

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

LIANNA KABBASH, on behalf of herself
and all others similarly situated,

Plaintiff,

Case No. A-16-CA-212-SS

vs.

THE JEWELRY CHANNEL, INC. USA
d/b/a LIQUIDATION CHANNEL,

Defendant.

FIRST AMENDED COMPLAINT

Plaintiff brings this class action for damages, injunctive relief, disgorgement of profits, restitution, and costs of suit, on behalf of herself and all others similarly situated. The allegations below are based on Plaintiff's personal knowledge as to her own acts and status, and otherwise based on information and belief.

NATURE OF THE ACTION

1. This is a consumer class action against The Jewelry Channel, Inc. USA d/b/a The Liquidation Channel ("LC") for falsely advertising price discounts for its items. In its direct marketing to consumers via television, its website, print and other advertising, LC advertises false former prices, false price discounts, and false retail values for its items. In one prominent practice, LC misrepresents the nature and amount of item discounts by purporting to offer specific dollar discounts from expressly referenced "estimated retail value" ("ERV"); these discounts are false, however, because the referenced ERVs are fabricated and inflated and do not represent an accurate retail price or value for the item. As a result of LC's false price advertising schemes, consumers end up paying more than they bargained for because they do not receive the actual value of the merchandise LC promises them.

2. LC's false price advertising scheme is pervasive across all its product lines and, indeed the heart of its marketing plan is to deceive the public by claiming that it consistently offers significantly lower prices than its competitors.

3. One unlawful marketing tool LC uses to bolster its low price reputation is known as a retail price comparison, and it works in this fashion: (1) first, LC displays the ERV of an item on the television channel and/or its website, which is represented as the item's normal retail price with that retail price struck-through (*e.g.* "Estimated Retail Value: ~~\$139.99~~"); (2) second, it displays the item's sale price in contrasting font (*e.g.* "Price: \$9.99"); and (3) third, LC lists the amount "saved" by highlighting the dollars saved with the percentage of cost savings represented (*e.g.* "You Save: \$130.00 (93%)").

4. The amount of savings advertised by LC is illusory and grossly overstated, because the ERV used to calculate the purported savings is *not* the prevailing fair market value of the same item from one of LC's competitors or the price charged by LC for the subject item in the normal course of its business. Simply stated, LC fabricates an unsupported ERV for the item and uses it to create the illusion of significant price discrepancy with the sale price to give the impression of considerable savings for its customers. Had Plaintiff and members of the Classes known that LC's purported discounts were illusory, overstated and manipulative, they would not have purchased their items from LC or would have paid significantly less for them.

THE PARTIES

5. Plaintiff Lianna Kabbash is an individual residing in Long Beach, California. Between November 21, 2014, and November 30, 2014, Ms. Kabbash purchased approximately 15 items from LC with a total sales price value (*i.e.* the aggregate amount Ms. Kabbash paid LC for the items) of approximately \$522.40. The discount touted by LC on Ms. Kabbash's purchases was illusory because the actual market value for the items she purchased was considerably less than the deceptive ERV used to induce Ms. Kabbash to make her purchases. Accordingly, LC was disingenuous in representing to Ms. Kabbash that she was receiving a substantial discount by purchasing these items from LC.

6. Defendant, The Jewelry Channel, Inc. USA d/b/a The Liquidation Channel, is a

corporation maintaining its principal place of business at 100 Michael Angelo Way, Suite 400D, Austin, Texas 78728. LC operates a web-based home shopping network, selling jewelry, gemstones, and related items under the name LIQUIDATIONCHANNEL.COM, and a television-based home shopping network, selling jewelry, gemstones and related items under the name The Liquidation Channel, doing business throughout the United States. LC's television programming is available in approximately 85 million homes throughout the United States.

JURISDICTION AND VENUE

7. The Court has jurisdiction of the claims alleged herein pursuant to 28 U.S.C. § 1332(d) because the amount in controversy for the class exceeds \$5,000,000, exclusive of interest and costs, and there are members of the proposed Classes who are not citizens of Texas, LC's state of citizenship, including Plaintiff Kabbash.

8. This Court has personal jurisdiction over LC because a substantial portion of the wrongdoing alleged in this Complaint took place in California, LC is authorized to do business in California, LC has sufficient minimum contacts with California, and/or LC otherwise intentionally avails itself of the markets in California through the promotion, marketing and sale of its items, to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District. Plaintiff Lianna Kabbash resides in Los Angeles County and thus a substantial part of the events or omissions which give rise to the asserted claims occurred in Los Angeles County.

FACTUAL ALLEGATIONS

A. Background

10. The Liquidation Channel was launched on December 1, 2008, as a re-branding of The Jewelry Channel, Inc. In 2012, the Liquidation Channel underwent a second re-branding and began referring to itself as simply "LC." In recent years, LC has experienced rapid growth. It boasts on its website that "[f]or the past five consecutive years, the company has seen high double-

digit sales increases and even more dramatic profitability increases.” It promotes itself and its products with the tagline, “Exceptional Quality, Exquisite Designs, and Outstanding Value.”

11. LC advertises and sells jewelry and accessories to customers—which LC refers to as “family members”—through its website and its own home-shopping television channel. LC’s television channel is on the air 24 hours a day, 7 days a week, and reaches 120 million households in the United States, Puerto Rico, and parts of Canada.





12. LC’s business model depends on consumers believing that they are getting an unprecedented bargain that they will not find anywhere else. LC’s website regularly informs viewers that they will receive savings of 80 percent or more on LC’s advertised products, and the hosts of its television channel repeatedly emphasize the incredible savings customers are receiving.

B. LC’s Website Marketing


13. LC’s website organizes its inventory by category, such as “jewelry,” “accessories,” and “mens,” and further subdivides these general groupings into smaller ones that enable the customer to search by type, style, and price. By clicking on the “jewelry” tab, for example, a customer can search for “earrings,” “neckware,” and “bracelets” and also search “by gemstone,” or based on the amount of money they are willing to spend.

14. All of LC’s products on its website are advertised according to a standard formula.

15. When a customer first selects a category, such as “earrings,” LC generates one or more webpages showcasing its inventory of earrings. Photographs and general descriptions of each jewelry item are organized in rows of four. Central to LC’s marketing presentation is an eye-catching bolded box that announces how much of the “Estimated Retail Value” the customer will save by purchasing the earrings through LC. LC first lists the “Estimated Retail Value in black type with the dollar figure crossed out, like this: “Est. Ret. Val.: \$139.99.” Immediately below that, LC lists in slightly larger, blue type, its price, like so: “LC Price: \$9.99.” And immediately next to this information is a bolded black or red box touting the percentage savings the customer will receive. For example, an ordinary search for “earrings” returns the following among its results:

 <p>White Howlite, Austrian Crystal Earrings and Necklace (18-20 in) in Silvertone and Stainless Steel TGW 26.000 cts.</p> <p>Est. Ret. Val.: \$139.99 LC Price: \$9.99</p> <div style="border: 1px solid black; padding: 2px; display: inline-block;">You Save: 93%</div> <p>ADD TO CART </p>	 <p>White Glass, White Crystal Earrings and Necklace (18-20 in) in Goldtone and ION Plated YG Stainless Steel TGW 0.004 cts.</p> <p>Est. Ret. Val.: \$120.99 LC Price: \$12.99</p> <div style="border: 1px solid black; padding: 2px; display: inline-block;">You Save: 91%</div> <p>ADD TO CART </p>
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16. If the customer clicks on a product generated from the initial search, she will be able to view the product from different perspectives and receive more information about it. LC displays a picture of the selected item on the left-hand-side of the screen. On the right, LC gives the name and a brief description of the product. Below that, it again lists the “Est. Ret. Val.” in crossed-out numbering and the “LC Price” in blue lettering. To the right of the “Est. Ret. Val.” and “LC Price” is another box highlighting the percentage savings that the “LC Price” represents relative to the “Est. Ret. Val.” This is often 80 percent or more. So, for example, a product described as “White Howlite, Austrian Crystal Earrings and Necklace (18-20 in) in Silvertone and Stainless Steel TGW 26.000 cts.” was recently advertised on LC’s website as having an “Est. Ret. Val.” of \$139.99 and an “LC Price” of \$9.99, representing a savings to the buyer of 93 percent. A customer who selected this product by clicking on it would be directed to a webpage appearing like this:




White Howlite, Austrian Crystal Earrings and Necklace (18-20 in) in Silvertone and Stainless Steel TGW 26.000 cts.

In Stock 1832437

Est. Ret. Val.: ~~\$139.99~~
LC Price: \$9.99

You Save:
93%

Quantity: ▼

ADD TO CART 

Estimated Delivery Date: May 27 - May 29
 Ships to US & Canada


Not letting you follow the fashion trail, you will create new trend when you accessorize with this white howlite and Austrian crystal necklace and earrings set. Accentuating your look, this necklace and earrings set fashioned in silvertone and stainless steel will escalate your style with ease.

Learn more about our [Gemstones](#).
 Learn more about our [Gemstones Treatments](#).

17. When an online customer places an item for purchase in her virtual shopping cart, the next screen lists an “order summary” that shows the subtotal, shipping charges, any taxes or discounts, and then the total cost. Below the total cost, in red letters, is a statement telling the buyer how much he or she saved on the purchase. For instance, a customer who purchased the earrings and necklace described above would receive a notice in her order summary, exclaiming, “You saved **\$130.00** today!” with the dollar figure in bold type, as seen below:

Shopping Cart | Payment & Order | Order Confirmation

DHL - DHL Global Mail Estimated Delivery Date: May 25 - May 27

Details	Quantity	Price	Shipping	Item Subtotal
 <p>1832437 White Howlite, Austrian Crystal Earrings and Necklace (18-20 in) in Silvertone and Stainless Steel TGW 26.000 cts.</p>	1	\$9.99	\$2.99	\$9.99

Promo Code ▲

Store Credit ▲

Order Summary

Subtotal	\$9.99
Shipping Total	\$2.99
Tax*	\$0.00
Discount	-\$0.00
Total	\$12.98

You saved **\$130.00** today!

*8.25% tax applies for Texas residents only.

CHECKOUT

18. Each of the products on LC’s website is advertised according to this uniform template. Each product has an advertised “Est. Ret. Val.” and “LC Price” with the former being dramatically higher than the latter. Each advertised product is also accompanied by a “You Save” emphasizing the percentage discount that the “LC Price” represents in relation to the “Est. Ret. Val.” Indeed, LC emphasizes the percentage savings to the customer at least three times before she completes a purchase transaction: (1) on the screen that first generates a list of search results,

(2) on the screen that showcases a selected product of interest, and (3) on the order summary screen.

C. LC's Television Advertising

19. LC also operates a television channel that broadcasts 24 hours a day, 7 days a week. A rotating cast of hosts display LC's jewelry and other products and tout their features. Most of all, the hosts are responsible for repeatedly hyping the unparalleled bargain the customer will receive by purchasing whatever the LC product of the moment is. When featuring an article of jewelry, for example, the hosts frequently express disbelief that anyone could acquire such a unique and beautiful piece at such an extraordinarily low price.

20. LC's television programming focuses on a single item of jewelry or other product at any particular time. Just like on the website, LC displays the estimated retail value, the LC price, and the savings information in a way that naturally stands out to viewers.

21. To reach the price at which LC sells its products through its home-shopping channel, LC conducts a "drop auction." In a typical auction, potential buyers bid on the item raising its price until the time period expires. The buyer with the highest bid wins the item. LC's drop auction works in the opposite way. While the item is featured on LC's TV programming, its price steadily declines. At the same time, the LC host expresses astonishment at the falling price and reinforces the message that viewers will reap tremendous value by purchasing the product at its deeply discounted LC price.

22. LC's television advertising uses the terms "Estimated Retail Value" and "start price." As the price continues to fall through the drop auction, customers are provided with the false impression that they are receiving a deal compared to the item's normal pricing on the open market.

23. For any given item, LC's ERV and start price are the same and bear no relation to the prevailing market value of its items. LC's ERV and start price do not accurately represent the price at which the jewelry or product is sold at any market location for any period of time.

24. As LC advertises the amount of the discount as both a total dollar number and as a percentage of the ERV displayed, it behooves LC to make the ERV as large as possible, to create

the appearance of vast savings. Accordingly, LC consistently misinforms its consumers regarding the most material disclosure regarding their transaction, namely, the price.

25. LC's purportedly discounted sales price is in fact not discounted at all, but rather is approximately equal to the true value of the item, although in many cases even the sale price exceeds an item's true value. The discounts promised by LC are false because they are derived based on the fabricated and inflated ERV and starting price, rather than against the true market value for the item. LC's promise to provide a substantial price discount from the false ERV and starting price is an objectively material term of the sales transaction. LC fails to keep its promise to provide true price discounts from realistic ERV, and as a result, consumers do not receive the benefit of the advertised bargains.

D. Federal Trade Commission Guidelines

1. False Estimated Retail Value

26. The Federal Trade Commission describes false retail price schemes involving "suggested retail prices" that operate identically to LC's "estimated retail values," 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.*

* * *

- (d) But this does not mean that all list prices are fictitious and all offers of reductions from list, therefore, deceptive. Typically, a list price is a price at which articles are sold, if not everywhere, then at least in

the principal retail outlets which do not conduct their business on a discount basis. It will not be deemed fictitious if it is the price at which substantial (that is, not isolated or insignificant) sales are made in the advertiser's trade area (the area in which he does business). *Conversely, if the list price is significantly in excess of the highest price at which substantial sales in the trade area are made, there is a clear and serious danger of the consumer being misled by an advertised reduction from this price.*

16 C.F.R § 233.3 (emphasis added).

27. As described above, LC consistently advertises its prices as deeply discounted from false and inflated ERVs. The effect of this practice is to convince consumers that they are receiving a bargain and to thereby induce them to purchase LC's products, when in fact, consumers are not receiving the advertised price reduction at all because the ERV is not an accurate reflection of the true cost of the product in any market.

2. False Retail Price Comparisons

28. Comparative price advertising is normally used throughout the industry to represent to the consumer the value in the difference between the ERV and the sales price, and upon information and belief, LC uses its comparative price advertising for that purpose.

29. LC falsely represents to potential buyers on its website and its television channel that it offers its items at a lower price than other sellers. It uses its false ERV to give the impression that the retail price of an item in the greater marketplace is significantly higher than that offered by LC.

30. Congress has given the Federal Trade Commission regulatory powers to prevent the use of deceptive acts or practices that affect commerce. The Federal Trade Commission has published a series of guidelines on how to identify deceptive practices. Specifically, the Guide Against Deceptive Pricing states in relevant part:

- (a) Another commonly used form of bargain advertising is to offer goods at prices lower than those being charged by others for the same merchandise in the advertiser's trade area (the area in which he does business). This may be done either on a temporary or a permanent basis, *but in either case the advertised higher price must be based upon fact, and not be fictitious or misleading. Whenever an advertiser represents that he is selling below the prices being charged in his area for a particular article, he should be reasonably certain that the higher price he advertises does not appreciably exceed the price at which substantial sales of the article are being made in the area*—that is, a sufficient number of sales so that a consumer would consider a reduction from the price to represent a genuine bargain or saving. Expressed another way, if a number of the principal retail outlets in the area are regularly selling Brand X fountain pens at \$ 10, it is not dishonest for retailer Doe to advertise: “Brand X Pens, Price Elsewhere \$ 10, Our Price \$ 7.50”.
- (b) The following example, however, illustrates a misleading use of this advertising technique. Retailer Doe advertises Brand X pens as having a “Retail Value \$ 15.00, My Price \$ 7.50,” when the fact is that only a few small suburban outlets in the area charge \$15. All of the larger outlets located in and around the main shopping areas charge \$7.50, or slightly more or less. The advertisement here would be deceptive, since the price charged by the small suburban outlets would have no real significance to Doe’s customers, to whom the advertisement of “Retail Value \$ 15.00” would suggest a prevailing, and not merely an isolated and unrepresentative, price in the area in which they shop.

16 C.F.R § 233.2 (emphasis added).

31. LC uses its ERV to give consumers the false impression that they are receiving items of greater actual value than the price they pay when, in fact, the item has a true value that bears no relation to the inflated ERV.

32. LC has no procedure or method of accurately determining the ERV of the items it sells so as to permit comparative price advertising in a manner permissible under the Federal Trade Commission Guides Against Deceptive Pricing, 16 C.F.R. § 233.2.

E. California False Advertising Law

33. By advertising an item's ERV at an artificially high level—one which would not be competitive in the current prevailing market or at which no retailer would ever attempt to sell the item—LC concocts a discount that does not exist. This method of advertising is materially misleading to the average consumer, who is often swayed into purchasing an item by the prospect of a large discount.

34. Both California lawmakers and federal regulators have each sought to prohibit this injurious conduct. California Business & Professional Code, § 17501, specifically states that:

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). The provision of § 17501 differentiates subjective uncertainty from clear illegality. The market price (i.e. market value) at the time of publication of such an advertisement is the price charged in the locality where the advertisement is published. Accordingly, LC can only properly include an ERV for comparative purposes in its advertisements if: (1) the prevailing market price has been researched (in California) and the list price is the average retail market price within the past three months, or (2) it advertises the date on which the published ERV was in effect.

35. LC's ERV for an item is not determined by referencing a "prevailing market price"

within the prior three months. LC instead displays an exaggerated “estimated retail value.” LC also does not state the date on which the ERV was derived. This allows LC to continue to influence sales by using an ERV bearing no relation to the actual prevailing market values.

STATUTE OF LIMITATIONS AND TOLLING

36. LC intentionally concealed and failed to disclose the truth about its representations and false-price advertising scheme for the purpose of inducing Plaintiff and the Class to purchase its products.

37. Plaintiff and the Class reasonably and justifiably acted or relied to their detriment on LC’s failure to disclose, and concealment of, the truth about its false-price advertising scheme in purchasing LC’s products.

38. Any applicable statutes of limitations have been tolled by LC’s knowing and active concealment of the operative facts alleged herein. The nature of LC’s misleading and deceptive pricing scheme is such that Plaintiff and the Class could not reasonably have discovered the true nature of the scheme. Accordingly, LC is estopped from relying on any statutes of limitations defenses in this action.

CLASS ACTION ALLEGATIONS

39. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23, on behalf of herself and a proposed nationwide class initially defined as:

Nationwide Class:

All persons who, while in the United States, purchased an item from LC for personal, family, or household use.

40. In the alternative, Plaintiff Kabbash seeks to represent the following state class:

California Class:

All persons who, while in California, purchased an item from LC for personal, family, or household use.

41. Excluded from the proposed classes are: (1) LC and its subsidiaries, affiliates, officers, and directors; (2) any entity in which LC or any other excluded entity has a controlling interest; (3) LC's legal representatives, predecessors, successors, assigns, and employees; and (4) the judge and staff to whom this case is assigned, and any member of the judge's immediate family.

42. **Numerosity under Fed. R. Civ. P. 23(a)(1).** The members of the proposed classes are so numerous that individual joinder of all its members is impracticable. Plaintiff is informed and believe that there are thousands, if not millions, of customers throughout the United States that have been damaged by LC's false and misleading advertising practices.

43. **Commonality under Fed. R. Civ. P. 23(a)(2).** This action involves common questions of law and fact, including, but not limited to, the following:

- (a) Whether LC falsely advertises sales price discounts from fictitious and inflated ERVs;
- (b) Whether LC breached its promises to provide price discounts;
- (c) Whether LC's use of advertising and other representations constitutes false advertising;
- (d) Whether LC engaged in unfair, unlawful, or fraudulent business practices;
- (e) Whether LC failed to disclose material facts about item pricing and discounts;
- (f) Whether LC has made false or misleading statements of fact concerning reasons for, existence of, or amounts of alleged price reductions;
- (g) Whether LC's conduct is intentional and knowing; and
- (h) Whether Plaintiff and proposed class members are entitled to compensatory damages, punitive damages, restitution, disgorgement of profits, or injunctive relief.

44. **Typicality under Fed. R. Civ. P. 23(a)(3).** The named Plaintiff's claims are typical of (and not antagonistic to) the claims of the members of the proposed classes. Plaintiff

and the proposed class members have all been deceived and damaged by LC's illegal practices.

45. **Adequacy of Representation under Fed. R. Civ. P. 23(a)(4).** Plaintiff's interests do not conflict with the interests of the class members of they seek to represent. Plaintiff has retained counsel competent and experienced in complex class action litigation and intends to prosecute this action vigorously.

46. **The Proposed Classes Can Be Properly Maintained under Fed. R. Civ. P. 23(b)(2) and (c).** LC has acted or refused to act on grounds generally applicable to members of the proposed classes, thereby making appropriate final injunctive relief with respect to the classes as a whole.

47. **The Proposed Classes Can Be Properly Maintained under Fed. R. Civ. P. 23(b)(3) and (c).** This proposed classes may be certified under Rule 23(b)(3) because common questions predominate over any individualized questions and because a class action is superior to other available methods for the fair and efficient adjudication of this controversy. Individual litigation of the claims of all proposed class members is impracticable because the cost of litigation would be prohibitively expensive for each individual and would impose an immense burden upon the courts. In addition, individualized litigation also presents the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, a class action presents fewer management difficulties and provides the benefits of a single adjudication, economies of scale, and comprehensive supervision by a single court.

FIRST CAUSE OF ACTION

(Negligent Misrepresentation)

(Plaintiff and the Nationwide Class)

48. Plaintiff realleges and incorporates, as if fully alleged herein, each of the allegations contained in the preceding paragraphs of this Complaint, and further allege as follows.

49. LC has made material misrepresentations of fact concerning the existence and/or nature of its alleged price discounts by representing that consumers were receiving a price discount from a referenced ERV of its items, when LC in fact inflated the purported ERV such that the

promised discount was false.

50. LC had no reasonable grounds for believing that its misrepresentations were true.

51. LC's false advertising focuses reasonable consumers' attention on representations of price discounts and other savings or bargains from falsely represented ERVs. At times, LC also tries to create a sense of urgency regarding potential purchases by advertising that the purported discounts are available only for limited time periods, thereby giving the false impression that consumers will miss out on the purported discounts if they do not buy the items immediately.

52. LC either knew or should have known that Plaintiff and members of the proposed Nationwide Class would rely on the false representations and purchase LC's items.

53. LC's false representations of discounts from ERV are objectively material to reasonable consumers, and therefore reliance upon such representations may be presumed as a matter of law.

54. Plaintiff and members of the proposed Nationwide Class reasonably relied to their detriment on LC's false representations, which caused them to purchase items from LC.

55. As a proximate result of LC's negligent misrepresentations, Plaintiff and members of the proposed Nationwide Class have been damaged.

SECOND CAUSE OF ACTION

(Intentional Misrepresentation)

(Plaintiff and the Nationwide Class)

56. Plaintiff, realleges and incorporates, as if fully alleged herein, each of the allegations contained in the preceding paragraphs of this Complaint, and further allege as follows.

57. LC has intentionally made material misrepresentations of fact concerning the existence or nature of its alleged price discounts by representing that consumers were receiving a price discount from a referenced ERV of its items, where LC in fact inflated the purported ERV such that the promised discount was false.

58. LC knew that the intentional misrepresentations alleged herein were false at the time LC made them.

59. LC intended that Plaintiff and members of the proposed Nationwide Class would

rely on the false representations and purchase LC's items.

60. LC's false representations of discounts from its ERV are objectively material to reasonable consumers, and therefore reliance upon such representations may be presumed as a matter of law.

61. Plaintiff and members of the proposed Nationwide Class reasonably relied to their detriment on LC's intentional misrepresentations.

62. LC's intentional misrepresentations were a substantial factor in causing plaintiff and members of the proposed Nationwide Class to purchase items from LC and to suffer damages.

63. LC has acted with "malice" by engaging in conduct that was and is intended by LC to cause injury to the Plaintiff and the members of the proposed Nationwide Class.

64. LC has committed "fraud" through its intentional misrepresentations, deceit, and/or concealment of material facts known to LC with the intent to cause injury to the purchasers of its items.

65. As a proximate result of LC's intentional misrepresentations, Plaintiff and members of the proposed Nationwide Class suffered an ascertainable loss and are entitled to relief and compensatory and punitive damages, in an amount to be determined at trial.

THIRD CAUSE OF ACTION

(Unjust Enrichment)

(Plaintiff and the Nationwide Class)

66. Plaintiff, realleges and incorporates, as if fully alleged herein, each of the allegations contained in the preceding paragraphs of this Complaint, and further allege as follows.

67. By its improper and wrongful conduct described herein, including its deceptive, misleading, and unlawful advertising, LC was unjustly enriched at the expense of Plaintiff and the members of the proposed Nationwide Class.

68. It would be inequitable for LC to retain the profits, benefits, and other compensation it obtained from its deceptive, misleading, and unlawful advertising.

69. Plaintiff, on behalf of herself and the members of the proposed Nationwide Class, is entitled to the imposition of a constructive trust upon all profits, benefits, and other

compensation obtained by LC from its deceptive, misleading and unlawful acts.

FOURTH CAUSE OF ACTION

(Violation of California's False Advertising Law,

Cal. Bus. & Prof. Code §§ 17500, *et seq.*)

(Plaintiff Kabbash and the California Class)

70. Plaintiff Kabbash, realleges and incorporates, as if fully alleged herein, each of the allegations contained in the preceding paragraphs of this Complaint, and further alleges as follows.

71. California Business and Professional Code, § 17501, states that:

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.

For the purpose of California Business and Professional Code, § 17501, the retail market price at the time of publication of such advertisement is the retail price in locality wherein the advertisement is published.

72. At all material times, LC engaged in a scheme of advertising that its items were subject to a discount when such discounts were illusory and did not reflect the "prevailing marketing price" (i.e. ERV) of the item for a particular time period in a particular location or even the price at which any similar seller would offer the item.

73. At all material times, LC did not include the date on which its ERV was established.

74. LC's advertisement of an inflated ERV misrepresented and/or omitted the true nature of LC's pricing. These advertisements were made to consumers located within the State of California, and come within the definition of advertising as contained in California Business and Professional Code, §§ 17500, *et seq.*, in that they were intended as inducements to purchase items from LC and are statements disseminated by LC to Plaintiff Kabbash and the members of the

proposed California Class. In the exercise of reasonable care, LC should have known that the statements regarding its pricing were false, misleading, deceptive and violated California law.

75. LC has prepared and disseminated information and advertising within the State of California, via its website and television channel, that its items were subject to substantial discounts. Plaintiff Kabbash necessarily and reasonably relied on LC's statements regarding the pricing of its items, and all members of the proposed California Class were exposed to such statements. Plaintiff Kabbash and the members of the proposed California Class were among the intended targets of LC's misrepresentations.

76. LC disseminated misleading and deceptive statements throughout the State of California and including Plaintiff Kabbash and members of the proposed California Class, which were and are likely to deceive reasonable consumers by obfuscating the true nature of LC's discounts, thus violating of California Business and Professional Code, §§ 17500, *et seq.*

77. Plaintiff Kabbash and the members of the proposed California Class who purchased items from LC suffered substantial injury. Had Plaintiff Kabbash and members of the proposed California Class known that LC's materials, advertisement and other inducements misrepresented or omitted the true nature of LC's discounts, they would not have purchased items from LC or would have paid less for them.

78. Plaintiff Kabbash, on behalf of herself and all other similarly situated California consumers, also seek injunctive relief prohibiting LC from continuing the unlawful practices alleged herein, directing LC to make corrective notices both on its website and in other appropriate media, allowing members of the proposed California Class to return any items purchased from LC, at LC's expense, and any other relief deemed proper by the Court.

FIFTH CAUSE OF ACTION

(Violation of the Consumers Legal Remedies Act,

Cal Civ. Code §§ 1750, *et seq.*)

(Plaintiff Kabbash and the California Class)

79. Plaintiff Kabbash, realleges and incorporates, as if fully alleged herein, each of the allegations contained in the preceding paragraphs of this Complaint, and further alleges as follows.

80. LC sells “goods” and “services” as defined by California Civil Code § 1761.

81. LC is a "person" as defined by California Civil Code § 1761(c).

82. Plaintiff Kabbash and the members of the proposed California Class are "consumers" within the meaning of California Civil Code § 1761(d) because they purchased items from LC for personal, family or household use.

83. The sale of the items to Plaintiff Kabbash and the members of the proposed California Class via LC’s website and television channel are “transactions” as defined by California Civil Code § 1761(e).

84. By misrepresenting the ERV and discounts on its items, LC made false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions, in violation of California Civil Code § 1770(a)(13).

85. Plaintiff Kabbash and members of the proposed California Class were harmed as a result of LC’s unfair competition and deceptive acts and practices. Had LC disclosed the true nature of its discounts, Plaintiff and the members of proposed California Class would not have been misled into purchasing items from LC’s website and television channel, or, alternatively, would have paid significantly less for them.

86. Plaintiff Kabbash, on behalf of herself and all other similarly situated California consumers, seeks injunctive relief prohibiting LC from continuing its unlawful practices alleged herein, directing LC to make corrective notices both on its website and in other appropriate media, allowing members of the California Class to return any items purchased from LC, at LC’s expense, and any other relief deemed proper by the Court.

87. Pursuant to the provisions of Cal. Civ. Code § 1782(a), Plaintiff will send a notice letter to LC to provide them with the opportunity to correct their business practices. If LC does not thereafter correct its business practices, Plaintiff will amend (or seek leave to amend) the complaint to add claims for monetary relief, including restitution, actual, and punitive damages under the Consumers Legal Remedies Act.

SIXTH CAUSE OF ACTION

(Violation of California's Unfair Competition Law,

Cal. Bus. & Prof. Code §§ 17200, *et seq.*)

(Plaintiff Kabbash and the California Class)

88. Plaintiff Kabbash, realleges and incorporates, as if fully alleged herein, each of the allegations contained in the preceding paragraphs of this Complaint, and further alleges as follows.

89. LC has violated and continues to violate California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, which prohibits unlawful, unfair, or fraudulent business acts or practices.

90. LC's business acts and practices are unlawful in that they violate California's False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*, the Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(13) (which prohibits making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions), and federal regulations.

91. These acts and practices also constitute fraudulent practices in that they are likely to deceive a reasonable consumer. As more fully described above, LC misleadingly markets and advertises its items as discounted from an ERV, when such discounts are illusory. LC's misleading marketing and advertisements are likely to, and do, deceive reasonable consumers. Plaintiff Kabbash and the members of the proposed California Class were deceived about the nature of LC's pricing, because LC prominently displayed its items as discounted on its website and television channel which consumers must view to purchase LC's items. Had LC disclosed the true nature of its discounts, Plaintiff Kabbash, the members of the proposed California Class, and reasonable consumers would not have purchased items from LC's website, or, alternatively, would have paid significantly less for them.

92. LC's acts and practices also constitute unfair business practices in that:

(a) LC's conduct violates the public policies of California and the federal government, including the policies underlying the Consumers Legal Remedies Act—to protect consumers from unfair or deceptive business practices;

(b) The gravity of harm to Plaintiff Kabbash and the members of the proposed

California Class far outweighs any legitimate utility resulting from LC's deceptive and misleading advertising; and

(c) LC's conduct is immoral, unethical, oppressive, unscrupulous, and substantially injurious to Plaintiff Kabbash and the other members of the proposed California Class.

93. As a direct and proximate result of LC's business practices as alleged above, Plaintiff Kabbash and the members of the proposed California Class have suffered injury in fact and lost money or property, because they purchased and paid for items from LC that they otherwise would not have, or alternatively, would have paid less for. Meanwhile, LC generated more revenue than it otherwise would have, unjustly enriching itself.

94. Plaintiff Kabbash, on behalf of herself and the members of the proposed California Class, seeks injunctive relief prohibiting LC from continuing the unlawful practices alleged herein, directing LC to make corrective notices both on its website and in other appropriate media, allowing the members of the proposed California Class to return any items purchased from LC for full refunds, at LC's expense, and any other relief deemed proper by the Court.

SEVENTH CAUSE OF ACTION

(Negligent Misrepresentation)

(Plaintiff Kabbash and the California Class)

95. Plaintiff Kabbash, realleges and incorporates, as if fully alleged herein, each of the allegations contained in the preceding paragraphs of this Complaint, and further alleges as follows.

96. LC represented to Plaintiff Kabbash and the members of the proposed California Class that items sold on its website and television channel were discounted from an ERV. However, had LC exercised even a minimal amount of diligence, it would have found that the ERV advertised on its website did not reflect the price at which the corresponding item had been recently sold in the relevant market. Additionally, LC failed to regularly update its ERVs to accurately reflect periodic changes in the relevant market value of items it offered for sale. Accordingly, any purported discounts calculated from LC's ERV were overstated or illusory and LC had no reasonable grounds for making any claims regarding its discounted pricing.

97. Under California law, California Business and Professional Code, § 17501, LC is

required to determine whether its ERV accurately reflects the relevant market price for an item advertised on its website or television channel within the past six months or, alternatively, inform its customers on which date the ERV was established. Had LC complied with this statutory duty, it would not have made representations regarding its “discount” pricing and/or reasonably known that such pricing was false and misleading.

98. The price of an item and the existence of any discounts thereon, are material representations on which Plaintiff Kabbash and the members of the proposed California Class reasonably relied. Each LC customer is exposed to LC’s negligent pricing practices. These representations were substantial factors in causing Plaintiff Kabbash and members of the proposed California Class to purchase items from LC and to suffer damages

99. Plaintiff Kabbash and the members of the proposed California Class were harmed by LC’s negligent misrepresentation regarding the nature of its purported discount because they purchased and paid for items from LC that they otherwise would not have, or alternatively, would have paid less for.

EIGHTH CAUSE OF ACTION

(Intentional Misrepresentation)

(Plaintiff Kabbash and the California Class)

100. Plaintiff Kabbash, realleges and incorporates, as if fully alleged herein, each of the allegations contained in the preceding paragraphs of this Complaint, and further alleges as follows.

101. LC has intentionally made material misrepresentations of fact concerning the existence or nature of price discounts falsely representing that customers were receiving a price discount from a referenced ERV of its items, where LC in fact inflated the purported ERV such that the promised discount was false.

102. LC knew or should have known that the intentional misrepresentations alleged herein were false at the time LC made them.

103. LC intended that Plaintiff Kabbash and members of the proposed California Class would rely on its false representations and purchase its items.

104. LC’s representations of discounts from false ERV are objectively material to

reasonable consumers, and therefore reliance upon such representations may be presumed as a matter of law.

105. Plaintiff Kabbash and members of the proposed California Class reasonably relied to their detriment on LC's intentional misrepresentations.

106. LC's intentional misrepresentations were a substantial factor in causing Plaintiff Kabbash and members of the proposed California Class to purchase items from LC and to suffer damages.

107. LC has acted with "malice" as that term is defined in California Civil Code § 3294(c)(1) by engaging in conduct that was and is intended by LC to cause injury to Plaintiff Kabbash and the members of the proposed California Class.

108. LC committed "fraud" as that term is defined in California Civil Code § 3294(c)(3) through its intentional misrepresentations, deceit, and/or concealment of material facts known to LC with the intent to cause injury to the purchasers of its items.

109. Plaintiff Kabbash and the members of the proposed California Class are entitled to actual and punitive damages and attorneys' fees under California Civil Code § 3294(a).

PRAYER FOR RELIEF

Plaintiff requests that the Court grant the following relief and enter judgment against The Jewelry Channel, Inc. USA d/b/a The Liquidation Channel as follows:

- A. An order certifying the proposed Class(es) and appointing Plaintiff and her counsel to represent the Class(es);
- B. An order for appropriate injunctive relief, including:
 - (i) Directing LC to make corrective notices on its website, television channel, and in other appropriate publications or media;
 - (ii) Directing LC to allow customers to return any items purchased from LC, at LC's expense, which were subject to LC's unlawful pricing policy; and
 - (iii) Permanently enjoining LC from the improper activities and practices described above.
- C. An order awarding Plaintiff and members of the Class(es):
 - (i) Actual and compensatory damages, except that no monetary relief is presently sought for violations of California's Consumers Legal Remedies Act;
 - (ii) Disgorgement of all revenues unjustly earned by LC as a result of its misleading advertising, except that no monetary relief is presently sought for violations of California's Consumers Legal Remedies Act;
 - (iii) Punitive damages for LC's fraudulent and deceptive scheme, except that no monetary relief is presently sought for violations of California's Consumers Legal Remedies Act;
 - (iv) Pre-judgment and post-judgment interest; and
 - (v) Reasonable attorneys' fees, expenses, and costs of suit, including but not limited to expert witness fees.
- D. All other and further relief as the Court deems necessary, just and proper.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury for all issues so triable under the law.

DATED: August 17, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2016, I electronically filed the foregoing with the clerk for the United States District Court for the Western District of Texas, using the electronic case filing system of the Court. The electronic case filing system sent a “Notice of Electronic Filing” to attorneys of record, who have consented in writing to accept this Notice as service of this document by electronic means.

s/Gregory F. Coleman
Gregory F. Coleman (*pro hac vice*)