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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

PEGGY CABRERA and LESHANEIL SHAW,)
individually on behalf of all others similar)
situated)

Plaintiffs,

vs.

KENNETH COLE PRODUCTIONS, INC.,)

Defendant.)

Case No. 2:15-cv-09197-CAS-JC
The Honorable Christina Snyder

**SECOND AMENDED CLASS ACTION
COMPLAINT
JURY TRIAL DEMANDED**

-) 1. Violation of the “Unfair” Prong of the UCL
) 2. Violation of the “Fraudulent” Prong of the
) UCL
) 3. Violation of the “Unlawful” Prong of the
) UCL
) 4. Violation of the California False
) Advertising Law, California Business &
) Professions Code Sections 17500, *et seq.*
) 5. Violation of the Consumers Legal Remedies
) Act, California Civil Code Sections 1750, *et*
) *seq.*
) 6. Unjust Enrichment; and
) 7. Violations of the Consumer Fraud Laws

1 **SECOND AMENDED CLASS ACTION COMPLAINT**

2 Plaintiffs, PEGGY CABRERA and LESHANEIL SHAW (“Plaintiffs”), on behalf of
3 themselves and all others similarly situated, allege the following based upon personal knowledge as
4 to allegations regarding Plaintiffs and on information and belief as to other allegations:

5 **INTRODUCTION**

6 1. This is a civil class action seeking monetary damages, restitution, injunctive and
7 declaratory relief from Defendant, Kenneth Cole Productions, Inc. (“Kenneth Cole”), arising from its
8 deceptive and misleading labeling and marketing of merchandise it sells at its company-owned
9 Kenneth Cole Outlet stores (“Kenneth Cole Outlets”).

10 2. During the Class Period (defined below), Kenneth Cole intentionally portrayed false
11 price information by misrepresenting the existence, nature and amount of price discounts on
12 products manufactured by Kenneth Cole for Kenneth Cole and exclusively sold at Kenneth Cole
13 Outlets (“Kenneth Cole Outlet Products”).

14 3. Kenneth Cole advertised—on the price tags of its Kenneth Cole Outlet Products—
15 Manufacturer’s Suggested Retail Prices (“MSRP”) and then advertised, on the same price tags, a
16 price termed “OUR PRICE,” which supposedly represented a deep discount off of the MSRP.

17 4. However, the MSRPs used by Kenneth Cole did not convey accurate information
18 about the products, and were instead a sham designed to mislead and deceive consumers.

19 5. Kenneth Cole led consumers to believe that its MSRPs represented authentic price
20 information about the products they purchased. In reality, Kenneth Cole manufactures the Kenneth
21 Cole Outlet Products for *exclusive sale* at its Kenneth Cole Outlets and always sells these goods for
22 the advertised “OUR PRICE,” never the MSRP. Accordingly, such items were never sold, never
23 suggested to be sold, or even intended to be sold—at the “MSRP” listed on its price tags. Kenneth
24 Cole Outlet Products are only sold for the lower “OUR PRICE.”

25 6. Further, Kenneth Cole intentionally uses the words “Manufacturers” and “Our” on its
26 price tags to mislead consumers into believing that Kenneth Cole – the manufacturer **and** the seller
27 of the product – are somehow different and distinct from one another. When “Manufacturers” is

1 used directly above the pronoun “Our,” it leads consumers to believe that they are not the same party
2 -- “Manufacturers” is a third party noun. Consumers understand “Our” to be Kenneth Cole.
3 Therefore, in this context they do not understand “Manufacturers” to also be Kenneth Cole. Kenneth
4 Cole uses the carefully chosen third party “Manufacturers” and the pronoun “Our” so that the
5 consumer will think that the party who “manufactured” the product and “suggested” its price are not
6 the same, thereby duping customers into thinking they are getting a discount off the price a third
7 party manufacturer determined it’s worth or the price at which it should be sold.

8 7. The nomenclature and the MSRP’s listed on Kenneth Cole Outlet Products are
9 fictional creations designed by Kenneth Cole to portray false price information, create an illusion
10 that the manufacturer and the seller are not the same parties, enable phantom markdowns and
11 increase sales.

12 8. Kenneth Cole knows consumers are bargain-hunters, and knows consumers are
13 excited by the prospect of a bargain. The juxtaposition of an artificial MSRP and an “OUR PRICE”
14 on Kenneth Cole Outlet Product price tags is intentionally designed to convey to consumers that the
15 consumer is receiving a bargain or a “deal” on the product—on sales terms more preferential or
16 more optimal to the consumer than those offered outside the context of the outlet store. But there is
17 no bargain to be had. The MSRP on Kenneth Cole Outlet Products exists only to create the illusion
18 of a bargain and the words “Manufacturers” and “Our” are used only to deceive consumers into
19 making purchases they otherwise would not have made because they perceive that Kenneth Cole is
20 offering a product for sale at a lower price than what the products’ manufacturer suggested it should
21 be sold.

22 9. In addition, the advertised MSRPs were *not* prevailing market retail prices within
23 three months immediately preceding the publication of the advertised prices, as required by
24 California law. *Business & Professions Code* § 17501, entitled “*Value determinations; Former*
25 *price advertisements*,” states:

26 For the purpose of this article the worth or value of anything advertised is the
27 prevailing market price, wholesale if the offer is at wholesale, retail if the offer at
28 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).

10. The Federal Trade Commission ("FTC") explicitly describes this fictitious pricing scheme employed at Kenneth Cole Outlets as deceptive:

- (a) Many members of the purchasing public believe that a manufacturer's list price, or suggested retail price, is the price at which an article is generally sold. Therefore, if a reduction from this price is advertised, many people will believe that they are being offered a genuine bargain. To the extent that list or suggested retail prices do not in fact correspond to prices at which a substantial number of sales of the article in question are made, the advertisement of a reduction may mislead the consumer. 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.
- (b) It bears repeating that the manufacturer, distributor or retailer must in every case act honestly and in good faith in advertising a list price, and not with the intention of establishing a basis, or creating an instrumentality, for a deceptive comparison in any local or other trade area. For instance, a manufacturer may not affix price tickets containing inflated prices as an accommodation to particular retailers who intend to use such prices as the basis for advertising fictitious price reductions.

16 C.F.R. § 233.3.

11. The Kenneth Cole Outlet pricing scheme was prominently advertised on the price tags of all Kenneth Cole Outlet Products in California. To illustrate, below is an example of the merchandise price tags that Plaintiffs relied on:



12. Upon information and belief, thousands of California consumers were victims of Kenneth Cole’s deceptive, misleading and unlawful false pricing scheme and thousands more, including Plaintiffs, will be deceived if the practices continue.

13. Kenneth Cole fraudulently concealed from, and intentionally failed to disclose to, Plaintiffs and others similarly situated, the truth about its MSRP’s and advertised price discounts from those supposedly “suggested prices.”

14. Kenneth Cole’s false representations of MSRP’s and false representations of savings, discounts and bargains are objectively material to a reasonable consumer.

15. Plaintiffs relied upon such false representations of MSRP’s and discounts when purchasing apparel from a Kenneth Cole Outlet in California. Plaintiffs would not have made such purchase, or would not have paid the amount they did, but for Kenneth Cole’s false representations of the MSRP of the items they purchased, especially when juxtaposed with the supposedly discounted “OUR PRICE” at which Kenneth Cole offered the items for sale.

16. Plaintiffs, in short, believed the truth of the price tags attached to the products they purchased at a Kenneth Cole Outlet, which expressly told them that they were getting a terrific bargain on their purchases. In reality, they were not getting a bargain at all.

17. Through its false and deceptive marketing, advertising and pricing scheme, Kenneth Cole violated (and continues to violate) California law. Specifically, Kenneth Cole violated (and continues to violate) California’s *Business & Professions Code* § 17200, *et seq.* (the “UCL”), California’s *Business and Professions Code* § 17500, *et seq.* (the “FAL”), the California Consumers’

1 Legal Remedies Act, *Civil Code* § 1750, *et seq.* (the “CLRA”), and the Federal Trade Commission
2 Act (“FTCA”), which prohibits “unfair or deceptive acts or practices in or affecting commerce” and
3 specifically prohibits false advertisements. 15 U.S.C. §§ 52(a) and 15 U.S.C. § 45(a)(1).

4 18. Plaintiffs, individually and on behalf of all others similarly situated, seek restitution
5 and other equitable remedies, including an injunction under the UCL, FAL and CLRA.

6 **PARTIES**

7 19. Plaintiff, Peggy Cabrera is an individual who is a citizen of the City of Lomita,
8 County of Los Angeles, California. In reliance on Defendant’s false and deceptive advertising,
9 marketing and pricing schemes, Ms. Cabrera purchased two Kenneth Cole Outlet Products from the
10 Kenneth Cole Outlet located in Camarillo, California on April 11, 2015, and as detailed herein, was
11 damaged as a result thereof.

12 20. Plaintiff, Leshaniel Shaw is an individual who is a citizen of the City of Northridge,
13 County of Los Angeles, California. In reliance on Defendant’s false and deceptive advertising,
14 marketing and pricing schemes, Ms. Dixon purchased various Kenneth Cole Outlet Products from
15 the Kenneth Cole Outlet located in Camarillo, California, and as detailed herein, was damaged as a
16 result thereof.

17 21. Defendant Kenneth Cole is a corporation duly organized and existing under the laws
18 of the State of Delaware, with its principal place at 603 West 50th Street, New York, NY, 10019.
19 Defendant operates 12 Kenneth Cole Outlets in California.

20 **JURISDICTION AND VENUE**

21 22. This Court has original jurisdiction of this action under the Class Action Fairness Act
22 of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has original jurisdiction because
23 the aggregate claims of the members of the putative Class exceed \$5 million, exclusive of costs, and
24 at least one of the members of the proposed Class is a citizen of a different state than Kenneth Cole.

25 23. The Southern District of New York has personal jurisdiction over Kenneth Cole
26 because Kenneth Cole regularly conducts business in this District.

30. Media reports indicates that outlet stores such as Kenneth Cole Outlets are using false and fraudulent price comparison tactics. *See* <http://www.buzzfeed.com/sapna/customers-finally-aware-that-most-outlet-merchandise-is-now> (last visited June 26, 2015).

31. The intentional use of false and fraudulent price comparison tactics is increasingly deceiving consumers in the market. To illustrate, on January 30, 2014, four Members of Congress demanded an FTC investigation of misleading marketing practices by outlet stores across the United States. The four Members of Congress described a pricing scheme similar to the one implemented at Kenneth Cole Outlets and stated, “[i]t is a common practice at outlet stores to advertise a retail price alongside the outlet store price—even on made-for-outlet merchandise that does not sell at regular retail locations. Since the item was never sold in the regular retail store or at the retail price, the retail price is impossible to substantiate. We believe this practice may be a violation of the FTC’s Guides Against Deceptive Pricing (16 CFR 233).” *See* <http://www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-stores-may-be-misleading-consumers> (last visited June 26, 2015).

32. This is precisely the practice used by Kenneth Cole in its Kenneth Cole Outlets.

Plaintiffs’ Purchases

33. On April 11, 2015, Plaintiff Cabrera entered the Kenneth Cole Outlet located in Camarillo, California. She observed that merchandise was advertised with price tags that represented an “MSRP” next to a significantly reduced “OUR PRICE.” She also observed that other items in the store did not make these price-reduction representations on their price tags. Ms. Cabrera understood that the items with the “MSRP” tags represented that she was receiving a bargain or a “deal” on the product—on sales terms more preferential or more optimal to the consumer than those offered outside the context of the outlet store. Enticed by this prospect, Plaintiff was induced to purchase one Maribeth Sweater bearing Style Number OW4KISS18 with an “MSRP” of \$128.00 and an “OUR PRICE” of \$99.99. She was also induced to purchase one Sati Top bearing Style Number WMS52KT08 with an OUR PRICE of \$49.99 and an MSRP of \$68.00.

1 34. But Kenneth Cole never intended, nor did it ever, sell the items at the represented
2 “MSRPs”. Thus, Plaintiff was deceived by the false price comparison into making a full retail
3 purchase with no discount.

4 35. Plaintiff Cabrera would not have purchased the products, or would not have paid the
5 price she did, if she had known she was not truly receiving a bargain, or receiving a discount, as
6 specified.

7 36. In or around June of 2015, Plaintiff Shaw entered the Kenneth Cole Outlet located in
8 Camarillo, California. She observed that merchandise was advertised with price tags that represented
9 an “MSRP” next to a significantly reduced “OUR PRICE.” She also observed that other items in the
10 store did not make these price-reduction representations on their price tags. Ms. Shaw understood
11 that the items with the “MSRP” tags represented that she was receiving a bargain or a “deal” on the
12 product—on sales terms more preferential or more optimal to the consumer than those offered
13 outside the context of the outlet store. Enticed by this prospect, Plaintiff was induced to purchase one
14 The Tristian Jumpsuit¹ with an “MSRP” of \$158.00 and an “OUR PRICE” of \$119.99.

15 37. But Kenneth Cole never intended, nor did it ever, sell the items at the represented
16 “MSRPs”. Thus, Plaintiff was deceived by the false price comparison into making a full retail
17 purchase with no discount.

18 38. Plaintiff Shaw would not have purchased the product, or would not have paid the
19 price she did, if she had known she was not truly receiving a bargain, or receiving a discount, as
20 specified.

21 39. Plaintiffs’ and class members’ reliance on Defendant’s false price comparison
22 advertising was reasonable. In fact, empirical marketing studies provide an incentive for retailers to
23 engage in this false and fraudulent behavior:

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

26 ¹ Plaintiff Shaw also made various other purchases of Kenneth Cole Outlet Products during the Class
27 Period, which included, but are not limited to, shirts, shoes, watches, sweaters, purses, cologne and a
28 cosmetic box.

deceptive if it makes any representation,... or involves any practice that may materially mislead a reasonable consumer.

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

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

Id. at 55, 56.

40. Despite the "MSRP/OUR PRICE" scheme used at Kenneth Cole Outlets, Plaintiffs would purchase Kenneth Cole Outlet Products in the future from Kenneth Cole Outlet stores and/or other retail establishments, if product labels accurately reflect discounts and bargains. If the Court were to issue an injunction ordering Kenneth Cole to comply with California's comparative price advertising laws, and prohibiting Kenneth Cole's use of the deceptive practices discussed herein, Plaintiffs would likely shop for Kenneth Cole Outlet Products again in the near future at Kenneth Cole Outlets.

CLASS ALLEGATIONS

41. Plaintiffs incorporate and reallege by reference each and every allegation contained in the preceding paragraphs as if set forth herein in full.

42. Plaintiffs bring this action individually and on behalf of the following Class pursuant to Federal Rule of Procedure 23 (the "Nationwide Class"):

All individuals residing in the United States and its territories who purchased Kenneth Cole Outlet Products from a Kenneth Cole Outlet store.

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

All individuals in the State of California who, within the applicable statute of limitations preceding the filing of this action, purchased Kenneth Cole Outlet Products from a Kenneth Outlet store in California.

44. Plaintiffs reserve the right to redefine the Classes prior to certification.

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

5 46. Plaintiffs reserve the right to expand, limit, modify, or amend this class definition,
6 including the addition of one or more subclasses, in connection with their motion for class
7 certification, or any other time, based upon, *inter alia*, changing circumstances and/or new facts
8 obtained during discovery.

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

12 48. There are numerous questions of law and fact common to the Class which
13 predominate over any questions affecting only individual members of the Class. Among the
14 questions of law and fact common to the Class are:

- 15 (a) Whether, during the Class Period, Kenneth Cole used false price representations and
16 falsely advertised price discounts on its merchandise sold at Kenneth Cole Outlets;
- 17 (b) Whether, during the Class Period, the MSRP's advertised by Kenneth Cole were the
18 prevailing market prices for the respective merchandise sold at Kenneth Cole Outlets
19 during the three month periods preceding the dissemination and/or publication of the
20 advertised former prices;
- 21 (c) Whether Kenneth Cole's use of false or deceptive price advertising constituted false
22 advertising under California Law;
- 23 (d) Whether Kenneth Cole engaged in unfair, unlawful and/or fraudulent business
24 practices under California law;
- 25 (e) Whether Kenneth Cole misrepresented and/or failed to disclose material facts about
26 its product pricing and discounts.

- 1 (f) Whether Kenneth Cole has made false or misleading statements of fact concerning
2 the reasons for, existence of, or amounts of price reductions;
- 3 (g) Whether Kenneth Cole's conduct, as alleged herein, was intentional and knowing;
- 4 (h) Whether Class members are entitled to damages and/or restitution, and in what
5 amount;
- 6 (i) Whether Kenneth Cole is likely to continue using false, misleading or illegal price
7 comparisons such that an injunction is necessary; and
- 8 (j) Whether Plaintiffs and Class members are entitled to an award of reasonable
9 attorneys' fees, pre-judgment interest and costs of suit.

10 49. Plaintiffs' claims are typical of the claims of the members of the Class and, like all
11 members of the Class, purchased goods from a Kenneth Cole Outlet that falsely conveyed an
12 "MSRP" representation and a fictitious discount. Accordingly, Plaintiffs have no interests
13 antagonistic to the interests of any other member of the Class.

14 50. Plaintiffs are representatives who will fully and adequately assert and protect the
15 interests of the Class, and has retained counsel who is experienced in prosecuting class actions.
16 Accordingly, Plaintiffs are adequate representatives and will fairly and adequately protect the
17 interests of the Class.

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

26 52. The prosecution of separate actions by members of the Class would create a risk of
27 establishing inconsistent rulings and/or incompatible standards of conduct for Kenneth Cole. For

1 example, one court might enjoin Kenneth Cole from performing the challenged acts, whereas
 2 another might not. Additionally, individual actions may be dispositive of the interests of the Class,
 3 although certain class members are not parties to such actions.

4 53. The conduct of Kenneth Cole is generally applicable to the Class as a whole and
 5 Plaintiffs seek, *inter alia*, equitable remedies with respect to the Class as a whole. As such, the
 6 systematic policies and practices of Kenneth Cole make declaratory appropriate.

7 **COUNT I**

8 **(Violation of the “Unfair” Prong of the UCL)**

9 54. Plaintiffs incorporate and reallege by reference each and every allegation contained in
 10 paragraphs 1-53 as if fully set forth herein.

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

14 56. A business act or practice is “unfair” under the UCL if the reasons, justifications and
 15 motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.

16 57. Kenneth Cole has violated the “unfair” prong of the UCL by representing a false and
 17 misleading “MSRP” and corresponding “OUR PRICE” representation for goods exclusively
 18 manufactured for sale at Kenneth Cole Outlets. As a result, the inflated “MSRP” and corresponding
 19 “OUR PRICE” was nothing more than a false, misleading and deceptive illusion of a discount.

20 58. These acts and practices are unfair because they caused Plaintiffs, and are likely to
 21 cause consumers, to falsely believe that Kenneth Cole Outlet is offering value, discounts or bargains
 22 from the prevailing market worth of the products sold that did not, in fact, exist. As a result,
 23 purchasers, including Plaintiffs, reasonably perceived that they were receiving products that
 24 regularly or were intended to be sold at substantially higher prices (and were, therefore, worth more)
 25 than what they paid. This perception has induced reasonable purchasers, including Plaintiffs, to buy
 26 such products, which they otherwise would not have purchased.

1 65. Kenneth Cole deceived consumers into believing that it was offering value, discounts
2 or bargains at Kenneth Cole Outlets from the prevailing market value, real suggested price or worth
3 of the products sold that did not, in fact, exist.

4 66. As a result, purchasers, including Plaintiffs, reasonably perceived that they were
5 receiving products that were worth more than what they paid. This perception induced reasonable
6 purchasers, including Plaintiffs, to buy such products from Kenneth Cole Outlets, which they
7 otherwise would not have purchased.

8 67. Kenneth Cole's acts and practices as described herein have deceived Plaintiffs and
9 were highly likely to deceive members of the consuming public. Specifically, in deciding to
10 purchase merchandise from a Kenneth Cole Outlet store, Plaintiffs relied on Kenneth Cole's
11 misleading and deceptive representations regarding its "MSRP" and "OUR PRICE" price tags. Each
12 of these factors played a substantial role in Plaintiffs' decision to purchase those products, and
13 Plaintiffs would not have purchased those items in the absence of Kenneth Cole's
14 misrepresentations. Accordingly, Plaintiffs suffered monetary loss as a direct result of Kenneth
15 Cole's pricing practices described herein.

16 68. As a result of the conduct described above, Kenneth Cole has been unjustly enriched
17 at the expense of Plaintiffs and members of the proposed Class. Specifically, Kenneth Cole has been
18 unjustly enriched by obtaining revenues and profits that it would not otherwise have obtained absent
19 its false, misleading and deceptive conduct.

20 69. Through its unfair acts and practices, Kenneth Cole has improperly obtained money
21 from Plaintiffs and the Class. As such, Plaintiffs request that this court cause Kenneth Cole to
22 restore this money to Plaintiff sand all Class members, and to enjoin Kenneth Cole from continuing
23 to violate the UCL as discussed herein and/or from violating the UCL in the future. Otherwise,
24 Plaintiffs and the Classes may be irreparably harmed and/or denied an effective and complete
25 remedy if such an order is not granted.

COUNT III

(Violation of the “Unlawful” Prong of the UCL)

70. Plaintiffs incorporate and reallege by reference each and every allegation contained in paragraphs 1-53 as if fully set forth herein.

71. 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. & Pro. Code § 17200.

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

73. California statutory and regulatory law also expressly prohibits false former pricing schemes. *Business & Professions Code* § 17501, entitled “*Value determinations; Former price advertisements*,” states:

For the purpose of this article the worth or value of anything advertised is the prevailing market price, wholesale if the offer is at wholesale, retail if the offer 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.]

Id.

74. *Civil Code* § 1770, subsection (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.”

75. Kenneth Cole also violated and continues to violate *Business & Professions Code* § 17501, and *Civil Code* § 1770, sections (a)(9) and (a)(13) by advertising false discounts from purported former prices that were, in fact, not the prevailing market prices within three months next preceding the publication and dissemination of advertisements containing the false former prices.

76. Further, the FTCA prohibits “unfair or deceptive acts or practices in or affecting commerce” and specifically prohibits false advertisements. (15 U.S.C. § 45(a)(1) and 15 U.S.C. § 52(a)). The FTC has established Guidelines which prohibit false pricing schemes, similar to Kenneth Cole’s MSRP/OUR PRICE Scheme in material respects, as deceptive practices that would violate the FTCA:

- (a) Many members of the purchasing public believe that a manufacturer’s list price, or suggested retail price, is the price at which an article is generally sold. Therefore, if a reduction from this price is advertised, many people will believe that they are being offered a genuine bargain. To the extent that list or suggested retail prices do not in fact correspond to prices at which a substantial number of sales of the article in question are made, the advertisement of a reduction may mislead the consumer. 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.
- (b) It bears repeating that the manufacturer, distributor or retailer must in every case act honestly and in good faith in advertising a list price, and not with the intention of establishing a basis, or creating an instrumentality, for a deceptive comparison in any local or other trade area. For instance, a manufacturer may not affix price tickets containing inflated prices as an accommodation to particular retailers who intend to use such prices as the basis for advertising fictitious price reductions.

16 C.F.R. § 233.3.

77. Kenneth Cole’s use of and reference to a materially false “MSRP” in connection with its marketing and advertisements concerning the merchandise sold at Kenneth Cole Outlets violated and continues to violate the FTCA, 15 U.S.C. § 45(a)(1) and 15 U.S.C. § 52(a), as well as FTC Guidelines published at 16 C.F.R. § 233.

78. As a result of the conduct described above, Kenneth Cole has been unjustly enriched at the expense of Plaintiffs and members of the proposed Class. Specifically, Kenneth Cole has been unjustly enriched by obtaining revenues and profits that it would not otherwise have obtained absent its false, misleading and deceptive conduct.

79. Through its unlawful acts and practices, Kenneth Cole has improperly obtained money from Plaintiffs and the Class. As such, Plaintiffs request that this court cause Kenneth Cole to

1 restore this money to Plaintiffs and all Class members, and to enjoin Kenneth Cole from continuing
 2 to violate the UCL as discussed herein and/or from violating the UCL in the future. Otherwise,
 3 Plaintiffs and the Classes may be irreparably harmed and/or denied an effective and complete
 4 remedy if such an order is not granted.

5 **COUNT IV**

6 **(Violation of the California False Advertising Law,**

7 **California Business & Professions Code Section 17500, *et seq.*)**

8 80. Plaintiffs incorporate and reallege by reference each and every allegation contained in
 9 paragraphs 1-53 as if fully set forth herein.

10 81. California's *Business and Professions Code* § 17500, *et seq.* prohibits unfair,
 11 deceptive, untrue, or misleading advertising, including, but not limited to, false statements as to
 12 worth, value and former price.

13 82. Kenneth Cole's practice of advertising "MSRP's" on exclusive, made for Kenneth
 14 Cole Outlets merchandise, which were materially greater than the actual prices of those products was
 15 an unfair, deceptive and misleading advertising practice because it gave the false impression that the
 16 products sold at Kenneth Cole Outlets were worth more than they actually were. In fact, the
 17 exclusive, made for Kenneth Cole Outlet merchandise did not sell for a price anywhere close to the
 18 "MSRP" advertised because the merchandise was always sold for, or discounted further from, the
 19 OUR PRICE representation on the price tag when placed on sale at the Kenneth Cole Outlets.

20 83. Through its unfair acts and practices, Kenneth Cole has improperly obtained money
 21 from Plaintiffs and the Class. As such, Plaintiffs request that this court cause Kenneth Cole to
 22 restore this money to Plaintiffs and all Class members, and to enjoin Kenneth Cole from continuing
 23 to violate the FAL as discussed herein and/or from violating the FAL in the future. Otherwise,
 24 Plaintiffs and the Classes may be irreparably harmed and/or denied an effective and complete
 25 remedy if such an order is not granted.

COUNT V

**(Violation of the Consumers Legal Remedies Act,
California Civil Code Section 1750, *et seq.*)**

84. Plaintiffs incorporate and reallege by reference each and every allegation contained in paragraphs 1-53 as if fully set forth herein.

85. This cause of action is brought pursuant to the CLRA.

86. Plaintiffs and each member of the proposed class are “consumers” within the meaning of California Civil Code § 1761(d).

87. Kenneth Cole’s selling of goods manufactured exclusively for sale at Kenneth Cole Outlets to Plaintiffs and the Class were “transactions” within the meaning of California *Civil Code* § 1761(e). The products purchased by Plaintiffs and the Class are “goods” within the meaning of California Civil Code §1761(a).

88. As described herein, Kenneth Cole violated the CLRA by falsely representing the nature, existence and amount of price discounts by fabricating inflated “MSRP’s” on price tags. Such a pricing scheme is in violation of Cal. Civ. Code § 1770, subsection (a)(9) (“[a]dvertising goods or services with intent not to sell them as advertised”) and subsection (a)(13) (“[m]aking false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions”).

89. Plaintiffs relied on Kenneth Cole’s false representations in deciding to purchase goods at a Kenneth Cole Outlet. Plaintiffs would not have purchased such items absent Kenneth Cole’s unlawful conduct.

90. On June 30, 2015, counsel for Plaintiffs provided proper notice of her intent to pursue claims under the CLRA and an opportunity to cure to Defendants via certified mail to the store where the purchase occurred at Kenneth Cole, 990 Camarillo Center Drive, Space 1016, Camarillo, California 93010. The domestic return receipt indicates the letter was delivered and signed-for on July 6, 2015; Plaintiffs understand that Defendant denies the claims contained in the letter.

1 Defendant's deception, Plaintiffs and members of the Classes were not receiving a product of the
 2 quality, nature, fitness, or value that had been represented by Defendant and reasonable consumers
 3 would have expected.

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

10 98. Retaining the non-gratuitous benefits conferred upon Defendant by Plaintiffs and
 11 members of the Classes under these circumstances made Defendant's retention of the non-gratuitous
 12 benefits unjust and inequitable. Thus, Defendant must pay restitution to Plaintiffs and members of
 13 the Classes for unjust enrichment, as ordered by the Court.

14 **COUNT VII**

15 **(Violations of the Consumer Fraud Laws on Behalf of** 16 **Classes in the States with Similar Laws)**

17 99. Plaintiffs incorporate and reallege by reference each and every allegation contained in
 18 paragraphs 1-53 as if fully set forth herein.

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

22 101. Plaintiffs and each of the other members of the Classes are consumers, purchasers, or
 23 other persons entitled to the protection of the consumer protection laws of the state in which they
 24 purchased Kenneth Cole Outlet Products.

25 102. The consumer protection laws of the state in which Plaintiffs and the other members
 26 of the Classes purchased Kenneth Cole Outlet Products declare that unfair or deceptive acts or
 27 practices, in the conduct of trade or commerce, are unlawful.

1 103. Forty states and the District of Columbia have enacted statutes designed to protect
 2 consumers against unfair, deceptive, fraudulent, and unconscionable trade and business practices and
 3 false advertising that allow consumers to bring private and/or class actions. These statutes are found
 4 at:

- 5 a. Alabama Deceptive Trade Practices Act, Ala. Code §8-19-1 *et seq.*
- 6 b. Alaska Unfair Trade Practices and Consumer Protection Act, Alaska Code
 §45.50.471 *et seq.*;
- 7 c. Arkansas Deceptive Trade Practices Act, Ark. Code Ann. §4-88-101 *et seq.*;
- 8 d. California Consumers Legal Remedies Act, Cal. Civ. Code §1750 *et seq.*, and
 California's Unfair Competition Law, Cal. Bus. & Prof. Code §17200 *et seq.*;
- 9 e. Colorado Consumer Protection Act, Colo. Rev. Stat. §6-1-101 *et seq.*;
- 10 f. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. §42-110a *et seq.*;
- 11 g. Delaware Deceptive Trade Practices Act, Del. Code tit. 6§2511 *et seq.*;
- 12 h. District of Columbia Consumer Protection Procedures Act, D.C. Code §28 3901 *et*
seq.;
- 13 i. Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. §501.201 *et seq.*;
- 14 j. Georgia Fair Business Practices Act, Ga. Code Ann. §10-1-390 *et seq.*;
- 15 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.*;
- 16 l. Idaho Consumer Protection Act, Idaho Code Ann. §48-601 *et seq.*;
- 17 m. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat.
 Ann. 505/1 *et seq.*;
- 18 n. Kansas Consumer Protection Act, Kan. Stat. Ann. §50 626 *et seq.*;
- 19 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.*;
- 20 p. Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann.
 §51:1401 *et seq.*;
- 21 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.*;
- 22 r. Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch 93A;
- 23 s. Michigan Consumer Protection Act, Mich. Comp. Laws §445.901 *et seq.*;
- 24 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.*;
- 25 u. Mississippi Consumer Protection Act, Miss. Code Ann. §§75-24-1 *et seq.*;
- 26 v. Missouri Merchandising Practices Act, Mo. Rev. Stat. §407.010 *et seq.*;
- 27 w. Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code Ann.
 §30-14-101 *et seq.*;
- 28 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. Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen. Laws §6-13.1-1 *et seq.*; South Carolina Unfair Trade Practices Act, S.C. Code Ann. §39-5-10 *et seq.*;
- ii. South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws §§37 24 1 *et seq.*;
- jj. Tennessee Consumer Protection Act, Tenn. Code Ann. §47-18-101 *et seq.*;
- kk. Vermont Consumer Fraud Act, Vt. Stat. Ann. tit. 9, §2451 *et seq.*;
- ll. Washington Consumer Fraud Act, Wash. Rev. Code §19.86.010 *et seq.*;
- mm. West Virginia Consumer Credit and Protection Act, West Virginia Code §46A-6-101 *et seq.*; and
- nn. Wisconsin Deceptive Trade Practices Act, Wis. Stat. §100.18 *et seq.*

104. Defendant's merchandise constitutes products to which these consumer protection laws apply.

105. In the conduct of trade or commerce regarding the pricing, advertising, marketing, and sale of their merchandise, Defendant 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 their merchandise that it was, among other things, being offered at a discount, as described herein.

106. Defendant's representations and omissions were false, untrue, misleading, deceptive, and/or likely to deceive.

107. Defendant knew, or should have known, that its representations and omissions were false, untrue, misleading, deceptive, and/or likely to deceive.

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

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

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

111. Plaintiffs and the other members of the Classes would not have purchased Kenneth Cole Outlet Products but for Defendant's deceptive and unlawful acts.

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

113. Defendant's conduct showed complete indifference to, or conscious disregard for, the rights and safety 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.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the members of the Class demand a jury trial on all claims so triable and judgment against Defendant Kenneth Cole as follows:

A. An order certifying that this action may be maintained as a class action, that Plaintiffs be appointed Class Representative and Plaintiffs' counsel be appointed Class Counsel;

B. A judgment awarding Plaintiffs and all members of the Class restitution and/or other equitable relief, including, without limitation, restitutionary disgorgement of all profits and unjust enrichment that Defendant obtained from Plaintiffs and the Class as a result of its unlawful, unfair and fraudulent business practices described herein;

C. An order enjoining Defendant from continuing to violate the UCL, False Advertising Law and CLRA as described herein.

D. A judgment awarding Plaintiffs their costs of suit; including reasonable attorneys' fees pursuant to California Civil Code § 1780(d), Code of Civil Procedure § 1021.5 and as otherwise permitted by statute; and pre and post-judgment interest;

E. An order awarding Plaintiffs and the proposed Class members damages;

F. An order awarding restitution and disgorgement of all profits and unjust enrichment that Defendant obtained from Plaintiffs and the Class members as a result of its unlawful, unfair and fraudulent business practices described herein; and

G. Such other and further relief as may be deemed necessary or appropriate.

1 Dated: January 21, 2016

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JURY TRIAL DEMANDED

27 PLAINTIFFS demand a jury trial on all triable issues.

28 Dated: January 21, 2016

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