

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ELLEN MULDER,

Plaintiff,

v.

KOHL'S DEPARTMENT STORES, INC.,

Defendant.

CIVIL ACTION NO: _____

NOTICE OF REMOVAL OF ACTION

Pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446, Defendant Kohl's Department Stores, Inc. ("Kohl's" or "Defendant"), by its undersigned counsel, hereby removes this civil action from the Superior Court of Plymouth County, Massachusetts (the "State Court Action"), pending as Case No. PLCV-2014-01248A, to the United States District Court for the District of Massachusetts, on the grounds that this Court has original jurisdiction over this action under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d) because the parties are diverse, and the Complaint filed in the State Court Action by Ellen Mulder ("Mulder" or "Plaintiff"), plausibly seeks relief in excess of \$5,000,000, exclusive of interests and costs; and further, that the State Court Action is also removable to this Court because it has original jurisdiction over this action pursuant to 28 U.S.C. § 1441(a) because the Complaint filed by Plaintiff arises presents a federal question. By removing this case, Kohl's does not waive, but expressly reserves, any and all defenses available to it.

I. INTRODUCTION

1. The State Court Action was commenced on February 25, 2015, by the filing of the Complaint in the State Court Action the Superior Court of Plymouth County, Massachusetts. Kohl's was served on February 26, 2015. True and correct copies of the Complaint, the

summons, and all process, pleadings and orders served on Kohl's are attached to this Notice of Removal as "**Exhibit A**," as required by 28 U.S.C. § 1446(a).

2. Promptly after filing this Notice of Removal, Kohl's will give written notice of the removal to Plaintiff through its attorneys of record in the Action, as well as to the Clerk of the Superior Court of Plymouth County, Massachusetts, as required by 28 U.S.C. § 1446(d).

3. Kohl's is the only defendant in this case, and as such, no additional defendants must join in or consent to the removal of this action.

4. No admission of fact, law, liability, or damages is intended by this Notice of Removal, and all defenses, affirmative defenses, objections and motions hereby are reserved.

II. THE PARTIES

5. Plaintiff Mulder is an individual and a citizen of Massachusetts. Compl. at p. 1.

6. At the time the Complaint was filed, Kohl's was a corporation organized and existing under the laws of Delaware, with its principal offices located in Menomonee Falls, Wisconsin. At the time of this Notice of Removal, Kohl's remains a Delaware corporation with its principal place of business in Wisconsin. Declaration of Kristine Vranak ("Vranak Decl."), ¶ 4, attached hereto as "**Exhibit B**"; *see also* 28 U.S.C. § 1332(c) (corporation is "citizen" of both state in which it was incorporated and principal place of business).

III. THE COURT HAS ORIGINAL JURISDICTION OVER PLAINTIFF'S COMPLAINT PURSUANT TO THE CLASS ACTION FAIRNESS ACT

7. This Court has original jurisdiction over this action under CAFA. 28 U.S.C. § 1332(d). CAFA grants district courts original jurisdiction over civil class actions filed under federal or state law in which *any* member of a class of plaintiffs is a citizen of a state different from *any* defendant, the class has more than 100 members, and where the amount in controversy

for the putative class members exceeds \$5,000,000, exclusive of interests and costs. *Id.*; *see also Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 551, (2014).

8. CAFA authorizes removal of such actions pursuant to 28 U.S.C. § 1446. As set forth below, this case meets all of CAFA's requirements for removal and is timely and properly removed by the filing of this Notice.

A. Minimal Diversity Exists

9. As described above, Plaintiff is a citizen of the State of Massachusetts. *See supra*, ¶ 5. Kohl's is a citizen of Delaware and Wisconsin. *See supra*, ¶ 6.

B. The Amount in Controversy Exceeds \$5 Million

10. CAFA authorizes the removal of class actions in which the amount in controversy for all potential class members exceeds \$5 million. *See* 28 U.S.C. § 1332(d); *Baker v. Equity Residential Mgmt., L.L.C.*, 996 F. Supp. 2d 1, 8 (D. Mass. 2014). “[A] removal notice need only plausibly allege, not detail proof of, the amount in controversy.” *Dart Cherokee*, 135 S. Ct. at 550 (2014).

11. Plaintiff brings this action on behalf of herself and the members of the putative class, defined in her Complaint as follows:

All individuals residing in the Commonwealth of Massachusetts who, within the applicable statute of limitations preceding the filing of this action, purchased Kohl's Products.

Compl. ¶ 28.

12. While Kohl's denies Plaintiff's claims of wrongdoing or that the Plaintiff states any claim in her Complaint, the allegations in Plaintiff's Complaint and the amount in alleged controversy exceed CAFA's jurisdictional minimum of \$5 million, calculated as follows:

- (a) Plaintiffs assert five causes of action: (1) fraud (Compl. ¶¶ 37-52); (2) breach of contract (Compl. ¶¶ 53-57); (3) unjust enrichment (Compl. ¶¶ 58-60); (4) violations of the Code of Massachusetts Regulations, 940 CMR 6:01, and the FTC Act, 15 U.S.C. § 45(a)(1) (Compl. ¶¶ 61-66); and, violations of the Massachusetts Consumer Protection Act, M.G.L. ch. 93A (Compl. ¶¶ 68-70);
- (b) The relevant time period covering Plaintiff's claims is four years from the date the Complaint was filed. Plaintiff does not define her "Class Period," but seeks to certify a putative class of Massachusetts residents who purchased Kohl's products "within the applicable statute of limitations" (the "Relevant Time Period"). Compl. ¶ 28. The statute of limitations relevant to this Notice of Removal, because it represents the cause of action with the greatest amount in controversy, including damages and equitable relief, treble damages, and attorneys' fees and costs, *see* M.G.L. ch. 93A, § 9, is four years. *See Ora Catering, Inc. v. Northland Ins. Co.*, No. CIV.A. 14-12618-NMG, 2014 WL 5776158, at *6 (D. Mass. Nov. 5, 2014) (citing M.G.L. c. 260, § 5A); *see also Baker v. Equity Residential Mgmt., L.L.C.*, 996 F. Supp. 2d 1, 7 (D. Mass. 2014) (where multiple causes of action exists, with differing possible recoveries, the greater potential award is used to compute the amount in controversy);
- (c) Plaintiff alleges that during the Relevant Time Period, Kohl's "misrepresented the existence, nature, and amount of price discounts on products by purporting to offer specific dollar discounts from its own

former retail prices, which were misrepresented as ‘regular,’ ‘original,’ or further as ‘Manufacturer’s Suggested Retail Prices.’ Compl. ¶ 2.

Plaintiff further alleges that the “advertised comparison prices [were not] prevailing market retail prices within three months immediately preceding the publication of the advertised former prices, or within the relevant market as required by Massachusetts law.”

- (d) Plaintiff alleges that she “would not have made such purchase, or would not have paid the amount she did but for Kohl’s false representations of the former price of the items she purchased.” Compl. ¶ 10. As Plaintiff alleges that she would not have purchased the product at all, her request for damages and restitution plausibly requests damages, restitution, or other equitable relief for the full purchase price of the Kohl’s Products sold to individuals residing in Massachusetts during the past four years.
- (e) In her prayer for relief, Plaintiff requests restitution, “restitutionary disgorgement,” damages, treble damages, attorneys’ fees, and “other and further relief and damages as may be deemed necessary.” Compl., Prayer for Relief.
- (f) Plaintiff seeks “three times damages, and in addition reasonable attorney’s fees and the costs of this action.” Compl., Prayer for Relief. M.G.L. c. 93A allows for trebling of actual damages if the court finds that the defendant willfully and knowingly violated the law. While attorneys’ fees are normally not included in determining the amount in controversy,

that does not apply where, as here, M.G.L. c. 93A permits recovery of attorneys' fees. *Baker*, 996 F. Supp. 2d at 7.

- (g) During the Relevant Time Period, February 25, 2011 through February 25, 2015, Kohl's gross sales of Kohl's Products in the State of Massachusetts far exceeded \$5,000,000.00. Vranak Decl., ¶ 8. Thus, CAFA's jurisdictional threshold is satisfied, even if damages were not trebled under M.G.L. c. 93A
- (h) Plaintiffs' Complaint itself alleges that "the aggregate damages sustained by the Class are in the millions of dollars." Compl., ¶ 34. Plaintiff's use of the plural "millions" plausibly alleges that she seeks at least \$2 million in aggregate class damages.
- (i) Trebling of Plaintiff's allegations of "millions of dollars" of aggregate class damages results in a plausible allegation that Plaintiff's Complaint seeks at least \$6 million in damages. Trebling of the gross sales of Kohl's Products in the State of Massachusetts during the Relevant time period results in a plausible allegation that Plaintiff's Complaint seeks far in excess of \$5 million in damages. This calculation does not include attorneys' fees as allowed by M.G.L. c. 93A, or any of the other relief requested by Plaintiff.

13. Although Kohl's denies Plaintiff's claims of wrongdoing, based upon the facial allegations contained in Plaintiff's Complaint and assuming – *for these purposes only* – Plaintiff were able to prove these allegations, the total amount of monetary relief sought by Plaintiff exceeds \$5 million, exclusive of interests and costs, as detailed above.

C. There Are Well Over 100 Members in Plaintiff's Proposed Class

14. This action has been styled as a class action. Compl. ¶¶ 27-36.

15. CAFA requires the existence of at least 100 members in Plaintiff's proposed class. 28 U.S.C. § (d)(5)(B).

16. Plaintiff seeks to represent "[a]ll individuals residing in the Commonwealth of Massachusetts who, within the [four years] preceding the filing of this action, purchased Kohl's Products. Compl. ¶¶ 11, 12(b).

17. Plaintiff's Complaint states that "the Class consists of thousands of members."

18. Indeed, there are more than 100 potential members in Plaintiff's proposed class (i.e. there have been more than 100 purchasers of Kohl's Products in Massachusetts during the Relevant Time Period). Vranak Decl., ¶ 7.

19. Accordingly, this case meets all of CAFA's requirements for removal and is timely and properly removed by the filing of this Notice.

IV. SEPARATELY, THE COURT HAS ORIGINAL JURISDICTION OVER PLAINTIFF'S CLAIMS BECAUSE THEY RAISE A FEDERAL QUESTION UNDER 28 U.S.C. 1331

20. The Court also has original jurisdiction over this action because it "aris[es] under the Constitution, laws, or treaties of the United States." 28. U.S.C. § 1331.

21. Plaintiff's Complaint asserts a cause of action for violation of the FTC Act, 15 U.S.C. § 45(a)(1) and 15 U.S.C. § 52(a). Plaintiff's Complaint further calls for the interpretation of federal regulations at 16 C.F.R. § 233.1.

22. Because the Complaint, on its face, asserts causes of action under federal law, this court has original jurisdiction and Plaintiff's claim arises under the laws of the United States as

required by 28 U.S.C. § 1331. *See Clee v. MVM, Inc.*, No. CA 13-11829-MLW, 2015 WL 1055820, at *2 (D. Mass. Mar. 10, 2015).

23. Additionally, Plaintiff's state law claims require the construction of a federal statute, namely the FTC Act and related federal deceptive pricing regulations at issue, 16 CFR 233.1 et seq. This situation, where a plaintiff pleads a state-law cause of action that necessarily turns on some construction of federal law, is referred to as an "embedded federal question." *Templeton Bd. of Sewer Comm'rs. v. Am. Tissue Mills of Massachusetts, Inc.*, 352 F.3d 33 (1st Cir. 2003); (citing *Merrell Dow Pharm. Inc.*, 478 U.S. 804, 808-09, 106 S.Ct. 3229 (1986)); *Almond v. Capital Props., Inc.*, 212 F.3d 20, 23 (1st Cir. 2000)). Beyond Plaintiff's general allegations that Kohl's has violated federal regulations relating to deceptive pricing as the basis for its claims generally, the Massachusetts Consumer Protection Law calls for interpretation in line with the FTC Act. M.G.L. ch. 93A, § 2.

24. Accordingly, Plaintiff's Complaint satisfies the requirements of 28 U.S.C. § 1331.

VI. CONCLUSION

25. WHEREFORE, having provided notice as required by law, the above-entitled action should be removed from the Superior Court of Plymouth County, Massachusetts to the United States District Court for the District of Massachusetts.

Dated: March 27, 2015
Boston, Massachusetts

By: _____



William T. Harrington
171 Milk Street, 2nd Floor
Boston, MA 02109
617-426-7400
Fax: 617-482-1567
Email: wharringtonlaw@gmail.com

*Attorney for Defendant
Kohl's Department Stores, Inc.*

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

Ellen Mulder

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

(c) Attorneys (Firm Name, Address, and Telephone Number) S. James Boumil, Boumil Law Office 120 Fairmount St., Lowell, MA 01852 (978) 458-0507

DEFENDANTS

Kohl's Department Stores, Inc.

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) William T. Harrington 171 Milk Street, 2nd Floor Boston, MA 02109 (617) 426-7400

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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 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)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

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. s 1332. Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 03/27/2015 SIGNATURE OF ATTORNEY OF RECORD /s/ William T. Harrington

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.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Mulder v. Kohl's Department Stores, Inc.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 410, 441, 470, 535, 830*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820*, 840*, 850, 870, 871.
- III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME William T. Harrington

ADDRESS 171 Milk Street, 2nd Floor, Boston, MA 02109

TELEPHONE NO. (617) 426-7400

EXHIBIT A



Corporate Creations Network Inc.

11380 Prosperity Farms Road #221E, Palm Beach Gardens, FL 33410

February 27, 2015

Kohl's Department Stores, Inc.
Kohl's Corporation - Legal Department
N56 W17000 Ridgewood Drive
MENOMONEE FALLS WI 53051

SERVICE OF PROCESS NOTICE

The following is a courtesy summary of the enclosed document(s). **ALL information should be verified by you.**

Note: Any questions regarding the substance of the matter described below, including the status or to whom or where to respond, should be directed to the person set forth in line 12 below or to the court or government agency where the matter is being heard.

Item: 2015-709

1.	Client Entity: Kohl's Department Stores, Inc.	
2.	Title of Action: Ellen Mulder vs. Kohl's Department Stores, Inc.	
3.	Document(s) Served: Summons First Amended Class Action Complaint	
4.	Court/Agency: Plymouth Superior Court	
5.	State Served: Massachusetts	
6.	Case Number: PLCV-2014-01248A	
7.	Case Type: Fraud/Breach of Contract	
8.	Method of Service: Hand Delivered	
9.	Date Received: Thursday 2/26/2015	
10.	Date to Client: Friday 2/27/2015	
11.	# Days When Answer Due: 20 Answer Due Date: 3/18/2015	CAUTION: Client is solely responsible for verifying the accuracy of the estimated Answer Due Date. To avoid missing a crucial deadline, we recommend immediately confirming in writing with opposing counsel that the date of service in their records matches the Date Received.
12.	SOP Sender: S. James Boumil, Esq. <small>(Name, Address and Phone Number)</small> Lowell, MA (978) 458-0507	
13.	Shipped to Client By: Regular Mail and Email with PDF Link	
14.	Tracking Number: Not Applicable	
15.	Handled By: 221	
16.	Notes: Please note that the Exhibit contains images, as a courtesy the original is being sent to your attention by regular mail.	

NOTE: This notice and the information above is provided for general informational purposes only and should not be considered a legal opinion. The client and their legal counsel are solely responsible for reviewing the service of process and verifying the accuracy of all information. At Corporate Creations, we take pride in developing systems that effectively manage risk so our clients feel comfortable with the reliability of our service. We always deliver service of process so our clients avoid the risk of a default judgment. As registered agent, our role is to receive and forward service of process. To decrease risk for our clients, it is not our role to determine the merits of whether service of process is valid and effective. It is the role of legal counsel to assess whether service of process is invalid or defective. Registered agent services are provided by Corporate Creations Network Inc.

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT OF THE COMMONWEALTH CIVIL ACTION NO. PLCV-2014-01248A

Ellen Mulder, Plaintiff(s)

vs.

Kohl's Department Stores, Inc, Defedant(s)

SUMMONS

To the above-named defendant:

You are hereby summoned and required to serve upon S. James Boumil plaintiff attorney, whose address is 120 Fairmount St., Lowell, MA an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this Court at Brockton either before service upon plaintiff attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff claim or you will thereafter be barred from making such claim in any other action.

Witness, Barbara J. Rouse Esquire, at Brockton the 25th day of February, in the year of our Lord Two thousand and 2015.

[Signature]

CLERK.

NOTES

- 1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.
3. To the plaintiff's attorney: please circle type of action involved-Tort-Motor Vehicle Tort-Contract-Equitable Relief-Other.

PROOF OF SERVICE OF PROCESS

I hereby certify and return that on , 201 , I served a copy of the within summons together with a copy with a copy of the complaint in this action, upon the within-named defendant , in the following manner(See Mass. R. Civ. P. 4(d)(1-5):

[Blank lines for proof of service details]

Dated: , 201

N.B. TO PROCESS SERVER:-

PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN THIS BOX ON THE ORIGINAL AND ON COPY SERVED ON DEFENDANT.

[Box for date of service, containing 201]

A true copy Attest: [Signature] Deputy Sheriff Suffolk County

NOTICE TO DEFENDANT -You need not appear personally in court to answer the complaint, but if you claim to have a defense, either you or your attorney must serve a copy of your written answer within 20 days as specified herein and also file the original in the Clerk's office at Brockton.

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss

PLYMOUTH SUPERIOR COURT
C.A. NO.:

_____)
Ellen Mulder,)
Plaintiff,)
v.)
)
KOHL'S DEPARTMENT STORES, INC.)
Defendant.)
_____)

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiff, Ellen Mulder ("Plaintiff"), resident of Hull, MA on behalf of herself and all others similarly situated, alleges the following based upon personal knowledge as to allegations regarding Plaintiff and on information and belief as to other allegations:

I. INTRODUCTION

1. This is a civil class action seeking monetary damages, restitution, injunctive and declaratory relief from Defendant, Kohl's Department Stores, Inc. ("Kohl's"), N56 W1700 Ridgewood Drive, Menomonee, WI 52051, arising from its deceptive and misleading labeling and marketing of merchandise it sells at its company-owned Kohl's stores. Defendant's Agent for the service of process in the Commonwealth is "Corporation Creations Network, Inc.", 10 Milk Street 1055, Boston, MA 02108. The address of the Corporation's principal headquarters is N56 W1700 Ridgewood Avenue, Menomonee, WI 53051.

2. During the Class Period (defined below), Kohl's misrepresented the

existence, nature, and amount of price discounts on products by purporting to offer specific dollar discounts from its own former retail prices, which were misrepresented as “regular”, “original” or further as Manufacturer’s Suggested Retail Prices (MSRP). These purported discounts are false, however, because the referenced former retail process or manufacturer’s suggested retail prices are fabricated, inflated, and do not represent the true prices for which products were being sold at Kohl’s (during the relevant regulatory time frame), whether for claimed third party goods or Kohl’s exclusive branded products. In fact Kohl’s did not sell any meaningful quantity of such products, and it had no intention of selling any meaningful quantity of such products, at the former retail prices, comparison prices, or at the MSRP. For example, during the week of November 6th, Kohl’s was selling Izod products, allegedly “on sale” from MSRP prices, which in fact it had not sold at such MSRP prices in any meaningful quantity during the relevant period specified by 940 C.M.R. 6:01 et seq. Many Hagar products were advertised as “on sale” in a similar fashion, as were other brands.

3. Specifically, Kohl’s represented—on the price tags of its Kohl’s Products— by comparison or MSRP prices that were overstated and did not represent a bona fide price at which Kohl’s formerly sold these Products. Nor were the advertised comparison prices prevailing market retail prices within three months immediately preceding the publication of the advertised former prices, or within the relevant market as required by Massachusetts law. The purchase prices of \$17.99 alleged savings of \$8.01 and \$29.99 alleged savings of \$25.01. (See Exhibits A, B and C). “Comparison pricing” is not limited to the declaration of comparison pricing but is accomplished by any language which indicated to the consumer that an offer was made in a relevant market at a relevant time frame which resulted in the sale of a relevant number of identical products, when in fact no such bona fide marketing had taken place. See 940 CMR 6:00 et seq. and

paragraph 7 below.

4. The comparison and MSRP prices used by Kohl's are a sham. In fact, Kohl's sells certain goods manufactured by third-party designers for *exclusive sale* at its Kohl's stores and other outlet stores, which means that such items were never sold—or even intended to be sold—at the comparison prices advertised on the price tags or LED displays at Kohl's. Kohl's comparison products were never offered for sale at retail stores in Massachusetts and thus no meaningful “comparison” was possible. The truth is that in large part the Kohl's Products are not discounted off “original prices”, or the prices shown on the LED displays all around its stores which tout to the public their great discounts.

5. The comparison prices listed on Kohl's Products' tags did not represent a former price at all—much less a former price in the preceding three months or relevant market area for a meaningful time as required by the code of Massachusetts Regulations. They are fictional amounts intentionally selected so that Kohl's could advertise phantom markdowns. The entire price tag – indeed the entire “discount store” motif – is designed to falsely convince consumers that they are buying main line retail designer brand products at reduced prices, which are apart from the discount store, sold at higher prices generally. In fact, consumers are often buying lower quality goods that were never offered or sold as genuine quality designer brand clothing and accessories or at the comparison pricing or MSRP pricing.

6. The Federal Trade Commission (“FTC”) explicitly describes the fictitious pricing scheme employed at Kohl's stores as deceptive:

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

the former price is genuine, the bargain being advertised is a true one. If, on the other hand, the former price being advertised is not bona fide but fictitious -- for example, where an artificial, inflated price was established for the purpose of enabling the subsequent offer of a large reduction -- the "bargain" being advertised is a false one; the purchaser is not receiving the unusual value he expects. In such a case, the "reduced" price is, in reality, probably just the seller's regular price. 16 C.F.R. § 233.1.

7. Similarly, Massachusetts statutory and regulatory law expressly prohibits false pricing schemes. For example, 940 CMR 6:01 defines the term "Price Comparison". See 940 CMR 6:01 *et seq.* "Price Comparison" means the comparison in any advertisement (whether or not expressed wholly or in part in dollars, cents, fractions, or percentages) of a seller's current price for a product with any other price or representation of value, whether or not such other price is actually stated in the advertisement. Price comparison includes any price reduction claim or savings claim which a seller makes with respect to the seller's current price for any product.
8. The Kohl's pricing scheme was prominently displayed on all products available for sale at Kohl's stores in Massachusetts. To illustrate, a merchandise price tag and sales slip for an item sold at Kohl's is attached hereto as Exhibits A, B & C.
9. Upon information and belief, thousands of Massachusetts consumers were victims of Kohl's unlawful false pricing scheme and thousands more will be damaged if the practices continue. Kohl's fraudulently concealed from, and intentionally failed to disclose to, Plaintiff, and others similarly situated, the truth about its "comparison" and MSRP prices and advertised price discounts from those supposedly former prices. Kohl's false representations of original prices and false representations of purported savings, discounts, and bargains are objectively material to a reasonable consumer.

10. Plaintiff relied upon such false representations of comparison pricing and discounts when purchasing apparel from Kohl's store in Massachusetts. Plaintiff would not have made such purchase, or would not have paid the amount she did, but for Kohl's false representations of the former price of the items she purchased, as compared to the supposedly discounted price and corresponding "savings" at which Kohl's offered the items for sale. Plaintiff, in short, believed the truth of the price tags attached to the products she purchased at Kohl's, and the LED price plaques, which expressly proclaimed that she was getting a significant discount on her purchase. In fact, she was not getting a bargain at all. Through its false marketing pricing scheme, Kohl's violated (and continues to violate) Massachusetts law prohibiting advertising goods for sale as discounted from former prices which are NOT former prices complying with the regulations. Statements about the existence and amount of price reductions which violate the Code of Massachusetts Regulations, are prohibited and defined as per se misleading. Specifically, Kohl's violated (and continues to violate) 940 CMR 6:01 *et seq.*, and the Federal Trade Commission Act ("FTCA"), which prohibits "unfair or deceptive acts or practices in or affecting commerce" and specifically prohibits false advertisements. 15 U.S.C. §§ 52(a) and 15 U.S.C. § 45(a)(1). Plaintiff, individually and on behalf of all others similarly situated, seeks restitution and other equitable remedies, including an injunction under applicable statutory law.

II. PARTIES

11. Plaintiff, Ellen Mulder, is an individual who is a citizen of Pembroke, Massachusetts. In reliance on Kohl's false marketing, and pricing schemes in violation of the Code of Massachusetts Regulations, Plaintiff purchased an item from Kohl's located in Hingham, MA, on November 3, 2014, and as detailed herein, was damaged as a result thereof. See Exhibits A., B, C hereto which are

incorporated by reference herein.

12. Defendant Kohl's Department Stores, Inc. is a corporation duly organized and existing under the laws of the State of Wisconsin, with its principal place of business at N56 W1700 Ridgewood Drive (or Avenue) , Menomonee, WI.

13. As of 2014, Kohl's operates over twenty (20+) Kohl's stores in Massachusetts which engage in general sales to the consumers of Massachusetts, and have for many years.

III. JURISDICTION AND VENUE

14. This Court has original jurisdiction of this action pursuant to Mass R. Civ Proc. 23.

15. The Commonwealth of Massachusetts has personal jurisdiction over Kohl's Department Stores, Inc. because Kohl's Department Stores, Inc. is licensed and doing business in Barnstable, Suffolk, Middlesex, Essex, Plymouth, and Worcester Counties in Massachusetts, authorized to do business in Massachusetts and registered with the Massachusetts Secretary of State, and has sufficient minimum contacts with Massachusetts, having intentionally availed itself of the Massachusetts market so as to render the exercise of jurisdiction over it by this Court consistent with traditional notions of fair play and substantial justice.

16. Venue is proper in the Plymouth County Superior Court, Commonwealth of Massachusetts because Plaintiff is a resident of Massachusetts, and the subject purchase was made in Hingham; Defendant operates its stores in Barnstable, Suffolk, Middlesex, Essex, Plymouth, and Worcester Counties in Massachusetts and because a the events giving rise to the claims occurred in Barnstable, Suffolk, Middlesex, Plymouth, Worcester, and Essex Counties.

IV. FACTUAL ALLEGATIONS

17. Traditionally, retail outlet or discount stores were located in remote areas and typically maintained an inventory of defective and excess merchandise. Customers often flocked to these outlets in hopes of finding steep discounts and bargains. See <http://www.forbes.com/sites/investopedia/2012/12/29/7-tips-for-outlet-mall-shopping/> (last visited November 3, 2014).

18. However, in an effort to increase profits, major retailers such as Kohl's have, without notice to consumers, begun using company-owned stores cast as "discount" or "value" stores to sell made-for-discount goods that are never intended to be sold at retail prices. The tactic of advertising "sales" which violate the applicable sections of the code of Massachusetts Regulations is used to dupe consumers into believing that but for their purchase at Koh's, they would be paying much more for the products they bought.

19. The very term "discount" or "value" convey to reasonable consumers that products are comprised of merchandise formerly or currently offered for sale at full-price retail locations. Similarly, the Kohl's name connotes a store selling discounted clothing and products. Indeed, Kohl's website describes Kohl's as "the off-price retail division of Kohl's Inc., which was founded in Menomonee, WI by John W. Kohl's."

20. Instead, retailers like Kohl's create the illusion of traditional discounts and bargains by offering the made-for-discount goods at prices reduced from fabricated, arbitrary, and false prices. In short, "value" stores such as Kohl's are using false and fraudulent price comparison tactics. See <http://www.buzzfeed.com/sapna/customers-finally-aware-that-most-outlet-merchandise-is-now> (last visited November 3, 2014) ("While price tags on outlet goods may list a manufacturer-suggested retail price (known as an MSRP) or, a 'valued at' price, that's little more than a number ascribed by the retailer and doesn't mean it was ever sold for such a sum in an actual full-price retail

location.”). The same applies for “discount” or “value” pricing schemes, outlet or discount type stores.

21. The intentional use of false and fraudulent price comparison tactics is increasingly deceiving consumers in the market. To illustrate, on January 30, 2014, four Members of Congress demanded an FTC investigation of misleading marketing practices by outlet stores across the United States. The four Members of Congress described a pricing scheme similar to the one implemented at Kohl’s stores and stated, “[i]t is a common practice at outlet stores to advertise a retail price alongside the outlet store price—even on made-for-outlet merchandise that does not sell at regular retail locations. Since the item was never sold in the regular retail store or at the retail price, the retail price is impossible to substantiate. We believe this practice may be a violation of the FTC’s Guides Against Deceptive Pricing (16 CFR 233).” The same applies for “discount” or “value” marketing schemes.

See <http://www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-stores-may-be-misleading-consumers> (last visited August 11, 2014).

22. This is precisely the practice used by Kohl’s in its Kohl’s department stores.

V. Plaintiff’s Purchase

23. On November 3, 2014, Plaintiff entered the Kohl’s located in Hingham, Massachusetts. She observed that merchandise was advertised with price tags that represented comparison prices that were directly shown with claimed “sale” prices significantly reduced by a percentage amount. Enticed by the idea of paying significantly less than the comparison pricing price charged outside of Kohl’s, Plaintiff was induced to purchase the merchandise set forth on Exhibits A,B,C. By purchasing the items identified in Exhibits A, B & C hereto for a “comparison” price of \$81.00 , for the sum of \$40.78 . By purchasing the item shown in Exhibits A, B & C for \$40.78 instead of the comparison price of \$81.00, Plaintiff was

induced to believe that she saved about 50% on her purchase. In reality, Kohl's never intended nor did it ever sell the items on Exhibit A, B & C at the represented comparison price in any manner that complied with the applicable sections of the Code of Massachusetts Regulations.

24. In reality, Kohl's never intended, nor did it ever, sell the items at the represented comparison price. Thus, Plaintiff was deceived by the false price comparison into making a full retail purchase with no actual discount.

25. Plaintiff's and class members' reliance on Kohl's false price comparison advertising was reasonable. In fact, empirical marketing studies provide an incentive for retailers to engage in this false and fraudulent behavior:

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

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

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

Id. at 55, 56.

26. Despite the comparison pricing scheme used at Kohl's stores, Plaintiff would purchase Kohl's Products in the future from Kohl's stores and/or other retail establishments, if price tags accurately reflect "former" prices and discounts. Currently, however, Plaintiff and Massachusetts consumers have no realistic way to know which—if any—of Kohl's price tag comparisons are not false or

deceptive. If the Court were to issue an injunction ordering Kohl's to comply with Massachusetts' comparative price advertising laws, and prohibiting Kohl's use of the deceptive practices discussed herein, Plaintiff would likely shop for Kohl's Products again in the near future at Kohl's stores.

VI. CLASS ALLEGATIONS

27. Plaintiff incorporates and re-alleges by reference each and every allegation contained in the preceding paragraphs as if set forth herein in full.

28. Plaintiff brings this action on behalf of herself and the members of the proposed Class. The proposed Class consists of:

All individuals residing in the Commonwealth of Massachusetts who, within the applicable statute of limitations preceding the filing of this action, purchased Kohl's Products.

29. Excluded from the Class are Kohl's, its parents, subsidiaries, affiliates, officers and directors, any entity in which Kohl's has a controlling interest, all customers who make a timely election to be excluded, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

30. The members of the Class are so numerous that joinder is impractical. The Class consists of thousands of members, the precise number which is within the knowledge of and can be ascertained only by resort to Kohl's records.

31. There are numerous questions of law and fact common to the Class which predominate over any questions affecting only individual members of the Class.

Among the questions of law and fact common to the Class are:

- (a) Whether, during the Class Period, Kohl's used false price representations and falsely advertised price discounts on Kohl's Products;
- (b) Whether, during the Class Period, the comparison pricing prices advertised by Kohl's were the prevailing market prices for the Kohl's Products

during the three month periods preceding the dissemination and/or publication of the advertised former prices;

- (c) Whether Kohl's use of false or deceptive price advertising constituted false advertising under Massachusetts Law;
- (d) Whether Kohl's engaged in unfair, unlawful and/or fraudulent business practices under Massachusetts law;
- (e) Whether Kohl's misrepresented and/or failed to disclose material facts about its product pricing and discounts;
- (f) Whether Kohl's made false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;
- (g) Whether Kohl's 's conduct, as alleged herein, was intentional and knowing;
- (h) Whether Class members are entitled to damages and/or restitution, and in what amount;
- (i) Whether Kohl's is likely to continue using false, misleading or illegal price comparisons such that an injunction is necessary; and
- (j) Whether Plaintiff and Class members are entitled to an award of reasonable attorneys' fees, pre-judgment interest and costs of suit.

32. Plaintiff's claims are typical of the claims of the members of the Class and, like all members of the Class, purchased goods from a Kohl's store that falsely conveyed a comparison pricing price and a fictitious discount. Accordingly, Plaintiff has no interests antagonistic to the interests of any other member of the Class.

33. Plaintiff is a representative who will fully and adequately assert and protect the interests of the Class, and has retained counsel who is experienced in prosecuting class actions. Accordingly, Plaintiff is an adequate representative and

will fairly and adequately protect the interests of the Class.

34. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all members of the Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are in the millions of dollars, the individual damages incurred by each member of the Class resulting from wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual Class members prosecuting their own separate claims is remote, and, even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

35. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Kohl's. For example, one court might enjoin Kohl's from performing the challenged acts, whereas another might not. Additionally, individual actions may be dispositive of the interests of the Class, although certain class members are not parties to such actions.

36. The conduct of Kohl's is generally applicable to the Class as a whole and Plaintiff seeks, *inter alia*, equitable remedies with respect to the Class as a whole. As such, the systematic policies and practices of Kohl's make declaratory relief with respect to the Kohl's Massachusetts class as a whole appropriate.

COUNT I - FRAUD

37. Plaintiff incorporates and re-alleges by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

38. At a specific time, namely November 3, 2014, the Defendant Kohl's, made a specific representation to the Plaintiff that it was selling the items represented in

Exhibit A, B & C hereto for a price of \$40.78, which price represented approximately a 50% savings.

39. Specifically, the Defendant Kohl's represented to the Plaintiff that the Plaintiff saved "\$40.22" on the purchase and thus further represented that apart from the sale a reasonable consumer would have to pay 100% more for the product at Kohl's or elsewhere within the relevant market and time frame established by the Code of Massachusetts Regulations.

40. This representation was made at the Defendant's store in Hingham, MA. Based upon the allegations in the preceding Paragraphs and the entire setup of the Defendant's store as a discount store, the Defendant intended that the Plaintiff believe and rely upon its representation that the Plaintiff had saved 50% and that the item was truly being sold at a 50% discount representing an enormous bargain to the Plaintiff. LED type displays festoon Kohl's stores in the Commonwealth proclaiming the "sales" and the "savings" that are being offered to their customers, as opposed to available elsewhere, or from a regulatory relevant Kohl's former price for the identical item)

41. The Defendant made the above representations for the purpose of inducing and intending that the Plaintiff rely thereon and the Plaintiff did rely thereon.

42. The reliance of the Plaintiff was reasonable in that Kohl's holds itself out to the public as a reputable department store which ought to be held in esteem by the public. Kohl's states in its public advertising that it operates more than 1,160 stores and does business in 49 states with sales of over \$19 billion. Kohl's states in its public advertising that the representation on the product documents which are Exhibits A & B is that the price to be paid represents a 50% savings and, therefore, is a very substantial sale in which more is saved than was spent. However, given that the comparison pricing price does not exist in the marketplace within the meaning of the requirements of the Code of Massachusetts Regulations, the terms

of the contract of purchase and sale are either explicitly violated or, at the very least, the covenant of good faith and fair dealing inherent in every Massachusetts contract has been violated. There was no 50% off “sale” and no money was saved. The representations made in the contract of sale, consummated by payment, were a material inducement to effectuate the sale, upon which the Plaintiff and thousands similarly situated relied in purchasing goods from the Defendant.

43. Kohl’s also advertises to its customers that it offers “clear compelling prices” and develops “innovative programs” and creates ways to help its customers “save in ways they won’t find anywhere else”. In sum Kohl’s advertises to the public that its approach results in “incredible savings”. Kohl’s further advertises that it “put[s] the customers at the heart of everything we do”. Despite these representations, many of the claimed “sales” do not represent price discounts from prices which prevailed in a relevant market area during a relevant time frame as required by the Code of Massachusetts Regulations and other applicable law., but instead are mere shams intended to induce a consumer to part with his/her money based upon nothing more than an advertising illusion.

44. The entire in-store atmosphere, presentation, advertising, internet presence, and commercial “packaging” of Kohl’s is an attempt by the Defendant to create in the minds of the public that it is a store of high quality in which the public may rely upon the representations made by management as to the pricing and quality of the products offered, especially real and meaningful discounts from regular retail prices that the consumers would have to pay if they shopped elsewhere. The Defendant spends millions of dollars in advertising for the purpose of creating an image upon which the public may rely. “Kohl’s” as a trademark and as a “brand” upon which it intends the public to rely, makes representations through its advertising that “customers may expect great things” from Kohl’s “each and every time they shop”.

45. These acts and practices alleged above are fraudulent because they caused Plaintiff, and are likely to cause consumers, to falsely believe that Kohl's is offering value, discounts or bargains from the prevailing market worth of the products sold that did not, in fact, exist. As a result, purchasers, including Plaintiff, reasonably perceived that they were receiving products that regularly sold in the retail marketplace at substantially higher prices (and were, therefore, worth more) than what they paid. This perception has induced reasonable purchasers, including Plaintiff, to buy Kohl's Products, which they otherwise would not have purchased.

46. The gravity of the harm to members of the Class resulting from these fraudulent acts and practices outweighed any conceivable reasons, justifications and/or motives of Kohl's for engaging in such fraudulent acts and practices.

47. Through its fraudulent acts and practices, Kohl's has improperly obtained money from Plaintiff and the Class. As such, Plaintiff requests that this court cause Kohl's to restore this money to Plaintiff and all Class members, and to enjoin Kohl's from continuing to violate the 940 CMR 6:01 *et seq.* as discussed herein and/or from violating the CMR in the future. Otherwise, Plaintiff and the Class may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

48. A business act or practice is "fraudulent" under the CMR if it is likely to deceive members of the consuming public.

49. The labels on the Kohl's Products and advertising materials concerning false former prices were fraudulent within the meaning of the applicable CMR's because they deceived Plaintiff, and were likely to deceive members of the class, into believing that Kohl's was offering value, discounts or bargains at Kohl's stores from the prevailing market value or worth of the products sold that did not, in fact, exist.

50. Kohl's deceived Ms Mulder and consumers in general into believing that it

was offering value, discounts or bargains at Kohl's stores from the prevailing market value or worth of the Kohl's products sold that did not, in fact, exist.

51. As a result, purchasers, including Plaintiff, reasonably perceived that they were receiving products that regularly sold in the main line retail marketplace at substantially higher prices (and were, therefore, worth more) than what they paid. This perception induced reasonable purchasers, including Plaintiff, to buy Kohl's Products, which they otherwise would not have purchased.

52. Kohl's acts and practices as described herein have deceived Plaintiff and were highly likely to deceive members of the consuming public. Specifically, in deciding to purchase Kohl's Products, Plaintiff relied on Kohl's misleading and deceptive representations regarding its comparison pricing and percentage discounted prices. Each of these factors played a substantial role in Plaintiff's decision to purchase those products, and Plaintiff would not have purchased those items in the absence of Kohl's misrepresentations and knowing fraud.

Accordingly, Plaintiff suffered monetary loss as a direct result of Kohl's pricing practices described herein, and consumers similarly situated also so suffered damage.

Count II – Breach of Contract

53. Plaintiff incorporates and re-alleges by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

54. Defendant offers for sale at its stores in Massachusetts items such as the one here in contest, at prices and terms similar to the terms set forth in Exhibits A & B hereto. The majority of items offered for sale are stamped with the same comparison pricing or functionally equivalent language set forth in those exhibits.

55. A person (in this case the Plaintiff, or others of the same class similarly situated) purchasing the item makes a contract of purchase and sale, consummated by payment, typically in cash or by credit card. The items come with an implied

warranty of fitness, and parameters set forth in the documents contained on the goods. For example, an item labeled “small”, in instead measured as a “large” could be returned for breach of contract and the money refunded (apart from store policies). An item labeled “wool” which was instead “cotton”, likewise, could be returned and the “contract” of sale rescinded.

56. All Massachusetts contracts contain an implied warranty of good faith and fair dealing, which, at the least, means that the contract terms ought not to be materially deceptive and misleading or outright lies.

57. As a result of these allegations the Plaintiff and all similarly situated class members have suffered damage for which compensation should be granted.

COUNT III – Unjust Enrichment

58. Plaintiff incorporates and re-alleges by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

59. As a result of the conduct described above, Kohl’s has been unjustly enriched at the expense of Plaintiff and members of the proposed Class.

Specifically, Kohl’s has been unjustly enriched by obtaining revenues and profits that it would not otherwise have obtained absent its false, misleading and deceptive conduct.

60. Through its unfair acts and practices, Kohl’s has improperly obtained money from Plaintiff and the Class. As such, Plaintiff requests that this court cause Kohl’s to restore this money to Plaintiff and all Class members, and to enjoin Kohl’s from continuing to violate the “CMR’s” as discussed herein and/or from violating the “CMR’s” in the future. Otherwise, Plaintiff and the Class may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

COUNT IV – Violations of the Code of Massachusetts Regulations and the FTCA

61. Plaintiff incorporates and re-alleges by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

62. Kohl's also violated and continues to violate 940 CMR 6:01 by advertising false discounts from purported former prices that were, in fact, not the prevailing market prices within three months next preceding the publication and dissemination of advertisements containing the false former prices.

63. The FTCA prohibits "unfair or deceptive acts or practices in or affecting commerce" and specifically prohibits false advertisements. (15 U.S.C. § 45(a)(1) and 15 U.S.C. § 52(a)). The FTC has established guidelines which prohibit false pricing schemes, similar to Kohl's comparison pricing scheme in material respects, as deceptive practices that would violate the FTCA:

(a) One of the most commonly used forms of bargain advertising is to offer a reduction from the advertiser's own former price for an article. If the former price is the actual, bona fide price at which the article was offered to the public on a regular basis for a reasonably substantial period of time, it provides a legitimate basis for the advertising of a price comparison. Where the former price is genuine, the bargain being advertised is a true one. If, on the other hand, the former price being advertised is not bona fide but fictitious -- for example, where an artificial, inflated price was established for the purpose of enabling the subsequent offer of a large reduction -- the "bargain" being advertised is a false one; the purchaser is not receiving the unusual value he expects. In such a case, the "reduced" price is, in reality, probably just the seller's regular price.

16 C.F.R. § 233.1.

64. Kohl's use of and reference to a materially false comparison pricing price in connection with its marketing and advertisements concerning the Kohl's Rack Products violated and continues to violate the FTCA, 15 U.S.C. § 45(a)(1) and 15 U.S.C. § 52(a), as well as FTC Guidelines published at 16 C.F.R. § 233.

65. As a result of the conduct described above, Kohl's has been unjustly enriched at the expense of Plaintiff and members of the proposed Class.

Specifically, Kohl's has been unjustly enriched by obtaining revenues and profits that it would not otherwise have obtained absent its false, misleading and deceptive conduct.

66. Through its unlawful acts and practices, Kohl's has improperly obtained money from Plaintiff and the Class. As such, Plaintiff requests that this court cause Kohl's to restore this money to Plaintiff and all Class members, and to enjoin Kohl's from continuing to violate the CMR as discussed herein and/or from violating the CMR in the future. Otherwise, Plaintiff and the Class may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

COUNT V – Violations of M.G.L. c 93A.

67) Plaintiff incorporates and realleges by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

68) A Demand letter as specified by c 93A:9(3) was sent to the Defendant by certified mail and standard mail both to its agent for the service of process in Massachusetts and to its main office as shown on said demand letter, which is Exhibit D hereto (incorporated by reference herein). A copy of the certified mailing and receipt is attached as Exhibit E. Said demand was sent more than 30 days prior to the filing of this First Amended Complaint and no adequate response has been received during the required time frame.

69) This action is appropriate because pursuant to G.L. c 93A:9(2):

a) The unfair and deceptive act or practice has caused injury similar to the injury to the Plaintiff, to numerous other persons similarly situated which the Plaintiff fairly represents.

- b) Plaintiff brings this action on behalf of herself and all persons within the Commonwealth similarly situated [which the exclusions previously noted].
- c) Given that the practices detailed above have persisted over time for many months (if not years) and that the Defendant has at least twenty (20) stores located in several counties in Massachusetts, comprising upon information and belief well over 250,000 square feet of retail space in among the most busy and desirable retail locations in the Commonwealth, it would be impractical if not impossible to seek relief for consumers on an individual basis.
- 70) The acts and practices engaged in by the Defendants as detailed above and in the exhibits hereto constitute unfair and deceptive trade practices within the meaning of the statutory and case law developed under C 93A, and under the applicable sections of the code of Massachusetts Regulations and the herein cited provisions of the Federal Trade Commission Act, and further constitute “trade and commerce” as defined under c. 93A:1, and other applicable law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the members of the Class demand a jury trial on all claims so triable and judgment against Defendant, Kohl’s Department Stores, Inc., as follows:

- A. An order certifying that this action may be maintained as a class action, that Plaintiff be appointed Class Representative and Plaintiff’s counsel be appointed Class Counsel;
- B. A judgment awarding Plaintiff and all members of the Class restitution and/or other equitable relief, including, without limitation, restitutionary disgorgement of all profits and unjust enrichment that Kohl’s obtained from Plaintiff and the Class as a result of its unlawful, unfair and fraudulent business practices described herein;

C. An order enjoining Kohl's from continuing to violate the Code of Massachusetts Regulations, and other applicable law, as described herein;

D. A judgment awarding Plaintiff her costs of suit; including reasonable attorneys' fees as permitted by statute or common law; and pre and post-judgment interest; and

E. A judgment for breach of contract damages, and

F. A judgment for damages resulting from fraud and deception, and

G. A judgment of multiple damages and particularly three times damages, and in addition reasonable attorney's fees and the costs of this action as may be allowed by law, and

H. Such other and further relief and damages as may be deemed necessary or appropriate under the facts as they are alleged or proven at trial, including all theories of law which may be applicable, whether designated to a particular "Count" or not.

DATED:

By: 

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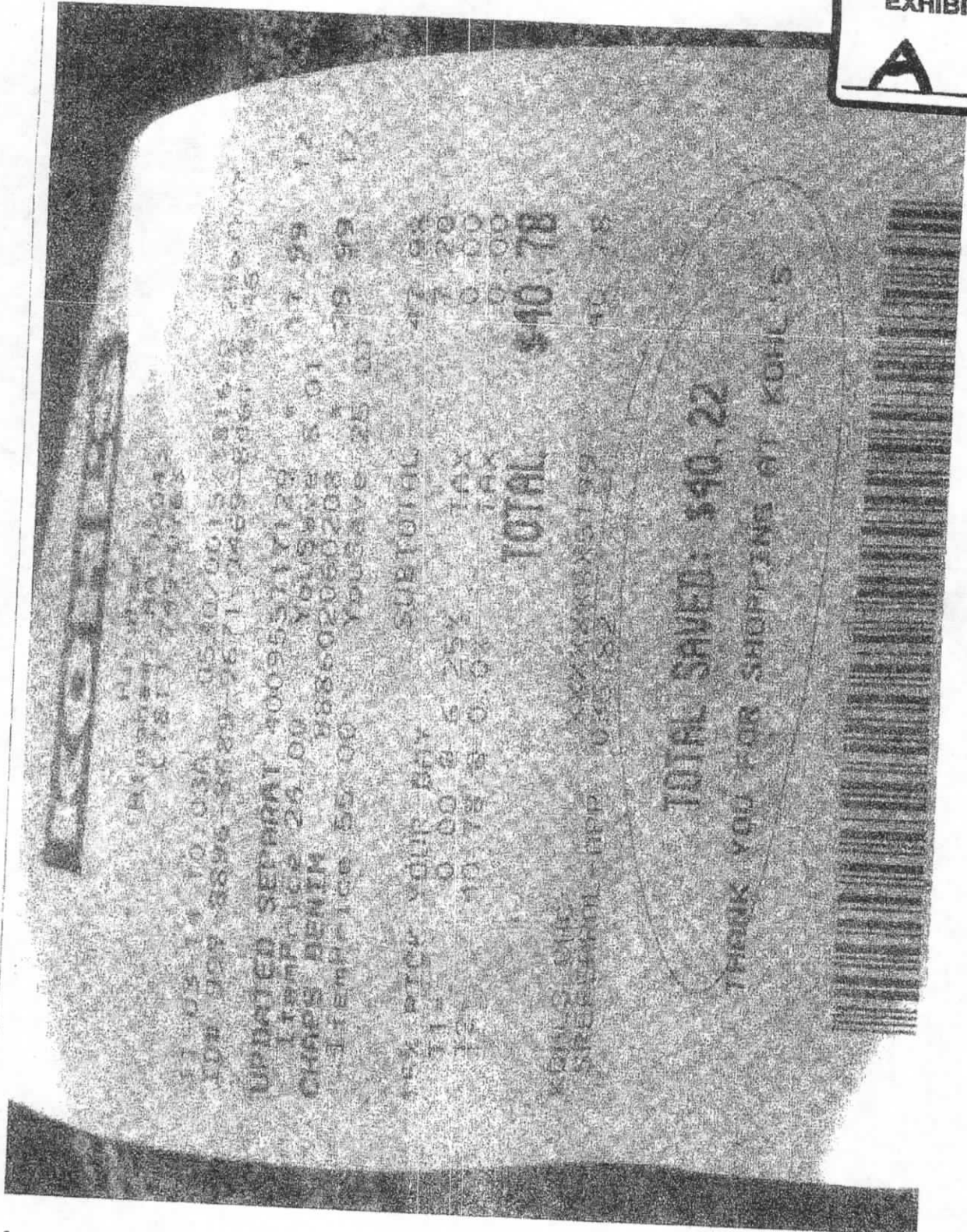
Attorneys for Plaintiff

JURY TRIAL DEMANDED

PLAINTIFF demands a jury trial on all triable issues.

Kohls Receipt

http://webmail.boumil-law.com/hwebmail/.../index



RECEIPT
Kohl's
7811 W. 112th St
Overland Park, MO 66209

UPDATED SEPRAT 400955711Y129
ITEM PRICE 26.00 YOU SAVE \$ 01 17.99 12
CHAPS DENIM W88602060208 * 19.99 12
ITEM PRICE 55.00 YOU SAVE 25.00

ITEM PRICE YOUR PAY SUBTOTAL 47.98
TAX 0.00 \$ 5.25% TAX 2.00
TAX 10.78 \$ 0.00% TAX 0.00
TOTAL \$40.78

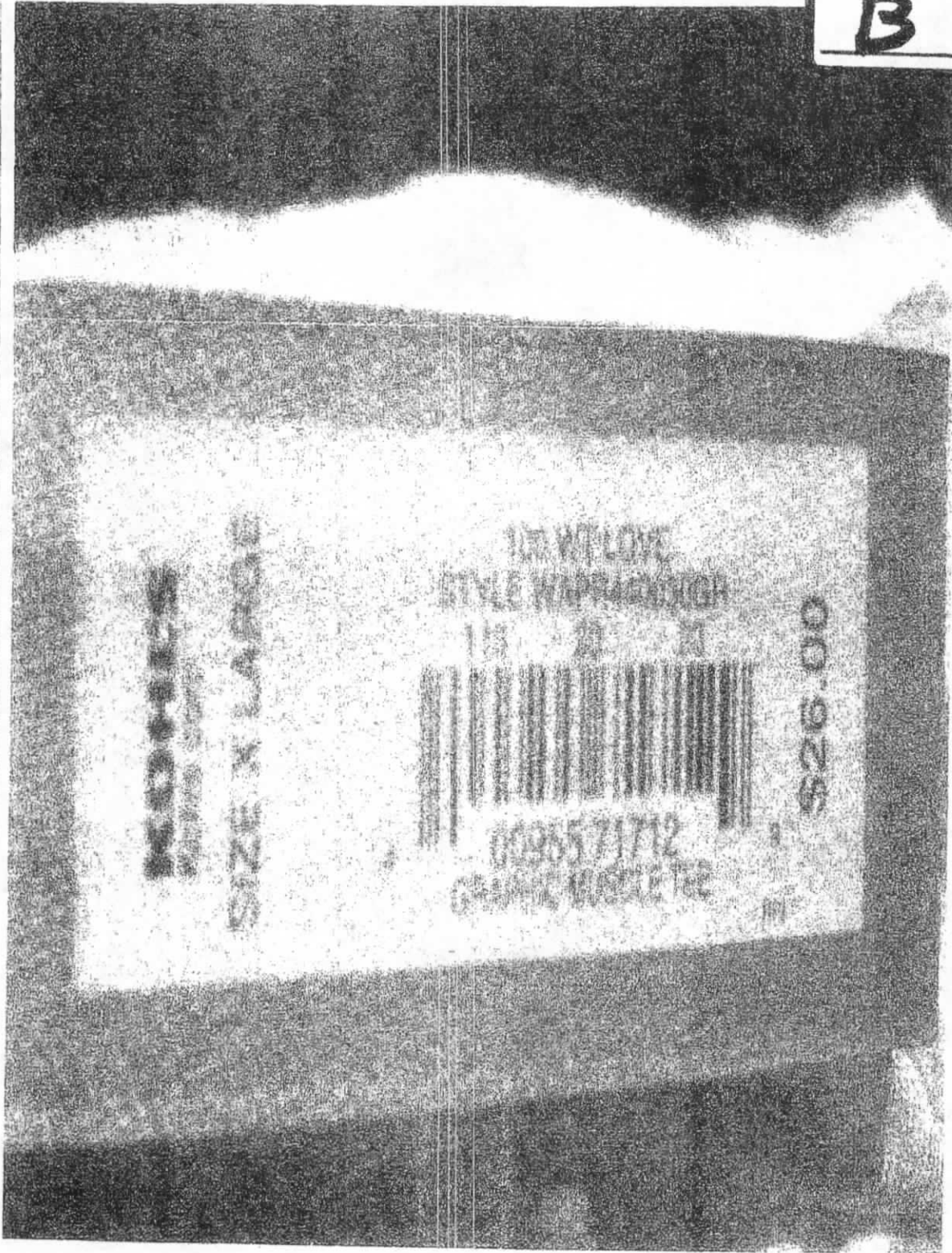
TOTAL SAVED: \$40.22

THANK YOU FOR SHOPPING AT KOHL'S

Sent from my iPhone

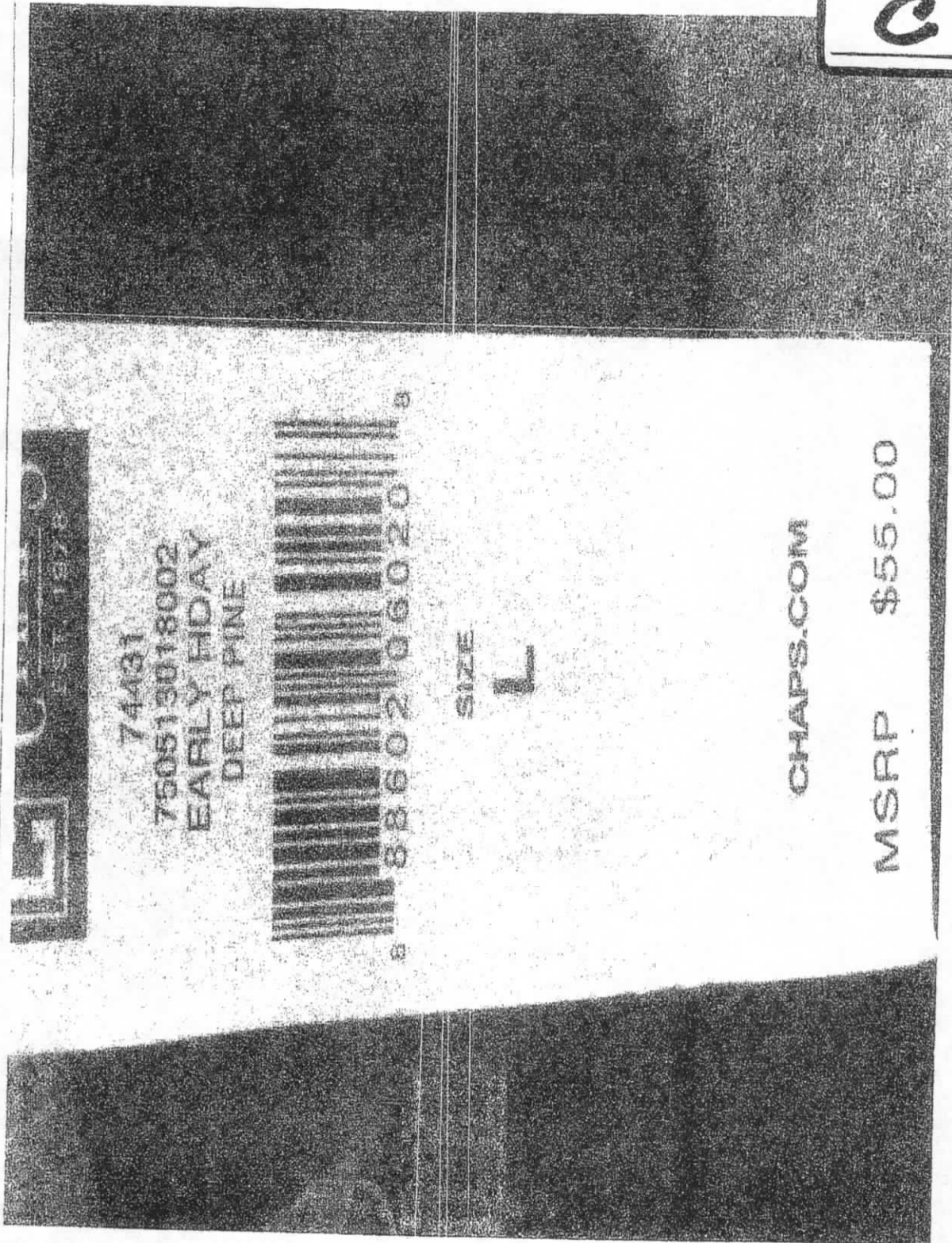
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EXHIBIT
B



Sent from my iPhone

<http://webmail.boumil-law.com/hwebmail>



Sent from my iPhone

EXHIBIT

" D "

S. James Bounil, J. D.
Counselor at Law

120 Fairmount Street
Lowell, Massachusetts 01852
U. S. A.

Tel: (978) 458 - 0507

Fax: (978) 453 - 6785

Email: SJBounil@Bounil-Law.com

Via Certified and First Class Mail

January 9, 2015

Jason J. Kelroy, Esquire
SVP, Assistant General Counsel
N56 W 1700 Ridgewood Ave
Menomonee Falls, WI 53051

Service Agent for Kohl's, Inc.
Corporation Creations Network, Inc.
10 Milk Street #1055
Boston, MA 02108

Dear Sir/Madam:

Please be advised that this office, together with the office of Konstantine W. Kyros, Esquire, Kyros Law Offices, PC, 17 Miles Road, Hingham, MA 02043, have been retained to represent the interests of Ellen Mulder, a consumer who purchased goods from a Kohl's, Inc., located in Hingham, Massachusetts.

The letter is sent to detail claims under Massachusetts General Laws Chapter 93A Section 9 concerning the fraudulent and deceptive trade practices of Kohl's, Inc. with respect to the sale detailed in this letter. Please be advised as follows:

I. Introduction

1. Plaintiff, Ellen Mulder, is an individual who is a resident of Pembroke, Massachusetts. In reliance on Kohl's false and deceptive advertising, marketing, and pricing schemes, Ms. Mulder purchased an item from Kohl's located in Hingham, MA, on November 3, 2014, and as detailed herein, was damaged as a result thereof. See Exhibits A, B C hereto.

S. James Bounil, J. D.
Counsellor at Law

120 Fairmount Street
Dorwell, Massachusetts 01852
U. S. A.
Tel.: (978) 458 - 0507
Fax: (978) 453 - 6785
Email: SJBounil@Bounil-Law.com

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I. Introduction

1. Plaintiff, Ellen Mulder, is an individual who is a resident of Pembroke, Massachusetts. In reliance on Kohl's false and deceptive advertising, marketing, and pricing schemes, Ms. Mulder purchased an item from Kohl's located in Hingham, MA, on November 3, 2014, and as detailed herein, was damaged as a result thereof. See Exhibits A, B C hereto.

2. Defendant Kohl's, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business at N56 W1700 Ridgewood Drive Menomonee, WI 53051

3. The Commonwealth of Massachusetts has personal jurisdiction over Kohl's, Inc. because Kohl's, Inc. is doing business in Suffolk, Middlesex, Essex, Barnstable, and Worcester Counties in Massachusetts, authorized to do business in Massachusetts and registered with the Massachusetts Secretary of State, and has sufficient minimum contacts with Massachusetts, having intentionally availed itself of the Massachusetts market so as to render the exercise of jurisdiction over it by this Court consistent with traditional notions of fair play and substantial justice.

4. On November 3, 2014, Plaintiff entered Kohl's located in Hingham, Massachusetts. She observed that merchandise was advertised with price tags that represented "comparison" and or Manufacturer's Suggested Retail Prices (MSRP), prices that were directly on top of prices significantly reduced by a percentage amount. Enticed by the idea of paying significantly less than what was represented as the usual price for the item outside of the Kohl's "sale", Plaintiff was induced to purchase items with a so called usual price price of \$81.00 at an actual price of \$40.78, which was allegedly a substantial discount from the usual price.

4a. By purchasing the item shown in Exhibits A, B & C for \$40.78 instead of the false usual price of \$81.00, Plaintiff was induced to believe that she saved at least 50% on her purchase. In fact, Kohl's declared to the customer a "savings" of \$40.22. In reality, Kohl's never intended nor did it ever sell the item on Exhibits A, B, & C at the represented full price, from which the "discount" was calculated.

5. In reality, Kohl's never intended, nor did it ever, sell the item shown in Exhibits A, B, & C, at the represented usual price. Thus, Plaintiff was deceived by the and relied upon the false price comparison into making a full retail purchase with no discount.

6. Plaintiff's (and class members') reliance on Kohl's false price comparison advertising was reasonable. In fact, empirical marketing studies provide an incentive for retailers to engage in this false and fraudulent behavior:

[c]omparative price advertising offers consumers a basis for comparing the relative value of the product offering by suggesting a monetary worth of the product and any potential savings...[A] comparative price advertisement can be construed as deceptive if it makes any

representation,... or involves any practice that may materially mislead a reasonable consumer.

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

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

Id. at 55, 56.

7. Despite the false pricing scheme used at Kohl's stores, Plaintiff would purchase Kohl's Products in the future from Kohl's stores and/or other retail establishments, if price tags accurately reflect "former" prices and discounts. Currently, however, Plaintiff and Massachusetts consumers have no realistic way to know which—if any—of Kohl's price tag comparisons are not false or deceptive.

II. Further Detail of Fraudulent and Deceptive Trade Practices

8. At a specific time, namely November 3, 2014, the Defendant Kohl's, made a specific representation to the Plaintiff that it was selling the items represented in Exhibit A, B & C hereto for a price of \$40.78, which price represented a "50% savings".

9. Specifically, the Defendant Kohl's, represented to the Plaintiff that the Plaintiff saved "\$40.78" inducing the Plaintiff to reasonably rely upon the false representation of a 50% savings.

10. This representation was made at the Defendant's store in Hingham, MA. Based upon the allegations in the preceding Paragraphs and the entire setup of the Defendant's store as a discount store, the Defendant intended that the Plaintiff believe and rely upon its representation that the Plaintiff had saved more than she had spent and that the item was truly being sold at a 50% discount representing an enormous savings to the Plaintiff. "LED" displays festoon Kohl's stores proclaiming the sales and "savings" to be had through the purchase of the item at Kohl's as opposed to elsewhere (or from a regulatory relevant Kohl's former price

for the same item), when in fact in many if not all instances the “savings” simply do not exist.

11. The Defendant made the above representations for the purpose of inducing and intending that the Plaintiff rely thereon and the Plaintiff did rely thereon.

12. The reliance of the Plaintiff was reasonable in that Kohl’s holds itself out to the public as a reputable department store offering value through substantial discounts which ought to be held in esteem by the public. Kohl’s states in its public advertising, that it operates more than 1,160 stores across 49 states with sales of over \$19 billion.

13. Kohl’s advertises to its customers that it offers “clear compelling prices” and develops “innovative promotions” and creates “ways to help our customers save in ways they won’t find anywhere else” in sum, Kohl’s advertises to the public that this approach results in “incredible savings” Kohl’s further advertises that it “put (s) customers at the heart of everything we do.” Many of the alleged “sales” do not represent price discounts from prices which prevailed in a relevant market area during a time frame required by the regulations, but are mere shams intended to induce a consumer to part with his/her money based upon nothing more than an advertising illusion.

14. The entire in-store atmosphere, presentation, advertising, internet presence, and commercial “packaging” of Kohl’s is an attempt by the Defendant to create in the minds of the public that it is a store of high quality in which the public may rely upon the representations made by management as to the pricing and quality of the products offered. The Defendant spends millions of dollars in advertising for the purpose of creating an image upon which the public may rely. Kohl’s as a “Trademark” and as a statement upon which they intend the public to rely, makes representations through its advertising that “that customers may expect “expect great things” from Kohl’s each and every time they shop.”

15. These acts and practices above are fraudulent and deceptive trade practices because they caused Plaintiff, and are likely to cause consumers, to falsely believe that Kohl’s is offering value, discounts or bargains from the prevailing market worth of the products sold that did not, in fact, exist. As a result, purchasers, including Plaintiff, reasonably perceived that they were receiving products that regularly sold in the non-outlet retail marketplace at substantially higher prices (and were, therefore, worth more) than what they paid. This perception has induced reasonable purchasers, including Plaintiff, to buy Kohl’s Products, which they

otherwise would not have purchased.

16. A business act or practice is “fraudulent” under 940 CMR 6:01 *et seq.* if it is likely to deceive members of the consuming public.

17. The labels on the Kohl’s Products and advertising materials concerning false former prices were fraudulent within the meaning of the applicable CMR’s because they deceived Ellen Mulder into believing that Kohl’s was offering value, discounts or bargains at Kohl’s stores from the prevailing market value or worth of the products sold that did not, in fact, exist.

18. Kohl’s deceived Ms. Mulder into believing that it was offering value, discounts or bargains at Kohl’s stores from the prevailing market value or worth of the Kohl’s products sold that did not, in fact, exist.

19. As a result, Ms. Mulder reasonably perceived that she was receiving products that regularly sold in the main line retail marketplace at substantially higher prices (and were, therefore, worth more) than what she paid. This perception induced the Plaintiff to buy Kohl’s Products, which she otherwise would not have purchased.

20. Kohl’s acts and practices as described herein have deceived Plaintiff. Specifically, in deciding to purchase Kohl’s Products, Plaintiff relied on Kohl’s misleading and deceptive representations regarding its “Compare At” and percentage discounted prices. Each of these factors played a substantial role in Plaintiff’s decision to purchase those products, and Plaintiff would not have purchased those items in the absence of Kohl’s misrepresentations and knowing fraud. Accordingly, Plaintiff suffered monetary loss as a direct result of Kohl’s pricing practices described herein.

21. The representation on the product documents which are Exhibits A, B & C is that the price to be paid represents a 50% savings and, therefore, is a very substantial sale in which more is saved than was spent. However, given that the “Compare At” price does not exist in the marketplace within the meaning of the requirements of the Code of Massachusetts Regulations, the terms of the contract of purchase and sale are either explicitly violated or, at the very least, the covenant of good faith and fair dealing inherent in every Massachusetts contract has been violated. There was no 50% off “sale” and no money was saved.

22. The representations made in the contract of sale, consummated by payment,

were a material inducement to effectuate the sale, upon which the Plaintiff relied in purchasing goods from the Defendant.

23. Kohl's also violated and continues to violate 940 CMR 6:01 by advertising false discounts from purported former prices that were, in fact, not the prevailing market prices within three months next preceding the publication and dissemination of advertisements containing the false former prices.

24. The FTCA prohibits "unfair or deceptive acts or practices in or affecting commerce" and specifically prohibits false advertisements. (15 U.S.C. § 45(a)(1) and 15 U.S.C. § 52(a)). The FTC has established guidelines which prohibit false pricing schemes, similar to Kohl's "Compare At" scheme in material respects, as deceptive practices that would violate the FTCA:

(a) One of the most commonly used forms of bargain advertising is to offer a reduction from the advertiser's own former price for an article. If the former price is the actual, bona fide price at which the article was offered to the public on a regular basis for a reasonably substantial period of time, it provides a legitimate basis for the advertising of a price comparison. Where the former price is genuine, the bargain being advertised is a true one. If, on the other hand, the former price being advertised is not bona fide but fictitious -- for example, where an artificial, inflated price was established for the purpose of enabling the subsequent offer of a large reduction -- the "bargain" being advertised is a false one; the purchaser is not receiving the unusual value he expects. In such a case, the "reduced" price is, in reality, probably just the seller's regular price.

16 C.F.R. § 233.1.

25. Kohl's use of and reference to a materially false price in comparison with its marketing and advertisements concerning the Kohl's Products violated and continues to violate the FTCA, 15 U.S.C. § 45(a)(1) and 15 U.S.C. § 52(a), as well as FTC Guidelines published at 16 C.F.R. § 233.

26. In a letter dated December 9, 2014, addressed to this author by Jason J Kelroy, Esq. Senior vice-president and assistant General Counsel of Kohl's, Kohl's claimed that its "chaps" item referenced in this 93A Demand letter and the subject of a prior correspondence was being sold by "many other nationwide retailers

with the exact same \$55.00 ticket pricing”. Further Attorney Kelroy advised that the only retailer that had any presence in Massachusetts and who he claimed was offering this item was a company called “Bon-ton”. Bon-ton has only one store located approximately 100 miles from Boston in the sparsely populated Western portion of Massachusetts. This location is in no way a relevant market to the area concerning the Kohl’s department store in Hingham, Massachusetts where the discussed sale was advertised. No rational person from Hingham, MA would consider driving to Bon-tons in Western Massachusetts to shop for a comparable item.

27. Under Massachusetts law a “price comparison” means the comparison in any advertisement of a seller’s price for a product with any price or representation of value, whether or not such other price is actually stated in the advertisement. See 940 CMR 6.01.

28. Likewise, if you care to compare your products to those sold by a retailer located outside of the Commonwealth of Massachusetts it is necessary under the Regulations for Kohl’s to identify the location and name of the seller being used for comparison in the sales offering. Kohl’s has failed to do so.

29. Under 940 CMR 6.03 the responsibility for truth for non-deceptive advertising rests with the seller. Sellers must be able to substantiate material representations made before such representations are disseminated.

30. The terms “comparative price” or “comparative pricing” in Massachusetts do not require the label to state “compare at.” Rather a “comparative price” means the price of value or a product to which a seller is comparing his or her current price in any advertising. Accordingly, if you list a “retail price” or “suggested retail price” and then claim that your “sale” is a percentage off that listed price, for the purposes of the Massachusetts code of regulations, you have made a “compare at” pricing representation. That representation is likewise a “price comparison” under the applicable regulations. Also under the regulations Kohl’s is clearly a “seller.”

31. Furthermore, 940 CMR 6.05 defines “price comparison advertising” to involve comparing current prices with the sellers former or future prices, the prices of other sellers or stated values to demonstrate price reductions or cost savings.

32. Clearly, the \$55.00 price on the item suggested did not represent goods sold within the trade area of eastern Massachusetts.

33. Your apparent contention that any offering on the internet of any product in any relevant time at a "list price" (or equivalent) or (functional equivalent) justifies Kohl's lesser price as being a bona fide "sale" clearly flies in the face of the basic principles established by 940 CMR 6.03.

34. Clearly you have made no claim that Kohl's itself offered this product to the public, openly and in good faith for a reasonably substantial period of time in the past recent to the subject sale. The code of Massachusetts Regulations places the burden on Kohl's to establish this fact and your letter has offered nothing in that regard.

35. Further, with respect to some of your specific comments, be advised that we called the Massachusetts "Bon-Ton's" store in Westfield, gave them the specific item purchased at Kohl's, asked if they carried it in stock and what the price was. To the knowledge of the person answering neither Bon-Ton's in Massachusetts, nor Bon-Ton's generally carried that item.

36. Accordingly, the representations made in your letter concerning support for your "price comparison" of \$55.00 as being a real and bona fide price in a relevant market area, simply fails for lack of supporting facts. The statement you have made is inaccurate. The sale violates the code of Massachusetts regulations and is not defended by the information provided by Attorney Kelroy in his letter of December 9th, 2014.

37. Through its unlawful acts and practices, Kohl's has improperly obtained money from Plaintiff and the Class. As such, Plaintiff requests that this court cause Kohl's to restore this money to Plaintiff and all Class members, and to enjoin Kohl's from continuing to violate the CMR as discussed herein and/or from violating the CMR in the future. Otherwise, Plaintiff and the Class may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

38. It is estimated that the cost of filing a complaint will be between \$195 and \$285 depending on the court in which it is filed, and that the cost of the sheriff services will be \$130.00. Additionally, the cost of the certified mailing is reasonably estimated to be approximately \$12.

III. Relief

39. Please be advised that this office charges \$500 per hour for representation in this type of matter, and has already expended 3 hours investigating and researching the complaint set forth. It is estimated, subject to further discovery, that the true price for which the item was sold in the marketplace was, in fact, the price listed on the invoice which was not discounted by "50%" but, rather, it was discounted by nothing. Therefore, it is estimated that the Plaintiff has suffered in damage the entire price of the item plus the price of travel to and parking to shop at having been induced to attend through the description of nonexistent discounts which in reality did not exist. It is estimated that another \$25.00 was expended in that effort.

40. Pursuant to Massachusetts General Law Chapter 93A Section 2(a), you have 30 days to respond to this letter with a good faith offer in settlement in response to this request.

41. If you do not so respond, you are advised that the court may assess up to three times actual damages plus attorney's fees and the costs of any litigation and that litigation may be filed without further notice.

Sincerely yours,

~~S. James Boumil, Esq.~~

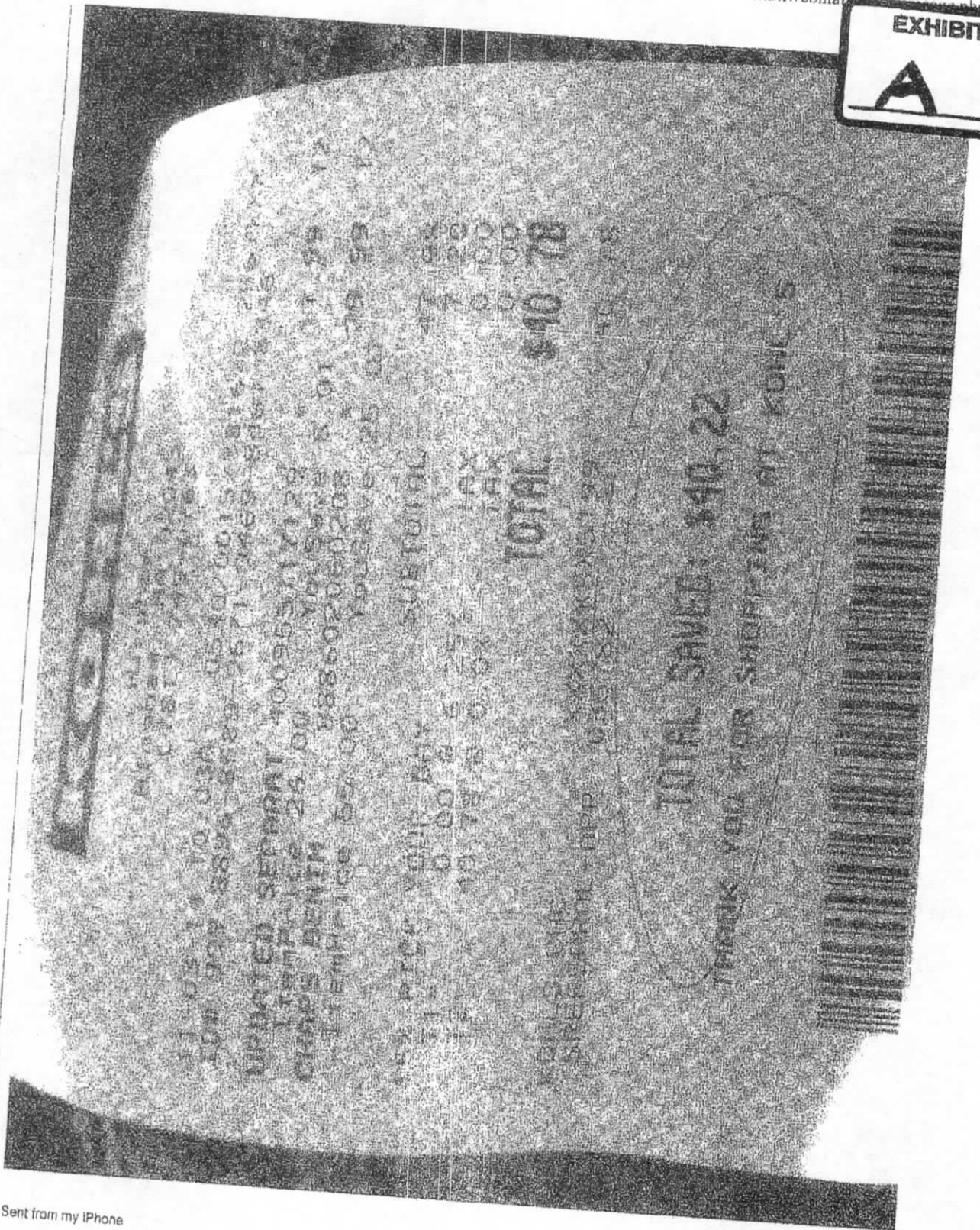
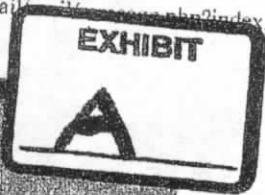
SJB/rab
Enclosure

Kohl's, Inc.: Certified Mail No.: 7002 0860 0008 7173 8317
Return Receipt Requested

Certified Mail No.: 7002 0860 0008 7173 8324
(Agent – Kohl's) Return Receipt Requested
Further copied by standard post and electronic mail
Cc: Konstantine W. Kyros, Esq. co-counsel

Kohls Receipt

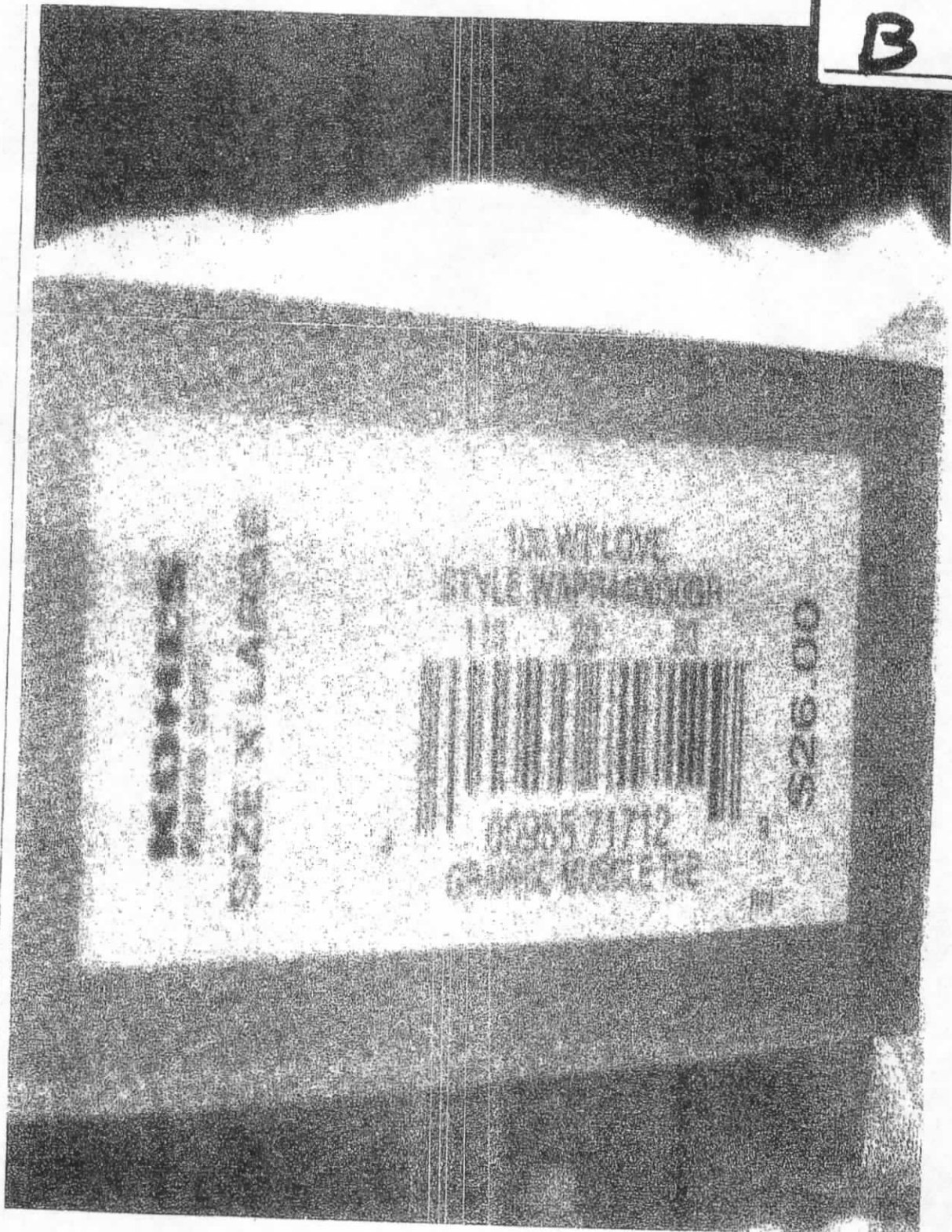
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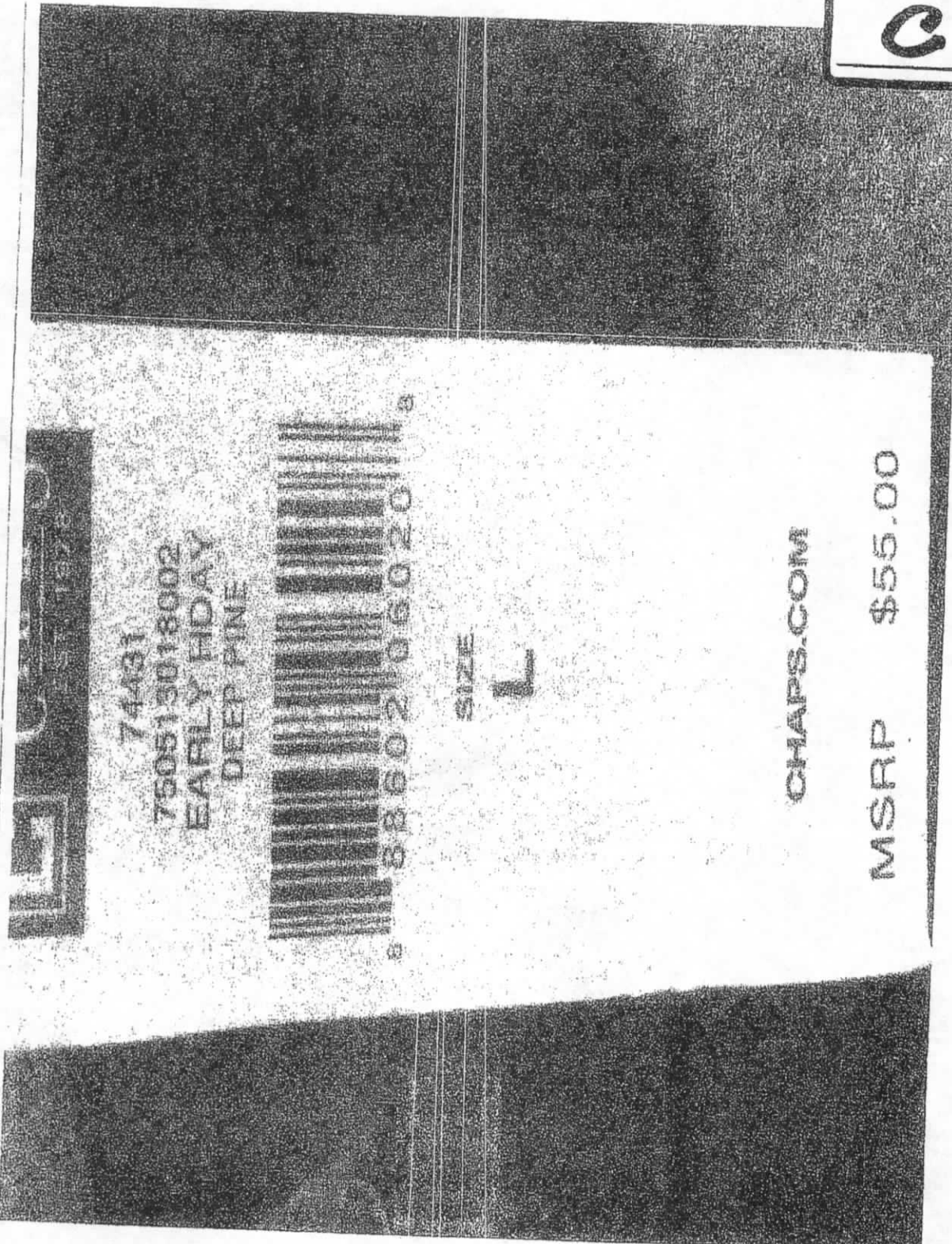
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MSRP \$55.00

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U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

BOSTON MA 02108

Postage	\$ 2.24	0853
Certified Fee	\$ 3.30	39
Return Receipt Fee (Endorsement Required)	\$ 2.70	
Restricted Delivery Fee (Endorsement Required)	\$ 0.00	
Total Postage & Fees	\$ 8.24	01/09/2015

Postmark Here
JAN 9 2015

Send to
Service Agent for Kohls
Street, Apt. No.; or PO Box No. 10 MILK ST 1055
City, State, ZIP Boston, MA 02108

PS Form 3800, April 2002 See Reverse for Instructions

Kohls.

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> X <i>Yez Yoo</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name)</p> <p>C. Date of Delivery 1-12-15</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to: Service Agent for Kohls Corporation New York, Inc. 10 MILK ST Boston MA 02108</p>	<p>3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from) 7002 0860 0008 7173 8324</p>	

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

FEB 26 2015

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ELLEN MULDER,

Plaintiff,

v.

KOHL'S DEPARTMENT STORES, INC.,

Defendant.

CIVIL ACTION NO: _____

DECLARATION OF KRISTINE VRANAK IN SUPPORT OF KOHL'S DEPARTMENT STORES, INC.'S NOTICE OF REMOVAL

I, Kristine Vranak, declare and state as follows:

1. I am a Manager of Pricing Compliance for Kohl's Department Stores, Inc. ("Kohl's"). I have been employed by Kohl's since 2000. Throughout my employment with Kohl's, I have worked in Kohl's corporate office in Menomonee Falls, Wisconsin.
2. I submit this declaration in support of Kohl's Notice of Removal on the grounds that this action meets the jurisdictional requirements of the Class Action Fairness Act, 28 U.S.C. §1332(d). I am competent to testify to the matters stated herein and have personal knowledge of the facts stated herein.
3. In my capacity as a Manager of Pricing Compliance, I have access to Kohl's business records, including the business records for and relating to the sales at issue in this action. I make this declaration based upon my review of those records and from my own personal knowledge of how they are kept and maintained. It is the regular practice to keep such records in the ordinary course of Kohl's regularly conducted business activity.
4. Presently, and at all times relevant to this Notice of Removal, Kohl's has been a corporation organized and existing under the laws of Delaware, with its principal offices located in Menomonee Falls, Wisconsin.

5. I have reviewed the Complaint in his matter and understand that Plaintiff defines the proposed class as "All individuals residing in the Commonwealth of Massachusetts who, within the applicable statute of limitations preceding the filing of this action, purchased Kohl's Products."


6. Kohl's Department Stores, Inc. operates 25 stores in the State of Massachusetts (the "Massachusetts Kohl's Locations"). Kohl's is also an online retailer operating throughout the United States, including Massachusetts.

7. Kohl's has sold Kohl's products to more than 100 customers within the State of Massachusetts between February 25, 2011 and February 25, 2015.

8. From February 25, 2011 through February 25, 2015, Kohl's sales within the State of Massachusetts far exceed \$5 million.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 25, 2015 in Menomonie Falls, WI.



Kristine Vranak