

**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.

**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 “market” 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 "market" prices, which were misrepresented as the "market" retail prices from which the "savings" was discounted. The advertised discounts were nothing more than mere phantom markdowns because the represented market prices were artificially inflated and were never the original prices for children's apparel and accessories sold at Defendants' retail and/or outlet stores. In addition, the represented "market" prices were not the prevailing marketing retail prices within three months next immediately preceding the publication of the advertised former prices, as required by California law.

3. 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 discounts, including "50% off" various items throughout the store.

4. The "market price" never existed and/or did not constitute the

prevailing market retail prices for such products within the three months immediately preceding the publication of the sales tag. Defendants sell their own, exclusive, branded products. There is no other “market price” for the products being sold other than the price set at Defendants’ Carter’s and OshKosh B’gosh retail and/or outlet stores. The difference between the “sale” and “regular” prices is a false savings percentage used to lure consumers into purchasing products they believe are significantly discounted.

5. Through their false and misleading marketing, advertising and pricing scheme, Defendants violated, and continue to violate California, Pennsylvania, federal, and other state law 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).

6. 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**

7. 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.

8. 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.

9. 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**

10. SIOBHAN MORROW ("Plaintiff Morrow") resides in San Diego, California. Plaintiff Morrow, in reliance on Defendants' false and deceptive advertising, marketing and "discount" pricing schemes, purchased several items for herself and family members, including three newborn baby sleep accessories and

two pairs of girls denim jeans. On or around November 13, 2015, Plaintiff Morrow purchased three newborn baby sleep accessories for \$9.00, \$3.50, and \$3.50 at a Carter's retail store located in San Ysidro, California. On or around 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. 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 Carter's and OshKosh B'gosh were supposedly discounted, and were represented to Plaintiff Morrow as "50% off" 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.

11. 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 price of \$12.00. 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 \$12.00 at Defendants' stores. Therefore, Plaintiff Gennock was damaged by her purchase of the products.

## **II. Defendants**

12. 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.

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

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

15. Defendant OshKosh B'gosh, Inc. is a Delaware Corporation with its

principal executive offices in Atlanta, Georgia.

16. 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**

17. On or around November 13, 2015, Plaintiff Morrow went shopping at Las Americas Premium Outlets in San Ysidro, California to purchase children's clothing and related apparel and accessories for herself and her family. Upon examining the newborn baby clothing and accessories at a Carter's retail store, she observed that they were advertised as "50% off". Plaintiff Morrow observed signage within the store and the price tags on three newborn baby swaddlers which represented that the items were "50% off". Believing that she was receiving a significant value by purchasing them for \$9.00, \$3.50, and \$3.50 when they were originally priced at approximately \$18.00, \$7.00, and, \$7.00 respectively, Plaintiff



Morrow decided to purchase the items and proceeded to the cash register where she did in fact purchase the three baby swaddlers.

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

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

20. On or around April 11, 2016, Plaintiff Gennock went shopping at the

Grove City Premium Outlets in Grove City, Pennsylvania to purchase children's clothing and related apparel for herself. Upon examining the girls' dresses at a Carter's outlet store, she observed that they were advertised as "\$2.00 off." Plaintiff Gennock observed signage within the store and the price tag on the dresses which represented that the dresses were "\$2.00 off." Believing that she was receiving a significant value by purchasing the dresses for \$10.00 that were originally priced at \$12.00, she decided to purchase two girls' dresses and proceeded to the cash register where she did in fact purchase the dresses.

21. Specifically, relying upon Defendants' misrepresentations and false and deceptive advertising, Plaintiff Gennock purchased two girls' dresses for \$10.00 each. The price tags indicated the original or "market" 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." These purported "market" prices and corresponding price "discounts" and savings were false and misleading, as the prevailing retail price for the girls' dresses were artificially inflated and were never the original prices for the girls' dresses sold at Defendants' retail and/or outlet stores.

22. Plaintiffs would not have purchased 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.

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

24. 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.

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

26. Plaintiffs relied upon Defendants' artificially inflated "market" 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.

27. 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.

28. 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**

29. 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 "original," "regular," or "market" price any time between the date in which the statute of limitations began to run to the date of certification (the "Class Period").

30. 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 "original," "regular," or "market" price any time between the date in which the statute of limitations began to run to the date of certification.

31. 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 “original,” “regular,” or “market” price any time between the date in which the statute of limitations began to run to the date of certification.

32. 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”).

33. 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.

34. 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.

35. **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.

36. ***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 "regular," "market" or "original" price labels and falsely advertised price discounts on their Carter's and Osh Kosh B'gosh branded products they sold in their retail and/or outlet stores;
- b. Whether, during the Class Period, the "regular," "original" or "market" prices advertised by Defendants were the prevailing market prices for the respective Carter's and Osh Kosh 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.

37. ***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.

38. ***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.

39. ***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.

40. 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 Osh Kosh B'gosh branded merchandise at Defendants' retail and/or outlet stores.

41. 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**

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

43. 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.

44. 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.

45. 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.

46. 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” 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.

47. 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.

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

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

50. 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 “market” prices for Carter’s and Osh Kosh 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.

51. 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.

52. 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.]

53. 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.”

54. 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.

55. 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 “market” prices to “discount” prices that created merely phantom markdowns and lead to financial damage for consumers, like Plaintiffs and the California Class.

56. 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**

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

58. 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.]

59. 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.

60. 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.

61. Defendants’ routine of advertising discounted prices from false “regular,” “original,” or “market” 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 Osh Kosh B’gosh branded products were worth more than they actually were.

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

63. 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**

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

65. 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 Osh Kosh 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).

66. 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 Osh Kosh 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)).

67. Pursuant to § 1782(a) of the CLRA, on May 6, 2016 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. If Defendants fail to respond to Plaintiffs' letter or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice, as proscribed by § 1782, Plaintiffs will move to amend their Complaint to pursue claims for actual, punitive and statutory damages, as appropriate against Defendants. As to this cause of action, at this time, Plaintiffs seek only injunctive relief.

**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**



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

69. 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 Osh Kosh 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).

70. 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)).

71. 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 Osh Kosh B'gosh branded products.

72. 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.

73. 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.

74. 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**

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

76. 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.

77. In the alternative, Plaintiffs bring this claim individually as well as on behalf of the California Class.

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

79. 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.

80. 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.

81. 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**

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

83. 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.

84. 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.

85. 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.

86. 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.*

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

88. 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.

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

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

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

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

93. 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.

94. Plaintiffs and the other members of the Classes would not have

purchased such merchandise but for Defendants' deceptive and unlawful acts.

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

96. 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**

97. 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**

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

Dated: May 6, 2016

**GILLEN, WITHERS & LAKE, LLC**

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*Attorneys for Plaintiffs*

CIVIL COVER SHEET

The JS44 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 is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

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

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego County, CA (EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANT(S)

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,

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Fulton County, GA (IN U.S. PLAINTIFF CASES ONLY)

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

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

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twithers@gwllawfirm.com

ATTORNEYS (IF KNOWN)

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) (FOR DIVERSITY CASES ONLY)

- PLF DEF PLF DEF
1 1 CITIZEN OF THIS STATE 4 4 INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE
2 2 CITIZEN OF ANOTHER STATE 5 5 INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE
3 3 CITIZEN OR SUBJECT OF A FOREIGN COUNTRY 6 6 FOREIGN NATION

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 ORIGINAL PROCEEDING
2 REMOVED FROM STATE COURT
3 REMANDED FROM APPELLATE COURT
4 REINSTATED OR REOPENED
5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District)
6 MULTIDISTRICT LITIGATION
7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT

V. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Class action regarding Defendants' false and misleading advertisement of "market" 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 in violation of the Federal Trade Commission Act ("FTCA") 15 U.S.C. §§ 45 & 52, and various State unfair or deceptive acts or practices acts.

(IF COMPLEX, CHECK REASON BELOW)

- 1. Unusually large number of parties.
2. Unusually large number of claims or defenses.
3. Factual issues are exceptionally complex
4. Greater than normal volume of evidence.
5. Extended discovery period is needed.
6. Problems locating or preserving evidence
7. Pending parallel investigations or actions by government.
8. Multiple use of experts.
9. Need for discovery outside United States boundaries.
10. Existence of highly technical issues and proof.

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT # AMOUNT \$ APPLYING IFP MAG. JUDGE (IFP)
JUDGE MAG. JUDGE (Referral) NATURE OF SUIT CAUSE OF ACTION

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
120 MARINE
130 MILLER ACT
140 NEGOTIABLE INSTRUMENT
151 MEDICARE ACT
160 STOCKHOLDERS' SUITS
190 OTHER CONTRACT
195 CONTRACT PRODUCT LIABILITY
196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
220 FORECLOSURE
230 RENT LEASE & EJECTMENT
240 TORTS TO LAND
245 TORT PRODUCT LIABILITY
290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
315 AIRPLANE PRODUCT LIABILITY
320 ASSAULT, LIBEL & SLANDER
330 FEDERAL EMPLOYERS' LIABILITY
340 MARINE
345 MARINE PRODUCT LIABILITY
350 MOTOR VEHICLE
355 MOTOR VEHICLE PRODUCT LIABILITY
360 OTHER PERSONAL INJURY
362 PERSONAL INJURY - MEDICAL MALPRACTICE
365 PERSONAL INJURY - PRODUCT LIABILITY
367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
371 TRUTH IN LENDING
380 OTHER PERSONAL PROPERTY DAMAGE
385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 441 VOTING
442 EMPLOYMENT
443 HOUSING/ ACCOMMODATIONS
444 WELFARE
440 OTHER CIVIL RIGHTS
445 AMERICANS with DISABILITIES - Employment
446 AMERICANS with DISABILITIES - Other
448 EDUCATION

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 463 HABEAS CORPUS- Alien Detainee
510 MOTIONS TO VACATE SENTENCE
530 HABEAS CORPUS
535 HABEAS CORPUS DEATH PENALTY
540 MANDAMUS & OTHER
550 CIVIL RIGHTS - Filed Pro se
555 PRISON CONDITION(S) - Filed Pro se
560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
720 LABOR/MGMT. RELATIONS
740 RAILWAY LABOR ACT
751 FAMILY and MEDICAL LEAVE ACT
790 OTHER LABOR LITIGATION
791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395ff)
862 BLACK LUNG (923)
863 DIWC (405(g))
863 DIWW (405(g))
864 SSID TITLE XVI
865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 375 FALSE CLAIMS ACT
376 QUI TAM 31 USC 3729(a)
400 STATE REAPPORTIONMENT
430 BANKS AND BANKING
450 COMMERCE/ICC RATES/ETC.
460 DEPORTATION
470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
480 CONSUMER CREDIT
490 CABLE/SATELLITE TV
890 OTHER STATUTORY ACTIONS
891 AGRICULTURAL ACTS
893 ENVIRONMENTAL MATTERS
895 FREEDOM OF INFORMATION ACT
899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION
950 CONSTITUTIONALITY OF STATE STATUTES

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTITRUST
850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- 896 ARBITRATION (Confirm / Vacate / Order / Modify)

\* PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3

VII. REQUESTED IN COMPLAINT:

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$

JURY DEMAND YES NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE DOCKET NO.

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO., WHICH WAS DISMISSED. This case IS IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

/s/Thomas A. Withers

5/6/2016

SIGNATURE OF ATTORNEY OF RECORD

DATE