

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

SIOBHAN MORROW and ASHLEY GENNOCK, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

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

Defendants.

Case No. 1:16-cv-01485-ELR

PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs SIOBHAN MORROW and ASHLEY GENNOCK bring this action on behalf of themselves and all others similarly situated against Defendants CARTER'S, INC., THE WILLIAM CARTER COMPANY, CARTER'S RETAIL, INC., and OSHKOSH B'GOSH, INC. ("Carter's" or "Defendants"), and states:

NATURE OF THE CASE

1. This is a class action regarding Defendants' false and misleading advertisement of "Manufacturer's Suggested Retail Price" or "MSRP" prices, and

corresponding phantom “savings” on children’s apparel and accessories sold in its Carter’s and OshKosh B’gosh retail and/or outlet stores. During the Class Period (defined below), Defendants advertised false price discounts for merchandise sold throughout its retail and/or outlet stores.

2. During the Class Period, Defendants continually misled consumers by advertising children’s apparel and accessories at discounted, “sale” prices. Defendants would compare the “sale” prices to false “Manufacturer’s Suggested Retail Price” or “MSRP” prices, from which the “savings” was discounted. The “MSRP” prices are set forth on price tags which are affixed to every items sold in Defendants’ retail stores. The advertised discounts were nothing more than mere phantom markdowns because the represented MSRP prices were artificially inflated and were never, except in extremely rare circumstances, the original prices for children’s apparel and accessories sold at Defendants’ retail and/or outlet stores. In addition, the represented “MSRP” prices were never the prevailing market retail prices for the apparel. Nor were they ever the prevailing market retail prices within three months next immediately preceding the publication of the advertised former prices or discounted prices, as required by California law.

3. Defendants manufacture their own exclusive, branded products. Carter’s retail stores sell only Carter’s branded products. OshKosh B’Gosh

(hereafter, “OshKosh”) sells only OshKosh branded products. The company operates approximately 594 Carter's and 241 OshKosh stores in the United States. Defendants convey their deceptive pricing scheme to consumers through promotional materials, in-store displays, and print advertisements. For example, in Defendants’ retail and/or outlet stores, the pricing scheme is prominently displayed, advertising deep and varying discounts, including “25% to 50% off” the MSRP price on all items throughout the store. The “MSRP” prices never existed, except in extremely rare circumstances and they do not constitute the prevailing market retail prices for such products within the three months immediately preceding the publication of the sales tag.

4. The Manufacturer's Suggested Retail Price for all Carter's and OshKosh B'Gosh clothing products is set by the Defendants. The MSRP "price" is complete fiction. Carter's routinely offers deep discounts from its own MSRP prices in all of its stand-alone retail and outlet stores. As does OshKosh B'gosh. The MSRP price appears on every price tag for every item of clothing sold at a Carter's or OshKosh B'gosh retail store. The difference between the "sale" and "MSRP" prices is a false savings percentage used to lure consumers into purchasing products they believe are significantly discounted.

5. Both the Carter’s and OshKosh B’Gosh brands are also manufactured

by the Defendants for *wholesale* distribution. The wholesale customers for Carter's include, but are not limited to, major retailers, such as, Costco, JCPenney, Toys R Us, Babies R Us, Buy Buy Baby, Kohl's, Macy's, Ross, and Sam's Club. Its OshKosh brand wholesale customers include retailers, such as Belk, Bon-Ton, Fred Meyer, and Sears. Carter's also sells its products in Wal-Mart and Target. The products sold in Wal-Mart are distributed by Wal-Mart under its "Child of Mine" line, while Target sells Carter's clothing under its "Just One You" and "Precious Firsts" brands.

6. The MSRP false discounting scheme is also prevalent among the wholesale customers which sell Carter's and OshKosh clothing at retail. The Carter's and OshKosh price tags setting forth the MSRP prices are affixed to every item of clothing sold by its wholesale customers, with limited exceptions. The wholesale customers also engage in the false discounting practice, offering substantial discounts from the Carter's MSRP prices. The retailers who do not engage in the false discounting practice offer Carter's and OshKosh B'gosh products at "regular" prices, which are significantly lower prices than the MSRP prices for identical or similar products. This means, the relevant market price for Carter's and OshKosh apparel is always significantly lower than the MSRP prices set forth on the price tags.

7. In summary, Carter's and OshKosh have engaged in a massive scheme

to defraud consumers by offering nearly all of their products at substantial discounts from false, inflated “MSRP” prices that they alone set for their Carter’s and OshKosh B’Gosh branded merchandise sold in their retail stores. This false discounting practice is prevalent throughout the relevant market for Carter’s and OshKosh branded products because the vast majority of retailers who offer Carter’s and OshKosh branded clothing for sale, have also discounted their products from the false, MSRP price set by Defendants. Thus, the discounts offered on Carter’s and OshKosh branded clothing are false discounts, because the MSRP prices never represent the real “market” prices of the clothing in the relevant market, which includes all Carter’s and OshKosh wholesalers in addition to the Carter’s and OshKosh retail stores.

8. Through their false and misleading marketing, advertising and pricing scheme, Defendants violated, and continue to violate California, Pennsylvania, federal, and other state laws prohibiting advertising goods for sale as discounted from former prices which are false, and prohibiting misleading statements about the existence and amount of price reductions. Specifically, Defendants violated, and continue to violate, California’s Business & Professions Code §§ 17200, *et seq* (the “UCL”), California’s Business & Professions Code §§ 17500, *et seq* (the “FAL”), the California Consumers’ Legal Remedies Act, California Civil Code §§ 1750, *et*

seq (the “CLRA”), Pennsylvania’s Unfair Trade Practices & Consumer Protection Law, 73 Pa. Stat. §§ 201-1, *et seq.* (the “UTPCPL”), and the Federal Trade Commission Act (“FTCA”), which prohibits “unfair or deceptive acts or practices in or affecting commerce” (15 U.S.C. § 45(a)(1)) and false advertisements. 15 U.S.C. § 52(a).

9. Plaintiffs bring this action on behalf of themselves and other similarly situated consumers who have purchased one or more items of children’s apparel or accessories at Defendants’ retail and/or outlet stores that were deceptively represented as discounted from false former prices in order to halt the dissemination of this false, misleading, and deceptive price scheme, to correct the false and misleading perception it has created in the minds of consumers, and to obtain redress for those who have purchased these products tainted by this scheme. Plaintiffs seek to permanently enjoin Defendants from using false and misleading claims regarding retail price comparisons in their packaging, labeling, and advertising. Further, Plaintiffs seek to obtain damages, restitution, and other appropriate relief in the amount by which Defendants were unjustly enriched as a result of their sales of merchandise offered at a false discount. Finally, Plaintiffs seek reasonable attorneys’ fees pursuant to California Code of Civil Procedure § 1021.5, as this lawsuit seeks the enforcement of an important right affecting the public interest and

satisfies the statutory requirements for an award of attorneys' fees.

JURISDICTION AND VENUE

10. This Court has original jurisdiction of this Action pursuant to the Class Action Fairness Act, 28 U.S.C §1332 (d)(2) and (6). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and at least some members of the proposed Classes have a different citizenship from Defendants.

11. The Northern District of Georgia has personal jurisdiction over the Defendants named in this action because Defendants are corporations or other business entities authorized to conduct and do conduct business in the State of Georgia, they maintain their headquarters in Georgia, and have sufficient minimum contacts in Georgia. Defendants intentionally avail themselves of this jurisdiction by marketing and selling products and services from and within Georgia to consumers nationwide.

12. Venue is proper under 18 U.S.C. § 1391 because Defendants are headquartered in this District and a substantial part of the events, acts, and omissions giving rise to Plaintiffs' claims occurred in this District, including the creation of the scheme alleged in the Complaint.

PARTIES

I. Plaintiffs

13. SIOBHAN MORROW (“Plaintiff Morrow”) resides in San Diego, California. Ms. Morrow traveled south of her home in downtown San Diego to the outlet stores in San Ysidro, California on November 13, 2015 to start her holiday shopping. She was also excited to start shopping for her baby; due in February 2016. Upon entering Carter’s retail store, she noticed that nearly every item in the store was on “sale”. She selected an infant’s “sleep sack” and two baby bibs. She thought she was getting a great deal because the items were advertised as 50% off.

14. Ms. Morrow purchased three newborn baby sleep accessories for \$9.00, \$3.50, and \$3.50 at a Carter’s retail store located at 4454 Camino De La Plaza, San Ysidro, CA 92173. The first item was a white fleece sleep suit, with an embroidered grey elephant, orange and yellow spotted giraffe, and a small green bird. Item number: 08885510828808. The MSRP for this item was listed at \$18.00. A large sign advertised it as “50% off”. Ms. Morrow also purchased two baby bibs. A white bib with a grey elephant, brown giraffe and grey bird embroidered on it. Item number: 0888510827450. The MSRP for this item was \$7.00. The same sign advertised that it was 50% off. Ms. Morrow purchased a second baby bib for \$3.50. It was also 50% off and had two yellow giraffes embroidered on it along with the

expression, “Mommy Loves Me”. The item number of this product is 0888510827917. See Exhibit, “A”, Ms. Morrow’s purchases. She purchased the items and walked next door to OshKosh B’Gosh in search of blue jeans for her nieces.

15. That same day, on November 13, 2015, Plaintiff Morrow also purchased two pairs of girls’ denim jeans at an OshKosh B’gosh retail store also located in San Ysidro, right next door to Carter’s. Upon entering OshKosh, she again noticed that nearly all of the items in the store were on sale. She examined the girls’ blue jeans and decided to purchase a pair for each of her nieces because they were advertised as 40% off; she thought she was getting a good deal. Plaintiff Morrow purchased one pair of the denim jeans for \$13.60, and the other for \$12.00. The sale prices for all of the items purchased by Plaintiff Morrow at OshKosh B’gosh were supposedly discounted, and were represented to Plaintiff Morrow as “40% off” the “ticket” price. The “ticket” price is the represented MSRP price according to the price tags and related signage. However, these products were never offered for sale at their full prices at Defendants’ stores, nor were they offered at their full retail prices within the 90-day time period immediately preceding Plaintiff’s purchase. Therefore, Plaintiff Morrow was damaged by her purchase of the products.

16. ASHLEY GENNOCK (“Plaintiff Gennock”) resides in New Castle,

Pennsylvania. Plaintiff Gennock, in reliance on Defendants' false and deceptive advertising, marketing, and "discount" pricing schemes, purchased two girls' dresses for herself for approximately \$10.00 each on or around April 11, 2016 at a Carter's outlet store in Grove City, Pennsylvania. The girls' dresses were advertised as having an original MSRP price of \$12.00. The price tags indicated the original or "MSRP" price of the dresses were "\$12.00," and that they were being offered at a discount, described on the receipt as "\$12.00-\$2.00, \$10.00 Girls DB." The sale prices for the items purchased by Plaintiff Gennock at Carter's were supposedly discounted, and were represented to Plaintiff Gennock as "\$2.00 off" according to the price tags and related signage. However, these products were never offered for sale at the full MSRP price of \$12.00 at Defendants' stores. Therefore, Plaintiff Gennock was damaged by her purchase of the products.

II. Defendants

17. Plaintiffs are informed and believe, and upon such information and belief allege, Defendant Carter's, Inc. is a Delaware corporation with its principal executive offices in Atlanta, Georgia. Defendant Carter's, Inc. is the parent company of wholly-owned subsidiaries Defendant The William Carter Company, Defendant Carter's Retail, Inc., and Defendant OshKosh B'gosh, Inc. Defendants operate Carter's and OshKosh B'gosh retail and outlet stores, as well as the

carters.com and oshkosh.com websites. Defendants advertise, market, distribute, and/or sell children's clothing and accessories in California, Pennsylvania, and throughout the United States.

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

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

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

21. Plaintiffs do not know the true names or capacities of the persons or entities sued herein as DOES 1-50, inclusive, and therefore sue such Defendants by such fictitious names. Plaintiffs are informed and believe, and upon such information and belief allege, that each of the DOE Defendants is in some manner legally responsible for the damages suffered by Plaintiffs and the Class members as alleged herein. Plaintiffs will amend this Complaint to set forth the true names and capacities of these Defendants when they have been ascertained, along with appropriate charging allegations, as may be necessary.

STATEMENT OF FACTS

22. Carter's, Inc. and its subsidiaries design, manufacture, distribute and

market branded children's wear under the Carter's and OshKosh brands. The company's products are sourced through contractual arrangements with manufacturers worldwide for wholesale distribution to major domestic retailers and for the company's own retail stores and Websites that market its brand name merchandise. The company operates approximately 594 Carter's and 241 OshKosh stores in the United States (U.S.). Defendants' Carter's brand is sold in department stores, national chains, specialty stores, off-price sales channels, through its Carter's retail stores, and online at www.carters.com. Additionally, the company sells its Child of Mine brand at Walmart and the company's Just One You and Precious Firsts brands at Target Corporation.

23. Under the company's OshKosh brand, it designs, sources, and markets a range of young children's apparel, primarily for children in sizes newborn to 12. The company's OshKosh brand is sold in its OshKosh retail stores, department stores, national chains, specialty stores, through off-price sales channels, and online at www.oshkoshbgosh.com and www.oshkosh.com.

A. Plaintiff's Investigation of Defendants' False Sale Discounting Practices.

24. Defendants continually misled consumers by advertising children's apparel and accessories at falsely discounted, "sale" prices. Defendants would compare the "sale" prices to false "Manufacturer's Suggested Retail Price" or

“MSRP” prices, from which the “savings” was discounted. The MSRP price tags are affixed to every items sold in Defendants’ retail stores. *See* Exhibit “B” examples of MSRP pricing and corresponding false sale discounts in Carter’s and OshKosh retail stores.

25. The advertised discounts were nothing more than mere phantom markdowns because the represented MSRP prices were artificially inflated and were never, except in extremely rare circumstances, the original prices for children’s apparel and accessories sold at Defendants’ retail and/or outlet stores. In addition, the represented “MSRP” prices were never the prevailing marketing retail prices within three months next immediately preceding the publication of the advertised former prices or discounted prices, as required by California law. Defendants routinely market and advertise steep percentage off discounts taken exclusively from their fake MSRP prices. *See* Exhibit C, 07/25/2016 Carter’s Big Back To School Sale print ad, p. 5; advertising 40% off Girls’ Southwest Collection; p. 9 advertising 50% off Girls Dresses.

26. Plaintiffs’ counsel performed an investigation of sale discounting practices in 2015 and 2016. Plaintiffs’ counsel tracked the pricing on various consumer goods at dozens of retail stores, including Carter’s retail and OshKosh B’Gosh retail stores for several months preceding and subsequent to Plaintiffs’

purchases. Plaintiffs' counsel also investigated several of Defendants' wholesale customers who sell the Defendant's branded products at retail, including: Buy Buy Baby, Toys R Us, Macy's, Ross, Kohl's, Target and Wal-Mart, and Sears to determine if identical products or similar products were being sold across all known retail stores in the relevant markets.

27. Plaintiffs' counsel's investigation revealed that Defendants routinely discount every item offered for sale within its retail stores –all the time. During separate investigations, one preceding Plaintiff Morrow's purchase and one subsequent to Ms. Morrow's purchase, Plaintiffs' counsel did not observe any items offered for sale at the full MSRP price. Instead, all item were routinely offered at lower prices or offered at varying discounts from 25% to 50% off the MSRP prices.

28. Plaintiffs' counsel's investigation revealed that every item priced at Carter's and OshKosh retail stores are marked with price tags which set forth the product's size and the "MSRP" price. Each segment of clothing is then substantially discounted utilizing large display discount signage, offering discounts of up to 25% to 50% off the MSRP price.

29. Plaintiffs' counsel's investigation tracked several Carter's and OshKosh retail items offered for sale at multiple store locations throughout California. Plaintiffs' counsel's investigation involved sending investigators into the

Carter's and OshKosh B'Gosh retail stores to manually record the pricing of items offered for sale within the stores. Plaintiffs' counsel's investigation was conducted for several months preceding Plaintiffs' purchases and for several months subsequent to Plaintiffs' purchases. Plaintiffs' counsel's investigation revealed that all items offered for sale at Defendants' retail stores during the investigation were routinely and constantly discounted from the MSRP prices listed on the price tags of the merchandise.

30. For example, for the duration of Plaintiff's investigation in the 90 days preceding Ms. Morrow's purchase, the Infant sleep sack purchased by Ms. Morrow had an MSRP price of \$18.00 (along with several other infant sleep sacks). The sleep sacks and infant-related sleep ware were routinely discounted at 50% off during the duration of the investigation. At no time in the 90 days leading up to Plaintiff's purchase was the sleep sack offered for sale at the MSRP price of \$18.00. Additionally, Plaintiffs' counsel confirmed that Carter's also offered the sleep sack purchased by Ms. Morrow for sale online, at www.carters.com; offering the exact same discounted price of "\$9.99" – 50% off of the advertised MSRP price of \$18.00, in *at least* the 90 days preceding Ms. Morrow's purchase. *See* Exhibit "D" demonstrating printouts from the Internet archiving service, the "Wayback Machine" at www.archive.org; site search: Carters.com; relevant time period:

August 13, 2015 through November 14, 2015.

31. Similarly, for the duration of Plaintiffs' counsel's investigation, Girls blues jeans and Toddler Girls blue jeans were continuously discounted at OshKosh B'Gosh retail stores. Each pair of blue jeans purchased by Ms. Morrow had an MSRP sale price of \$34.00. At no time in the 90 days preceding Ms. Morrow's purchase were either pair of the Girls blue jeans offered for sale at the MSRP price. Instead, they were consistently discounted at \$8.00 per pair for Skinny Jeans and \$12.00 per pair for Bootcut jeans. Additionally, Plaintiff's counsel confirmed that OshKosh also offered its Girls Blue Jeans, skinny cut and bootcut styles, at the exact same discount on its website at OshKosh.com during the relevant time period preceding Ms. Morrow's purchase. *See* Exhibit "E" demonstrating printouts from the Internet archiving service, the "Wayback Machine" at www.archive.org ; site search: Oshkoshcom; relevant time period: August 13, 2015 through November 14, 2015.

32. Further examples of Plaintiffs' counsel's investigation of the brick and mortar retail stores in the 90 days preceding November 13, 2015 include several core product lines that are offered for sale in every Carter's retail store; and every OshKosh retail store, including:

- a) Carter's Boy's Cargo Pants; all sizes, multiple colors, including grey,

- navy, khaki, and camo, listed with an MSRP price of \$30.00, but routinely offered for sale at \$18.00;
- b) Carter's Boy's Blue Jeans; all sizes, regular fit, listed with an MSRP price of \$26.00, but routinely discounted to a selling price of \$12.00; and at various times during the 90 days prior to November 13, 2015 were offered for sale at between 40% and 60% off.
 - c) Carter's Girls bottoms, including leggings, all sizes and styles, listed with an MSRP of \$14.00 and continuously offered for sale between \$5.00 and \$9.00.
 - d) OshKosh Girl's Denim; all sizes, Skinny blue jeans; MSRP price of \$34.00; continuously discounted to \$8.00.
 - e) OshKosh Girl's Denim; all sizes, Bootcut blue jeans; MSRP price of \$34.00; continuously discounted to \$12.00.
 - f) OshKosh Boys Jeans; all sizes; all cuts, MSRP price of \$34.00; continuously discounted to \$12.00.

33. In addition to their investigation of the brick and mortar retail stores, Plaintiffs' counsel examined the historical website offerings from Carters.com and Oshkosh.com through the use of the Wayback Machine, an online website archiving database. Plaintiffs' counsel's investigation confirmed what was observed in the

brick and mortar retail stores; that, except for in extremely rare circumstances, all of Defendants' products are offered at a perpetual discount from the MSRP price. For example, all boys' bottoms, including: Pull On Corduroy Pants, Pull On Cargo Pants, 5 Pocket Corduroy Pants, Pull on Fleece Sweatpants, French Terry Jeans were continually discounted at up to 50% off of their MSRP prices. *See* Exhibit F, Boy's Bottoms website archive data. Similarly, Carter's Boys Shorts (all styles and sizes) were routinely discounted from their MSRP prices (*See* Exhibit G); as were OshKosh denim (*See* exhibit "E") and Infant's sleep apparel (*See* Exhibit "D").

34. Despite the fact Carters and OshKosh sell their products through multiple wholesalers, the false discount pricing scheme is prevalent in the relevant market. The items Plaintiffs purchased **were not offered for sale at the MSRP price** at any of the other known wholesale or retail stores which sell Carter's and OshKosh clothing in the relevant markets, including in San Diego County, California for Ms. Morrow and in Lawrence County, Pennsylvania for Ms. Gennock. Plaintiffs' counsel investigated all known retailers who sell Carters and OshKosh clothing and did not find the products purchased by Plaintiffs and/or did not find them for sale at the MSRP price.

35. Plaintiffs' counsel's investigation revealed that several of the retailers who sell Carters' products and OshKosh products include Carter's and OshKosh

original price tags, complete with the MSRP price and then discount the merchandise utilizing their own price tags. Several other retailers forego the use of the MSRP price tags, but offer their Carter's and OshKosh merchandise at regular prices, but the regular prices are lower than identical merchandise sold at competing retailers with MSRP price tags. For example, the Carter's 3 Piece Infant Little Character Set bearing the "Little Hunk" and Firetruck embroidery, is offered on sale at Carter's for \$12.00. The MSRP price at Carter's is \$22.00. The identical set is offered for sale for \$11.99 at JC Penney's. The JC Penney's price tag bears the Carter's MSRP price of \$22.00. And the signage in the JC Penney's store advertises, "Carter's Little Baby Basics" 35% to 45% off. The 35% to 45% off discount is advertised *from* the MSRP price of \$22.00. The identical set is also offered for sale at Babies R Us. The Babies R Us price tag contains the Carter's MSRP price of \$22.00. The in-store signage at Babies R Us advertises, "Carter's Sale; All Carter's Clothing 40% off". The discount is again taken from the MSRP price of \$22.00. *See* Exhibit "H", price comparison of the Little Hunk 3 piece Infant Character Set at Carters.com, JC Penney's, Babies R Us, and Macy's.

36. A similar, but not identical three-piece set is also offered for sale at Macy's. This three piece set bears only the Macy's price tag. It is not offered at a discount, but is instead regularly priced at \$11.98; nearly the same price as the

“discounted” items sold at Carter’s and other Carter’s retailers. *See* Exhibit “H”, price comparison of the Little Hunk 3 piece Infant Character Set at Carters.com, JC Penney’s, Babies R Us, and Macy’s.

37. Simply stated, Plaintiffs’ counsel’s investigation revealed that the MSRP prices are never the prevailing “market” prices for any of Defendants’ merchandise. Plaintiffs’ counsel’s investigation revealed that retailers such as Target and Wal-Mart, sell unique merchandise that was similar, but not identical to merchandise offered in Carter’s retail stores and OshKosh retail stores. All of the items Plaintiffs’ counsel was able to identify that were sold in multiple retail stores were always offered at price discounted from the MSRP price and/or were offered at a regular price which was lower than the MSRP price on a comparable or identical item. The MSRP prices are false prices, not offered in the retail market.

38. Defendant Carter’s acknowledges that it engages in the deceptive conduct described herein. Buried in its website under the subheading, Pricing and Promotions, Carter’s attempts to disclaim is abhorrent pricing conduct. Its disclaimer, states as follows:

Sales

Sale offers are valid for a limited time and are valid on online purchases only at Carters.com | OshKoshBgosh.com, unless otherwise noted. Carter’s reserves the right to change or cancel promotions at any time. Offers void where prohibited by law.

We may offer merchandise on this Site at the same price at which it is offered in our retail stores, and our promotions may follow those that are in our retail stores. However, in some cases, the prices will be different because the Site and stores may choose to offer items at different prices or may run different promotional events at different times. For this reason, prices and promotions (e.g., promotion codes or free shipping) offered on this Site may not always apply in stores, and store prices and promotions (e.g., coupons or additional discounts) may not always apply on this Site, unless otherwise stated.

Price comparisons are made to the Manufacturer's Suggested Retail Price ("MSRP"). MSRP is an estimate of the price at or above which these items have been offered or sold by retailers in the trade area, which may not include Carter's and OshKosh B'gosh. **Actual sales may not have been made at MSRP in all trade areas, and the MSRP price may not represent the average or prevailing market price at any particular time.** Given the national scale of our offerings, our products may not be sold at MSRP in all locations. Because the MSRP may vary from retail prices in your area, you may want to make a comparison for yourself by checking the prices of other internet or local retailers prior to making a purchase. Percentage reductions are off of MSRP, except where noted. (emphasis added)

At: <http://www.carters.com/cs-pricing.html>; last viewed 08/01/2016.

39. Remarkably, Carter's admits that its MSRP prices are not, as a reasonable consumer would expect, actual prices established by the manufacturer, but instead, inflated, false prices that Carter's uses to benchmark its false sale discount offerings. Carter's also admits that its price % reductions are taken off of MSRP. The pricing scheme is clearly to discount its apparel from the MSRP price. The MSRP price is not an unknowable, amorphous, static quantity; it is set by Defendants; Defendants are the manufacturers. Reasonable consumers, including

Plaintiffs, expect that the MSRP price is the market based, regular price of the goods sold. Reasonable consumers, including Plaintiffs, expect that advertised discounts are taken from actual, regular, market prices; not fake, made up prices. Plaintiff's investigation reveals that the MSRP prices were never the prevailing market prices for the Carter's branded and OshKosh branded products. This form of discounting is prohibited by California state law and federal regulations.

40. Plaintiffs would not have been enticed to purchase the items without the misrepresentations made by Defendants. As a result, Plaintiffs have been personally victimized by and suffered economic injury as a direct result of Defendants' unlawful, unfair and fraudulent conduct. By failing to price their clothing items at their real regular price for a reasonable period of time and then discounting them, Defendants artificially inflated the "market" price or value for the clothing it sells. By constantly offering discounts from fake, inflated prices, Defendants interfered with market forces; driving the selling price of its products higher than they would be if Defendants had complied with the law. The false price discount employed by Defendants creates an artificial demand for Defendants' clothing because consumers believe they are getting a valuable discount, when in fact they are not. This enticement to purchase has the effect of driving up the demand for the merchandise to artificially high prices, depriving consumers of money and

property.

41. Defendants know that their comparative price advertising is false, deceptive, misleading and unlawful under California, Pennsylvania, federal, and other state law.

42. Defendants fraudulently concealed from and intentionally failed to disclose to Plaintiffs and other members of the proposed Classes the truth about its advertised price and former prices.

43. At all relevant times, Defendants have been under a duty to Plaintiffs and the proposed Classes to disclose the truth about its false discounts.

44. Plaintiffs relied upon Defendants' artificially inflated "MSRP" prices and false discounts when purchasing the items at Defendants' retail and/or outlet stores. Plaintiffs would not have made such purchases but for Defendants' representations of fabricated original "market" prices and false discounts.

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

46. Defendants intentionally concealed and failed to disclose material facts

regarding the truth about false former price advertising in order to provoke Plaintiffs and the proposed Classes to purchase Carter's and OshKosh B'gosh branded products in their retail and/or outlet stores.

CLASS ALLEGATIONS

47. Plaintiffs bring this action on behalf of themselves and all other similarly situated Class members pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure and seek certification of the following Class (the "Nationwide Class") against Defendants:

All persons who purchased one or more items from Defendants offered at a purported discount from an "MSRP" price any time between the date in which the statute of limitations began to run to the date of certification (the "Class Period").

48. Plaintiffs also bring this action individually and as a Class action pursuant to Federal Rule of Civil Procedure 23 on behalf of all persons located within the state of California (the "California Class"):

All persons residing in the State of California who purchased one or more items from Defendants offered at a purported discount from an "MSRP" price any time between the date in which the statute of limitations began to run to the date of certification.

49. Plaintiffs also bring this action individually and as a Class action pursuant to Federal Rule of Civil Procedure 23 on behalf of all persons located within the state of Pennsylvania (the "Pennsylvania Class"):

All persons residing in the State of Pennsylvania who purchased one or more items from Defendants offered at a purported discount from an “MSRP” price any time between the date in which the statute of limitations began to run to the date of certification.

50. Plaintiffs also bring this action on behalf of all persons located within states with similar consumer protection laws (collectively with the Nationwide, California, and Pennsylvania Classes, the “Classes”).

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

52. This action is brought and may properly be maintained as a class action pursuant to Federal Rule of Civil Procedure 23. This action satisfies the numerosity, typicality, adequacy, predominance, and superiority requirements of those provisions.

53. **Numerosity:** The class members are so numerous that joinder of all members is impracticable. Plaintiffs are informed and believe that the proposed Classes contains hundreds of thousands of individuals who have been damaged by

Defendants' conduct as alleged herein. The precise number of Class members is unknown to Plaintiffs.

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

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

55. ***Typicality:*** Plaintiffs' claims are typical of the claims of the members

of the Classes because, *inter alia*, all Class members have been deceived (or were likely to be deceived) by Defendants' false and deceptive price advertising scheme, as alleged herein. Plaintiffs are advancing the same claims and legal theories on behalf of themselves and all members of the class.

56. ***Adequacy***: Plaintiffs will fairly and adequately protect the interests of the members of the Classes. Plaintiffs have retained counsel experienced in complex consumer class action litigation, and Plaintiffs intend to prosecute this action vigorously. Plaintiffs have no antagonistic or adverse interests to those of the Classes.

57. ***Superiority***: The nature of this action and the nature of laws available to Plaintiffs and the Classes make the use of the class action format a particularly efficient and appropriate procedure to afford relief to them and the Classes for the wrongs alleged. The damages or other financial detriment suffered by individual Class members is relatively modest compared to the burden and expense that would be entailed by individual litigation of their claims against Defendants. It would thus be virtually impossible for Plaintiffs and Class members, on an individual basis, to obtain effective redress for the wrongs done to them. Absent the class action, Class members and the general public would not likely recover, or would not likely have the chance to recover, damages or restitution, and Defendants will be permitted to

retain the proceeds of its fraudulent and deceptive misdeeds.

58. All Class members, including Plaintiffs, were exposed to one or more of Defendants' misrepresentations or omissions of material fact claiming that former "original" advertised prices were in existence. Due to the scope and extent of Defendants' consistent false "discount" price advertising scheme, disseminated in a years-long campaign to California, Pennsylvania, and other state's consumers via a number of different platforms – in-store displays, print advertisements, etc. – it can be reasonably inferred that such misrepresentations or omissions of material fact were uniformly made to all members of the Class. In addition, it can be reasonably presumed that all Class members, including Plaintiffs, affirmatively acted in response to the representations contained in Defendants' false advertising scheme when purchasing Carter's and OshKosh B'gosh branded merchandise at Defendants' retail and/or outlet stores.

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

requirements.

III. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violation of Unfair Competition Law California Business and Professions Code § 17200, *et seq.* On Behalf of the California Class

60. Plaintiffs repeat and re-allege the allegations contained in every preceding paragraph as if fully set forth herein.

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

62. The UCL imposes strict liability. Plaintiffs need not prove that Defendants intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices – but only that such practices occurred.

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

64. Defendants’ actions constitute “unfair” business acts or practices because, as alleged above, Defendants engaged in misleading and deceptive price

comparison advertising that represented false “regular” or “MSRP” prices and “discount” prices that were nothing more than fabricated “regular” prices leading to phantom markdowns. Defendants’ acts and practices offended an established public policy, and engaged in immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to consumers.

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

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

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

68. Defendants’ acts and practices alleged above have deceived Plaintiff Morrow and are highly likely to deceive members of the consuming public. Plaintiff Morrow relied on Defendants’ fraudulent and deceptive representations regarding its “MSRP” prices for Carter’s and OshKosh B’gosh branded products that Defendants sell at their retail and/or outlet stores. These misrepresentations played a substantial role in Plaintiff Morrow’s decision and that of the proposed California

Class to purchase merchandise at a steep discount, and Plaintiff Morrow would not have purchased such merchandise without Defendants' misrepresentations.

69. The FTCA prohibits "unfair or deceptive acts or practices in or affecting commerce" (15 U.S.C. § 45(a)(1)) and prohibits the dissemination of any false advertisements. 15 U.S.C. § 52(a). Under the FTC, false former pricing schemes, similar to the ones implemented by Defendants, are described 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 article price, inflated price was established for the purpose of enabling the subsequent offer of a large reduction – the "bargain" being advertised is a false one; the purchaser is not receiving the unusual value he expects.

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

70. California law also expressly prohibits false former pricing schemes.

Cal. Bus. & Prof. Code §17501, entitled “*Worth or value; statements as to former price,*” states:

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

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

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

72. Defendants’ practices, as set forth above, have violated the FTCA and California law. Consequently, Defendants’ practices constitute an unlawful and unfair practice within the meaning of the UCL.

73. Defendants’ violation of the UCL through its unlawful, unfair and fraudulent business practices are ongoing and present a continuing threat that members of the public will be deceived into purchasing products based on price

comparisons of arbitrary and inflated “original,” “regular,” or “MSRP” prices to “discount” prices that created merely phantom markdowns and lead to financial damage for consumers, like Plaintiffs and the California Class.

74. Pursuant to the UCL, Plaintiffs are entitled to preliminary and permanent injunctive relief ordering Defendants to cease this unfair competition, as well as disgorgement and restitution to Plaintiff and the California Class of all of Defendants’ revenues associated with its unfair competition, or such portion of those revenues as the Court may find equitable.

SECOND CAUSE OF ACTION
**Violation of the California False Advertising Law,
California Business & Professions Code § 17500, *et seq.*
on Behalf of the California Class**

75. Plaintiffs repeat and re-allege the allegations contained in every preceding paragraph as if fully set forth herein.

76. Cal. Bus. & Prof. Code § 17500 provides that:

[i]t is unlawful for any...corporation...with intent...to dispose of...personal property...to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated...from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement...which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading....

[Emphasis added.]

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

78. Similarly, Cal. Bus. & Prof. Code § 17501 provides:

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

79. Defendants’ routine of advertising discounted prices from false “regular,” “MSRP” prices associated with its merchandise, which were never the true prevailing prices of those products and were materially greater than the true prevailing prices was an unfair, untrue and misleading practice. This deceptive marketing practice gave consumers the false impression that the products were regularly sold on the market for a substantially higher price than they actually were, therefore leading to the false impression that the Carter’s and OshKosh B’gosh branded products were worth more than they actually were.

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

81. As a direct and proximate result of Defendants’ misleading and false

advertisements Plaintiffs and California Class members have suffered injury in fact and have lost money. As such, Plaintiffs request that this Court order Defendants to restore this money to Plaintiffs and all California Class members, and to enjoin Defendants from continuing these unfair practices in violation of the UCL in the future. Otherwise, Plaintiffs, California Class members, and the broader general public will be irreparably harmed and/or denied an effective and complete remedy.

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

82. Plaintiffs repeats and re-allege the allegations contained in every preceding paragraph as if fully set forth herein.

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

84. Defendants violated and continues to violate the CLRA by engaging in

the following practices proscribed by California Civil Code § 1770(a) in transactions with Plaintiffs and the California Class which were intended to result in, and did result in, the sale of Carter's and OshKosh B'gosh branded products:

- a. Advertising goods or services with intent not to sell them as advertised (§ 1770(a)(9));
- b. Making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions (§ 1770(a)(13)).

85. Pursuant to § 1782(a) of the CLRA, Plaintiffs' counsel notified Defendants in writing by certified mail of the particular violations of § 1770 of the CLRA and demanded that it rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendants' intent to act. Defendant has failed to adequately address Plaintiffs' claims.

FOURTH CAUSE OF ACTION
Violation of Unfair Trade Practices & Consumer Protection Law
("UTPCPL")
73 Pennsylvania Statute §§ 201-1, *et seq.*
on Behalf of the Pennsylvania Class

86. Plaintiffs repeat and re-allege the allegations contained in every preceding paragraph as if fully set forth herein.

87. This cause of action is brought pursuant to Pennsylvania's Unfair Trade Practices & Consumer Protection Law (UTPCPL), Title 73 of Pennsylvania Statute §§ 201-1, *et seq.* Defendants' advertising, marketing, and sale of Carter's and

OshKosh B’gosh branded products at its retail and/or outlet stores to Plaintiffs and the Pennsylvania Class constitutes “trade” or “commerce” within the meaning of 73 P.S. § 201-2(3).

88. The UTPCPL defines “unfair methods of competition” and “unfair or deceptive acts or practices” to mean any one or more of the following acts and declares such acts to be unlawful under § 201-3:

- a. Advertising goods or services with intent not to sell them as advertised (§ 201-2(4)(ix));
- b. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions (§ 201-2(4)(xi));
- c. Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding (§ 201-2(4)(xxi)).

89. Defendants violated and continue to violate the UTPCPL by engaging in the above conduct proscribed under 73 P.S. § 201-2(3) in transactions with Plaintiffs and the proposed Pennsylvania Class which were intended to result in, and did result in, the sale of Carter’s and OshKosh B’gosh branded products.

90. Defendants’ acts and practices alleged above have misled Plaintiffs and the proposed Pennsylvania Class and are highly likely to create confusion and misunderstanding among the consuming public. Plaintiff Gennock relied on Defendants’ fraudulent and deceptive representations regarding its “market” prices for Carter’s branded products that Defendants sell at their retail and/or outlet stores.

These misrepresentations misled Plaintiff Gennock and the proposed Pennsylvania Class as to the true value of the price reductions because the dresses were never offered for sale at \$12.00 at Defendants' retail and/or outlet stores. This deceptive marketing practice gave consumers the false impression that the products were regularly sold on the market for a substantially higher price than they actually were, therefore, leading to the false impression that the Carter's branded products were worth more than they actually were.

91. Plaintiff Gennock and the proposed Pennsylvania Class would not have purchased such products but for Defendants' misleading and false advertisements. As a direct and proximate result of Defendants' misrepresentations, Plaintiffs and the proposed Pennsylvania Class members have suffered injury in fact and have lost money.

92. As such, Plaintiffs request that this Court issue a permanent injunction to restrain Defendants from continuing these unfair practices in violation of the UTPCPL in the future. 73 P.S. § 201-4. Plaintiffs also request that this Court order Defendants to restore the money to Plaintiffs and all proposed Pennsylvania Class members that was acquired as a result of Defendants' unfair and deceptive practices. § 201-4.1. Otherwise, Plaintiffs, Pennsylvania Class members, and the broader general public will be irreparably harmed and/or denied an effective and complete

remedy. Lastly, Plaintiffs seek actual damages and request that the Court exercise its discretion to award treble damages based on Defendants' egregious and systematic misconduct and award Plaintiffs costs and reasonable attorneys' fees. § 201-9.2.

FIFTH CAUSE OF ACTION

**Unjust Enrichment on Behalf of the Classes,
or in the Alternative, on Behalf of the California Class**

93. Plaintiffs repeat and re-allege the allegations contained in every preceding paragraph as if fully set forth herein.

94. Plaintiffs bring this claim individually, as well as on behalf of members of the Classes, under California law. Although there are numerous permutations of the elements of the unjust enrichment cause of action in the various states, there are few real differences. In all states, the focus of an unjust enrichment claim is whether the defendant was unjustly enriched. At the core of each state's law are two fundamental elements –the defendant received a benefit from the plaintiff and it would be inequitable for the defendant to retain that benefit without compensating the plaintiff. The focus of the inquiry is the same in each state. Since there is no material conflict relating to the elements of unjust enrichment between the different jurisdictions from which Class members will be drawn, California law applies to the claims of the Classes.

95. In the alternative, Plaintiffs bring this claim individually as well as on

behalf of the California Class.

96. At all times relevant hereto, Defendants deceptively priced, marketed, advertised, and sold merchandise to Plaintiffs and the Classes.

97. Plaintiffs and members of the Classes conferred upon Defendants non-gratuitous payments for merchandise that they would not have if not for Defendants' deceptive pricing, advertising, and marketing. Defendants accepted or retained the non-gratuitous benefits conferred by Plaintiffs and members of the Classes, with full knowledge and awareness that, as a result of Defendants' deception, Plaintiffs and members of the Classes were not receiving a product of the quality, nature, fitness, or value that had been represented by Defendants and reasonable consumers would have expected.

98. Defendants have been unjustly enriched in retaining the revenues derived from purchases of merchandise by Plaintiffs and members of the Classes, which retention under these circumstances is unjust and inequitable because Defendants misrepresented, among other things, that its merchandise was being offered at a significant discount, which caused injuries to Plaintiffs and members of the Classes because they paid for, and/or paid a price premium due to the misleading pricing and advertising.

99. Retaining the non-gratuitous benefits conferred upon Defendants by

Plaintiffs and members of the Classes under these circumstances made Defendants' retention of the non-gratuitous benefits unjust and inequitable. Thus, Defendants must pay restitution to Plaintiffs and members of the Classes for unjust enrichment, as ordered by the Court.

SIXTH CAUSE OF ACTION
**Violations of the Consumer Protection Laws on Behalf
of Classes in the States with Similar Laws**

100. Plaintiffs repeat and re-allege the allegations contained in every preceding paragraph as if fully set forth herein.

101. Plaintiffs brings this Count individually under the laws of California and Pennsylvania and on behalf of all other persons who have purchased merchandise in states having similar laws regarding consumer fraud and deceptive trade practices.

102. Plaintiffs and each of the other members of the Classes are consumers, purchasers, or other persons entitled to the protection of the consumer protection laws of the state in which they purchased merchandise from Defendants.

103. The consumer protection laws of the states in which Plaintiffs and the other members of the Classes purchased Defendants' merchandise declare that unfair or deceptive acts or practices, in the conduct of trade or commerce, are unlawful.

104. Forty-one states and the District of Columbia have enacted statutes designed to protect consumers against unfair, deceptive, fraudulent, and

unconscionable trade, business practices, and false advertising that allow consumers to bring private and/or class actions. These statutes are found at:

- a. Alabama Deceptive Trade Practices Act, Ala. Code § 8-19-1, *et seq.*;
- b. Alaska Unfair Trade Practices and Consumer Protection Act, Alaska Code § 45.50.471, *et seq.*;
- c. Arkansas Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101, *et seq.*;
- d. California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, and California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*;
- e. Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-101, *et seq.*;
- f. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a, *et seq.*;
- g. Delaware Deceptive Trade Practices Act, Del. Code tit. 6 § 2511, *et seq.*;
- h. District of Columbia Consumer Protection Procedures Act, D.C. Code § 28 3901, *et seq.*;
- i. Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*;
- j. Georgia Fair Business Practices Act, Ga. Code Ann. § 10-1-390, *et seq.*;
- k. Hawaii Unfair and Deceptive Practices Act, Hawaii Revised

Statutes § 480-1, *et seq.*, and Hawaii Uniform Deceptive Trade Practices Act, Haw. Rev. Stat. § 481A-1, *et seq.*;

- l. Idaho Consumer Protection Act, Idaho Code Ann. § 48-601, *et seq.*;
- m. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. Ann. 505/1, *et seq.*;
- n. Kansas Consumer Protection Act, Kan. Stat. Ann § 50 626, *et seq.*;
- o. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. § 367.110, *et seq.*, and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann. § 365.020, *et seq.*;
- p. Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. § 51:1401, *et seq.*;
- q. Maine Unfair Trade Practices Act, Me. Rev. Stat. tit. 5 § 205A, *et seq.*, and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. Tit. 10, § 1211, *et seq.*;
- r. Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch. 93A;
- s. Michigan Consumer Protection Act, Mich. Comp. Laws § 445.901, *et seq.*;
- t. Minnesota Prevention of Consumer Fraud Act, Minn. Stat. Ann. § 325F.68 *et seq.*, and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.*;
- u. Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1, *et seq.*;

- v. Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*;
- w. Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code Ann. § 30-14-101, *et seq.*;
- x. Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59-1601, *et seq.*, and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et seq.*;
- y. Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. § 598.0903, *et seq.*;
- z. New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et seq.*;
- aa. New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8 1, *et seq.*;
- bb. New Mexico Unfair Practices Act, N.M. Stat. Ann. § 57 12 1, *et seq.*;
- cc. New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law § 349, *et seq.*;
- dd. North Dakota Consumer Fraud Act, N.D. Cent. Code § 51 15 01, *et seq.*;
- ee. Ohio Consumer Sales Practices Act, Ohio Rev. Code Ann. § 1345.02 and 1345.03; Ohio Admin. Code § 109:4-3-02, 109:4-3-03, and 109:4-3-10;
- ff. Oklahoma Consumer Protection Act, Okla. Stat. tit. 15 § 751, *et seq.*;
- gg. Oregon Unfair Trade Practices Act, Ore. Rev. Stat. §

- 646.608(e) & (g);
- hh. Pennsylvania Unfair Trade Practices & Consumer Protection Law, 73 P.S. §§ 201-1, *et seq.*;
 - ii. Rhode Island Unfair Trade Practices and Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1, *et seq.*;
 - jj. South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*;
 - kk. South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws §§ 37 24 1, *et seq.*;
 - ll. Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101, *et seq.*;
 - mm. Vermont Consumer Fraud Act, Vt. St. Ann. Tit. 9, § 2451 *et seq.*;
 - nn. Washington Consumer Fraud Act, Wash. Rev. Code § 19.86.010, *et seq.*;
 - oo. West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-6-101, *et seq.*; and
 - pp. Wisconsin Deceptive Trade Practices Act, Wis. Stat. § 100.18, *et seq.*

105. Defendants' merchandise constitutes products to which these consumer protection laws apply.

106. In the conduct of trade or commerce regarding the pricing, advertising, marketing, and sale of its merchandise, Defendants engaged in one or more unfair or deceptive acts or practices, including but not limited to, uniformly representing to

Plaintiffs and each member of the Classes by means of the pricing and advertising of its merchandise that it was, among other things, being offered at a discount, as described herein.

107. Defendants' representations and omissions were false, untrue, misleading, deceptive, and/or likely to deceive.

108. Defendants knew, or should have known, that their representations and omissions were false, untrue misleading, deceptive, and/or likely to deceive.

109. Defendants used or employed such deceptive and unlawful acts or practices with the intent that Plaintiffs and members of the Classes rely thereon.

110. Plaintiffs and the other members of the Classes did so rely.

111. Plaintiffs and the other members of the Classes purchased merchandise sold by Defendants which misrepresented the magnitude of the price discounts offered for the merchandise.

112. Plaintiffs and the other members of the Classes would not have purchased such merchandise but for Defendants' deceptive and unlawful acts.

113. As a result of Defendants' conduct, Plaintiffs and the other members of the Classes sustained damages in amounts to be proven at trial.

114. Defendants' conduct showed complete indifference to, or conscious disregard for, the rights of others such that an award of punitive and/or statutory

damages is appropriate under the consumer protection laws of those states that permit such damages to be sought and recovered.

IV. PRAYER FOR RELIEF

115. Wherefore, Plaintiffs, on behalf of themselves and on behalf of the other members of the Classes, requests that this Court award relief against Defendants as follows:

- a. An order certifying the class and designating SIOBHAN MORROW and ASHLEY GENNOCK as the Class Representatives and their counsel as Class Counsel;
- b. Awarding Plaintiffs and the proposed Class members damages;
- c. Awarding restitution and disgorgement of all profits and unjust enrichment that Defendants obtained from Plaintiffs and the Class members as a result of its unlawful, unfair and fraudulent business practices described herein;
- d. Awarding declaratory and injunctive relief as permitted by law or equity, including: enjoining Defendants from continuing the unlawful practices as set forth herein, and directing Defendants to identify, with Court supervisions, victims of its misconduct and pay them all money they are required to pay;

- e. Order Defendants to engage in a corrective advertising campaign;
- f. Awarding attorneys' fees and costs; and
- g. For such other and further relief as the Court may deem necessary or appropriate.

VIII. DEMAND FOR JURY TRIAL

116. Plaintiffs hereby demand a jury trial for all the claims so triable.

Dated: August 1, 2016

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

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

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

GILLEN WITHERS & LAKE LLC

Thomas A. Withers
twithers@gwllawfirm.com
8 E. Liberty Street
Savannah, GA 31401
Telephone: 912-447-8400
Facsimile: 912-233-6584

Anthony C. Lake
aclake@gwllawfirm.com
3490 Piedmont Road, N.E.
One Securities Centre, Suite 1050
Atlanta, GA 30305
Telephone: 404-842-9700
Facsimile: 404-842-9750

Attorneys for Plaintiff