SUITS <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 checked="" 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 <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	CIVIL RIGHTS <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 PRISONER PETITIONS Habeas Corpus: <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 Other: <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. 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.

CARLSON LYNCH SWEET KILPELA & CARPENTER

Todd D. Carpenter (CA 234464)
402 West Broadway, 29th Floor
San Diego, California 92101
Telephone: (619) 347-3517
Facsimile: (619) 756-6991
tcarpenter@carlsonlynch.com

Attorney for Plaintiff

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

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

Plaintiff,

v.

PVH CORP., a Delaware corporation,
PVH RETAIL STORES, LLC, a
Delaware corporation, CALVIN
KLEIN, INC., a New York corporation,
TOMMY HILFIGER WHOLESALE,
INC., and DOES 1-50, inclusive,

Defendants.

Case No.: '16CV348 L RBB

**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 and owner of Carlson Lynch Sweet Kilpela & Carpenter, LLP, and the counsel of record for Plaintiff in the above-entitled action.

2. Defendant Calvin Klein, Inc., has done and is doing business in the Southern District of California. Such business includes the marketing, distributing,

and sale of clothing, clothing accessories and other fashion apparel.

3. Furthermore, Plaintiff Siobhan Morrow purchased clothing from Defendant in the Southern District of California.

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

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

Dated: February 10, 2016

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

/s/ Todd D. Carpenter

Todd D. Carpenter (CA 234464)
402 West Broadway, 29th Floor
San Diego, California 92101
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Facsimile: (619) 756-6990
tcarpentar@carlsonlynch.com

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.

PVH CORP., a Delaware corporation,
PVH RETAIL STORES, LLC, a
Delaware corporation, CALVIN
KLEIN, INC., a New York corporation,
TOMMY HILFIGER WHOLESALE,
INC., and DOES 1-50, inclusive,

Defendants.

Case No.: **'16CV348 L RBB**

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2. Defendant PVH Corp., has done and is doing business in the Southern District of California. Such business includes the marketing, distributing, and sale

of clothing, clothing accessories and other fashion apparel.

3. Furthermore, Plaintiff Siobhan Morrow purchased clothing from Defendant in the Southern District of California.

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

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tcarpentar@carlsonlynch.com

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.

PVH CORP., a Delaware corporation,
PVH RETAIL STORES, LLC, a
Delaware corporation, CALVIN
KLEIN, INC., a New York corporation,
TOMMY HILFIGER WHOLESALE,
INC., and DOES 1-50, inclusive,

Defendants.

Case No.: '16CV348 L RBB

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2. Defendant PVH Retail Stores, LLC, has done and is doing business in the Southern District of California. Such business includes the marketing,

1 distributing, and sale of clothing, clothing accessories and other fashion apparel.

2 3. Furthermore, Plaintiff Siobhan Morrow purchased clothing from
3 Defendant in the Southern District of California.

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

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

8
9 Dated: February 10, 2016

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

11 /s/ Todd D. Carpenter

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17 tcarpentar@carlsonlynch.com

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19 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.

PVH CORP., a Delaware corporation,
PVH RETAIL STORES, LLC, a
Delaware corporation, CALVIN
KLEIN, INC., a New York corporation,
TOMMY HILFIGER WHOLESALE,
INC., and DOES 1-50, inclusive,

Defendants.

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

2. Defendant Tommy Hilfiger Wholesale, Inc., has done and is doing business in the Southern District of California. Such business includes the

1 marketing, distributing, and sale of clothing, clothing accessories and other fashion
2 apparel.

3 3. Furthermore, Plaintiff Siobhan Morrow purchased clothing from
4 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.
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Attorney for Plaintiff