

**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**

MONICA RAEL, on behalf of herself  
and all others similarly situated,

Plaintiff,

vs.

NEW YORK & COMPANY, INC., a  
DELAWARE corporation, NEW YORK  
& COMPANY STORES, INC., a NEW  
YORK corporation, and DOES 1- 50,  
inclusive,

Defendants.

Case No. '16CV0369 BAS 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 MONICA RAEL brings this action on behalf of herself and all others  
2 similarly situated against Defendant NEW YORK & COMPANY, INC. and Defendant  
3 NEW YORK & COMPANY STORES, INC. (collectively “Defendants”), and states:

4 **I. NATURE OF ACTION**

5 1. This is a class action regarding Defendants’ false and misleading  
6 advertisement of “market” prices, and corresponding phantom “savings” on clothing,  
7 accessories, and fashion apparel sold in their retail stand-alone and retail stores  
8 (collectively, “retail stores”). During the Class Period (defined below), Defendants  
9 advertised false price discounts for merchandise sold throughout their retail stores.

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

20 3. Defendants conveys their deceptive pricing scheme to consumers through  
21 promotional materials, in-store displays, and print advertisements. For example, in  
22 Defendants’ retails, the pricing scheme is prominently displayed, advertising deep  
23 discounts on various items throughout the store.

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

1 savings percentage used to lure consumers into purchasing products they believe are  
2 significantly discounted.

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

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

## 21 **II. JURISDICTION AND VENUE**

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

26 8. The Southern District of California has personal jurisdiction over Defendants  
27 named in this action because Defendants conduct business in the State of California.  
28 Defendants have sufficient minimum contacts in California, and/or otherwise intentionally

1 avail themselves of the California market through the ownership and operation of over 40  
2 retail stores within the State of California.

3 9. Venue is proper under 28 U.S.C. § 1391(b) because Defendants transact  
4 substantial business in this District and a substantial part of the events or omissions giving  
5 rise to Plaintiff's claims arose here.

### 6 **III. PARTIES**

#### 7 **Plaintiff**

8 10. MONICA RAEL resides in San Diego, California. Plaintiff, in reliance on  
9 Defendants' false and deceptive advertising, marketing and "discount" pricing schemes,  
10 purchased a pair of women's pants for herself for approximately \$16.17 on or around  
11 November 24, 2015 at a New York & Company retail store, located in San Diego,  
12 California. The pants were advertised as having an original price of approximately  
13 "\$49.94". That price was discounted and represented to Plaintiff as: "70% off" according  
14 to the price tag and related signage. However, this product was never offered for sale at  
15 approximately \$49.94 at Defendants' retail store, nor was it offered at that price within the  
16 90 day time period immediately preceding Plaintiff's purchase. Therefore, Ms. Rael was  
17 damaged by her purchase of the product.

#### 18 **Defendants**

19 11. Plaintiff is informed and believes, and upon such information and belief  
20 alleges, Defendant New York & Company, Inc., is a Delaware Corporation with its  
21 principal executive offices in New York, New York.

22 12. Plaintiff is informed and believes, and upon such information and belief  
23 alleges, Defendant New York & Company Stores, Inc., is a New York Corporation with  
24 its principal executive offices in New York, New York

25 13. Defendants operate New York & Company outlet stores as well as the  
26 nyandcompany.com website, and advertise, market, distribute, and/or sell clothing and  
27 clothing accessories in California and throughout the United States.

28 14. Plaintiff does not know the true names or capacities of the persons or entities

1 sued herein as DOES 1-50, inclusive, and therefore sues such Defendants by such  
2 fictitious names. Plaintiff is informed and believes, and upon such information and belief  
3 alleges, that each of the DOE Defendants is in some manner legally responsible for the  
4 damages suffered by Plaintiff and the Class members as alleged herein. Plaintiff will  
5 amend this Complaint to set forth the true names and capacities of these Defendants when  
6 they have been ascertained, along with appropriate charging allegations, as may be  
7 necessary.

#### 8 **IV. FACTUAL BACKGROUND**

9 15. On or around November 24, 2015, Plaintiff went shopping at an outlet mall  
10 to purchase clothing and related apparel for herself and her family. Upon examining a pair  
11 of women's pants at a New York & Company outlet store, she observed that they were  
12 advertised at 70% off. Plaintiff observed signage within the store and the price tag on the  
13 pants which represented that the pants were "70% off". Believing that she was receiving a  
14 significant value by purchasing the pants for \$14.98 that were originally priced at  
15 approximately \$49.94, she decided to purchase the pants and proceeded to the cash  
16 register where she did in fact purchase the pants.

17 16. Specifically, relying upon Defendants' misrepresentations and false and  
18 deceptive advertising, Plaintiff purchased the pants for \$16.17. The price tag indicated the  
19 "Original" or "Market" price of the pants was, "\$49.94," and that they were being offered  
20 at a discount, described as: "70% off." These purported "market" prices and  
21 corresponding price "discounts" and savings were false and misleading, as the prevailing  
22 retail price for the pants during the three months immediately prior to Plaintiff's purchase  
23 was not the \$49.94 "market" price advertised by Defendants.

24 17. Plaintiff would not have purchased the pants without the misrepresentations  
25 made by Defendants. As a result, Plaintiff has been personally victimized by and suffered  
26 economic injury as a direct result of Defendants' unlawful, unfair and fraudulent conduct.

27 18. Defendants know that their comparative price advertising is false, deceptive,  
28 misleading and unlawful under California law.

1 19. Defendants fraudulently concealed from and intentionally failed to disclose  
2 to Plaintiff and other members of the proposed class the truth about their advertised price  
3 and former prices.

4 20. At all relevant times, Defendants have been under a duty to Plaintiff and the  
5 proposed class to disclose the truth about their false discounts.

6 21. Plaintiff relied upon Defendants' artificially inflated "market" price and false  
7 discounts when purchasing her pants at Defendants' retail store. Plaintiff would not have  
8 made such purchases but for Defendants' representations of fabricated original "market"  
9 prices and false discounts.

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

15 23. Defendants intentionally concealed and failed to disclose material facts  
16 regarding the truth about false former price advertising in order to provoke Plaintiff and  
17 the proposed class to purchase New York & Company branded products in their retail  
18 store and/or on their Internet website.

19 **V. CLASS ALLEGATIONS**

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

24 All persons who, within the applicable statute of limitations preceding the  
25 filing of this action, purchased one or more items offered at a purported  
26 discount from an "original" or "regular" or "manufacturer's suggested" price  
27 at one of Defendant's retail stores.

28 Excluded from the Class are Defendants, as well as their officers, employees,

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

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

11 26. ***Existence and Predominance of Common Questions of Law and Fact:***  
12 This action involves common questions of law and fact, which predominate over any  
13 questions affecting individual Class members. These common legal and factual questions  
14 include, but are not limited to, the following:

- 15 a. Whether, during the Class Period, Defendants used false "market" or  
16 "original" price labels and falsely advertised price discounts on their  
17 New York & Company branded products it sold in their retail stores;
- 18 b. Whether, during the Class Period, the "original" or "market" prices  
19 advertised by Defendants were the prevailing market prices for the  
20 respective New York & Company branded products during the three  
21 months period preceding the dissemination and/or publication of the  
22 advertised former prices;
- 23 c. Whether Defendants' alleged conduct constitutes violations of the laws  
24 asserted;
- 25 d. Whether Defendants engaged in unfair, unlawful and/or fraudulent  
26 business practices under the laws asserted;
- 27 e. Whether Defendants engaged in false or misleading advertising;
- 28 f. Whether Plaintiff and Class members are entitled to damages and/or

1 restitution and the proper measure of that loss; and

2 **g.** Whether an injunction is necessary to prevent Defendants from  
3 continuing to use false, misleading or illegal price comparison.

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

9 28. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the  
10 members of the Class. Plaintiff has retained counsel experienced in complex consumer  
11 class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff  
12 has no antagonistic or adverse interest to those of the Class.

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

24 30. All Class members, including Plaintiff, were exposed to one or more of  
25 Defendants' misrepresentations or omissions of material fact claiming that former  
26 "original" advertised prices were in existence. Due to the scope and extent of Defendants'  
27 consistent false "discount" price advertising scheme, disseminated in a years-long  
28 campaign to California consumers via a number of different platforms – in-store displays,



1 print advertisements, etc. – it can be reasonably inferred that such misrepresentations or  
2 omissions of material fact were uniformly made to all members of the Class. In addition,  
3 it can be reasonably presumed that all Class members, including, Plaintiff affirmatively  
4 acted in response to the representations contained in Defendants’ false advertising scheme  
5 when purchasing New York & Company branded merchandise at Defendants’ retail  
6 stores.

7 31. Defendants keep extensive computerized records of their customers through,  
8 *inter alia*, customer loyalty programs, co-branded credit cards and general marketing  
9 programs. Defendants have one or more databases through which a significant majority  
10 of Class members may be identified and ascertained, and they maintain contact  
11 information, including email and home addresses, through which notice of this action  
12 could be disseminated in accordance with due process requirements.

## 13 **VI. CAUSES OF ACTION**

### 14 **FIRST CAUSE OF ACTION** 15 **Violation Unfair Competition Law** 16 **Business and Professions Code § 17200 et seq.**

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

19 33. The UCL defines unfair business competition to include any “unlawful,  
20 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or  
21 misleading” advertising. Cal. Bus. Prof. Code § 17200.

22 34. The UCL imposes strict liability. Plaintiff need not prove that Defendants  
23 intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices –  
24 but only that such practices occurred.

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

1 36. Defendants’ actions constitute “unfair” business acts or practices because, as  
2 alleged above, Defendants engaged in misleading and deceptive price comparison  
3 advertising that represented false “regular” prices and “discount” prices that were nothing  
4 more than fabricated “regular” prices leading to phantom markdowns. Defendants’ acts  
5 and practices offended an established public policy, and engaged in immoral, unethical,  
6 oppressive, and unscrupulous activities that are substantially injurious to consumers.

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

11 38. A business act or practice is “fraudulent” under the UCL if it is likely to  
12 deceive members of the consuming public.

13 39. A business act or practice is “unlawful” under the UCL if it violates any  
14 other law or regulation.

15 40. Defendants’ acts and practices alleged above have deceived Plaintiff and are  
16 highly likely to deceive members of the consuming public. Plaintiff relied on Defendants’  
17 fraudulent and deceptive representations regarding their “market” prices, the  
18 corresponding discounts for the New York & Company branded products which  
19 Defendants sell at their retail stores and on their website. These misrepresentations played  
20 a substantial role in Plaintiff’s decision and that of the proposed class to purchase the  
21 products at steep discounts, and Plaintiff would not have purchased her pants without  
22 Defendants’ misrepresentations.

23 41. The FTCA prohibits “unfair or deceptive acts or practices in or affecting  
24 commerce” (15 U.S.C. § 45(a)(1)) and prohibits the dissemination of any false  
25 advertisements. 15 U.S.C. § 52(a). Under the FTC false former pricing schemes, similar  
26 to the ones implemented by Defendants, are described as deceptive practices that would  
27 violate the FTCA:

28 (a) One of the most commonly used forms of bargain advertising is to offer a

1 reduction from the advertiser's own former price for an article. If the former  
2 price is the actual, bona fide price at which the article was offered to the  
3 public on a regular basis for a reasonably substantial period of time, it  
4 provides a legitimate basis for the advertising of a price comparison. Where  
5 the former price is genuine, the bargain being advertised is a true one. If, on  
6 the other hand, the former price being advertised is not bona fide but  
7 fictitious – for example, where an article price, inflated price was established  
8 for the purpose of enabling the subsequent offer of a large reduction – the  
9 “bargain” being advertised is a false one; the purchaser is not receiving the  
10 unusual value he expects.

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

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

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

25 **No price shall be advertised as a former price of any advertised thing,**  
26 **unless the alleged former price was the prevailing market price as above**  
27 **defined within three months next immediately preceding the publication**  
28 **of the advertisement** or unless the date when the alleged former price did

1 prevail is clearly, exactly and conspicuously stated in the advertisement.

2 [Emphasis added.]

3 43. As detailed in Plaintiff's Third Cause of Action below, Cal. Civ. Code §  
4 1770(a)(9), prohibits a business from "[a]dvertising goods or services with intent not to  
5 sell them as advertised," and subsection (a)(13) prohibits a business from "[m]aking false  
6 or misleading statements of fact concerning reasons for, existence of, or amounts of price  
7 reductions."

8 44. Defendants' practices, as set forth above, have mislead Plaintiff, the  
9 proposed class, and the general public in the past and will continue to misled in the future.  
10 Consequently, Defendants' practices constitute an unlawful an unfair business practice  
11 within the meaning of the UCL.

12 45. Defendants' violation of the UCL through their unlawful, unfair and  
13 fraudulent business practices are ongoing and present a continuing threat that members of  
14 the public will be deceived into purchasing products based on price comparisons of  
15 arbitrary and inflated "regular" prices to "sale" prices that created merely phantom  
16 markdowns and lead to financial damage for consumers, like Plaintiff and the proposed  
17 Class

18 46. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent  
19 injunctive relief ordering Defendants to cease this unfair competition, as well as  
20 disgorgement and restitution to Plaintiff and the Class of all of Defendants' revenues  
21 associated with their unfair competition, or such portion of those revenues as the Court  
22 may find equitable.

23 **SECOND CAUSE OF ACTION**

24 **Violation of the California False Advertising Law,  
California Business & Professions Code § 17500, et seq.**

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

27 48. Cal. Bus. & Prof. Code § 17500 provides that "[i]t is unlawful for  
28 any...corporation...with intent...to dispose of...personal property...to induce the public

1 to enter into any obligation relating thereto, to make or disseminate or cause to be made or  
2 disseminated...from this state before the public in any state, in any newspaper or other  
3 publication, or any advertising device, or by public outcry or proclamation, or in any other  
4 manner or means whatever, including over the Internet, any statement...which is untrue or  
5 misleading, and which is known, or which by the exercise of reasonable care should be  
6 known, to be untrue or misleading...” [Emphasis added].

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

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

15 51. Defendants’ routine of advertising discounted prices from false “market”  
16 prices associated with their New York & Company branded outlet store products which  
17 were never the true prevailing “market” prices of those products and were materially  
18 greater than the true prevailing prices was an unfair, untrue and misleading practice. This  
19 deceptive marketing practice gave consumers the false impression that the products were  
20 regularly sold on the market for a substantially higher price than they actually were.  
21 Therefore, leading to the false impression that the New York & Company branded  
22 products were worth more than they actually were.

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

25 53. As a direct and proximate result of Defendants’ misleading and false  
26 advertisements Plaintiff and Class members have suffered injury in fact and have lost  
27 money. As such, Plaintiff requests that this Court order Defendants to restore this money  
28 to Plaintiff and all Class members, and to enjoin Defendants from continuing these unfair

1 practices in violation of the California law in the future. Otherwise, Plaintiff, Class  
2 members and the broader general public will be irreparably harmed and/or denied an  
3 effective and complete remedy.

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

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

9 55. This cause of action is brought pursuant to the Consumers Legal Remedies  
10 Act (CLRA), California Civil Code § 1750, *et seq.* and similar laws in other states.  
11 Plaintiff and each member of the proposed class are “consumers” as defined by California  
12 Civil Code § 1761(d). Defendants’ sale of the New York & Company branded products at  
13 their factory outlet store and online to Plaintiff and the Class were “transactions” within  
14 the meaning of California Civil Code § 1761(e). The products purchased by Plaintiff and  
15 the Class are “goods” within the meaning of California Civil Code § 1761(a).

16 56. Defendants violated and continues to violate the CLRA by engaging in the  
17 following practices proscribed by California Civil Code § 1770(a) in transactions with  
18 Plaintiff and the Class which were intended to result in, and did result in, the sale of New  
19 York & Company branded products:

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

24 57. Pursuant to § 1782(a) of the CLRA, on February 11, 2016, Plaintiff’s counsel  
25 notified Defendants in writing by certified mail of the particular violations of § 1770 of  
26 the CLRA and demanded that it rectify the problems associated with the actions detailed  
27 above and give notice to all affected consumers of Defendants’ intent to act. If  
28 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

1 the date of written notice, as proscribed by § 1782, Plaintiff will move to amend her  
2 Complaint to pursue claims for actual, punitive and statutory damages, as appropriate  
3 against Defendants. As to this cause of action, at this time, Plaintiff seeks only injunctive  
4 relief.

5 **VII. PRAYER FOR RELIEF**

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

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

24 **VIII. DEMAND FOR JURY TRIAL**

25 59. Plaintiff hereby demands a jury trial for all of the claims so triable.  
26  
27  
28

1 Dated: February 11, 2016  
2

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

3 /s/ Todd D. Carpenter

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

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

18 *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

Monica Rael, 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 619-756-6994

DEFENDANTS

NEW YORK & COMPANY, INC., 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)

'16CV0369 BAS 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 02/11/2016 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**

MONICA RAEL on behalf of herself  
and all others similarly situated,

Plaintiff,

v.

NEW YORK & COMPANY, INC., a  
DELAWARE corporation, NEW  
YORK & COMPANY STORES, INC.,  
a NEW YORK corporation, and DOES  
1-50, inclusive,

Defendant.

Case No.: '16CV0369 BAS 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 and part-owner of Carlson Lynch Sweet Kilpela & Carpenter, LLP, and the counsel of record for Plaintiff in the above-entitled action.

2. New York & Company Stores, Inc. has done and is doing business in the Southern District of California. Such business includes the marketing, distributing, and sale of clothing, accessories, and fashion apparel.

3. Furthermore, Plaintiff Monica Rael purchased a pair of pants from Defendant in the Southern District of California.

I declare under penalty of perjury under the laws of the State of California

1 that  
2 the foregoing is true and correct.

3 Executed this Thursday, February 11, 2016 in San Diego, California.  
4

5  
6 Dated: February 11, 2016

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

7  
8 /s/ Todd D. Carpenter

9 Todd D. Carpenter (CA 234464)  
10 402 West Broadway, 29th Floor  
11 San Diego, California 92101  
12 Telephone: (619) 347-3517  
13 Facsimile: (619) 756-6990  
14 tcarpentar@carlsonlynch.com

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Attorney for Plaintiff