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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**
10

11 SERENA ADAME and VERSIL MILTON, each)
individually and on behalf of all others similarly)
12 situated,)

13)
14 Plaintiffs,)

15 vs.)

16 GUESS?, INC., GUESS? RETAIL, INC.; and)
17 DOES 1 through 100, inclusive,)

18)
19 Defendants.)

Case No. BC579128

CONSOLIDATED AMENDED CLASS
ACTION COMPLAINT

Causes of Action on Behalf of California
Subclass:

1. Deceit (Fraud, California Civil Code §1709)
2. Violation of the “Unfair” Prong of the UCL
3. Violation of the “Fraudulent” Prong of the UCL
4. Violation of the “Unlawful” Prong of the UCL
5. Violation of the California False Advertising Law, California Business & Professions Code Sections 17500, *et seq.*
6. Violation of the Consumers Legal Remedies Act, California Civil Code Sections 1750, *et seq.*

Causes of Action on Behalf of Nationwide
Class:

7. Unjust Enrichment
8. Violation of the UCL, California Business & Professions Code § 17200, *et seq.*
9. Violation of the California False Advertising Law, California Business & Professions Code § 17500, *et seq.*
10. Violation of the California Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.*
11. Fraud, California Civil Code § 1709

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1 Plaintiff, SERENA ADAME (“Adame”) and Plaintiff, VERSIL MILTON (“Milton”)
2 (collectively referred to as “Plaintiffs”), on behalf of themselves and all others similarly situated,
3 alleges the following based upon personal knowledge as to allegations regarding Plaintiffs and on
4 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 Defendants, Guess?, Inc., and Guess? Retail, Inc. (“Guess”) arising from its
8 deceptive and misleading labeling and marketing of merchandise it sells at its company-owned
9 Guess factory outlet stores (“Guess Outlet”).

10 2. During the Class Period (defined below), Guess misrepresented the existence, nature
11 and amount of price discounts on products manufactured exclusively for Guess Outlet (“Guess
12 Outlet Products”) by purporting to offer steep discounts off of fabricated, arbitrary, and false prices.

13 3. Specifically, the clothing and other items sold at Guess Outlets are manufactured for,
14 and sold exclusively by, those Outlets. These items are never offered to the public at the “full”
15 prices from which Guess Outlets claim to offer discounts, nor at department stores or Guess
16 Boutiques. Nevertheless, the price tag for each Guess Outlet item prominently and conspicuously
17 displays two purported prices: a higher price and a seemingly discounted price. The higher price is
18 labeled either as the Manufacturer’s Suggested Retail (“MSR”) or “Value Was” price. The lower
19 price is identified by Guess Outlets as “Our Price.” In fact, no Guess Outlet item is ever offered or
20 sold at the higher “MSR” or “Value Was” price, but rather is always sold for the lower “Our Price”
21 amount. Nor were the advertised “MSR” or “Value Was” prices prevailing market retail prices
22 within three months immediately preceding the publication of the advertised former prices, as
23 required by California law.

24 4. Having touted a false “MSR” or “Value Was” price, Guess then offered, on the same
25 sales labels, to sell Guess Outlet Products for a price termed “OUR PRICE,” which supposedly
26 represented a deep discount off of the false “MSR” or Value Was price.
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1 5. But the “MSR” or “Value Was” prices used by Guess, which represented to
2 consumers either a price at which Guess Outlet Products were generally sold or the purported former
3 price, were a sham. In fact, Guess manufactures certain goods for *exclusive sale* at its Guess Outlets,
4 which means that such items were never sold—or even intended to be sold—at the “MSR” or “Value
5 Was” price listed on their labels. Guess Outlet Products were never offered for sale in Guess’ non-
6 outlet stores in California, or any other state, or in non-outlet retailers carrying Guess products.

7 6. Further, Guess intentionally uses “MSR” and “Our” on some of its price tags to
8 mislead consumers into believing that Guess – the manufacturer *and* the seller of the product – are
9 somehow different and distinct from one another. When “Manufacturer” is used directly next to the
10 pronoun “OUR,” it leads consumers to believe that they are not the same party -- “Manufacturer” is
11 a third party noun. Consumers understand “OUR” to be Guess. Therefore, in this context, they do
12 not understand “Manufacturer” to also be Guess. Guess uses the carefully chosen third party
13 “Manufacturer” and the pronoun “Our” so that the consumer will think that the party who
14 “manufactured” the product and “suggested” its price are not the same, thereby duping customers
15 into thinking they are getting a discount off the price a third party manufacturer determined it’s
16 worth or the price at which it should be sold.

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

1 8. Accordingly, the “MSR” or “Value Was” prices listed on Guess Outlet Products did
2 not represent bona fide price information at all—much less a former price in the preceding three
3 months. They are fictional creations intentionally designed to enable Guess’ phantom markdowns.

4 9. The deceptive advertising by Guess for its Guess Outlet Products originated from its
5 headquarters in Los Angeles, CA. For example, Guess’ Fiscal 2014 Annual Report States: “Since
6 our inception, Paul Marciano has had principal responsibility for the GUESS brand image and
7 creative vision. Under the direction of Mr. Marciano, our Los Angeles-based advertising department
8 is responsible for overseeing all worldwide advertising.”

9 10. The Federal Trade Commission (“FTC”) explicitly describes the fictitious pricing
10 scheme employed at Guess Outlet stores as deceptive:

11 (a) Many members of the purchasing public believe that a manufacturer's list
12 price, or suggested retail price, is the price at which an article is generally
13 sold. Therefore, if a reduction from this price is advertised, many people will
14 believe that they are being offered a genuine bargain. To the extent that list or
15 suggested retail prices do not in fact correspond to prices at which a
16 substantial number of sales of the article in question are made, the
17 advertisement of a reduction may mislead the consumer. A former price is not
18 necessarily fictitious merely because no sales at the advertised price were
19 made. The advertiser should be especially careful, however, in such a case,
20 that the price is one at which the product was openly and actively offered for
21 sale, for a reasonably substantial period of time, in the recent, regular course
22 of her business, honestly and in good faith – and, of course, not for the
23 purpose of establishing a fictitious higher price on which a deceptive
24 comparison might be based.

25 (i) It bears repeating that the manufacturer, distributor or retailer must in every
26 case act honestly and in good faith in advertising a list price, and not with the
27 intention of establishing a basis, or creating an instrumentality, for a deceptive
28 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 11. Similarly, California statutory and regulatory law expressly prohibits false pricing
12 schemes. *Business & Professions Code* § 17501, entitled “*Value determinations; Former price*
13 *advertisements,*” states:

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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.

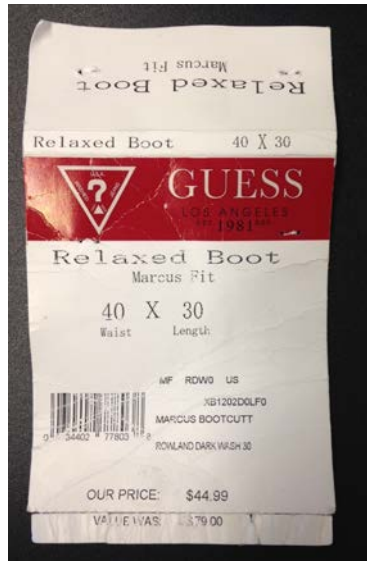
No price shall be advertised as a former price of any advertised thing, unless the alleged former price was the prevailing market price as above defined within three months next immediately preceding the publication of the advertisement or unless the date when the alleged former price did prevail is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

(emphasis added).

12. The Guess Outlet pricing scheme was prominently displayed on all products available for sale at Guess Outlet stores in California. To illustrate, one of the merchandise price tags that advertised a sham “MSR” and a “OUR PRICE” that Plaintiffs relied on is pictured below:



13. The Guess Outlet also fraudulently advertised merchandise at higher “Value Was” prices, as illustrated by the price tag below:



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14. Upon information and belief, thousands of consumers in California, and nationwide, were victims of Guess’ deceptive, misleading and unlawful false pricing scheme and thousands more, including Plaintiffs, will be deceived if the practices continue.

15. Guess fraudulently concealed from, and intentionally failed to disclose to, Plaintiffs and others similarly situated, the truth about its “MSR” and “Value Was” prices and advertised price discounts.

16. Guess’ false representations of “MSR” and “Value Was” prices and false representations of purported savings, discounts and bargains are material to a reasonable consumer.

17. Plaintiffs relied upon such false representations of “MSR” and “Value Was” prices and discounts when purchasing apparel from Guess Outlet stores in California. Plaintiffs would not have made such purchases, or would not have paid the amount they did, but for Guess’ false representations of the former price or “MSR” or “Value Was” price of the items they purchased, as compared with the supposedly discounted “OUR PRICE” at which Guess offered the items for sale.

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

19. Reasonable consumers also understand Guess Outlet Products price tags to advertise bona fide price information for another reason: many items in Guess Outlet stores (and which are

1 excluded from the definition of Guess Outlet Products) do not advertise an “MSR” or “Value Was”
2 price.

3 20. When, during a shopping experience, a consumer is confronted with some items that
4 bear prominent “MSR” or “Value Was” price representations, and other items which simply state a
5 price, it is reasonable for consumers to understand the reference price tags to indicate a true savings
6 or bargain. The consumer reasonably understands that the plain-price tags do not offer a “savings”
7 compared to a higher price.

8 21. In other words, if both types of products were only “bargains” due to their actual sales
9 price, the “MSR” price representations would have no additional meaning.

10 22. Through its false and deceptive marketing, advertising and pricing scheme, Guess
11 violated (and continues to violate) California law prohibiting advertising goods for sale as
12 discounted from former prices which are false, and prohibiting misleading statements about the
13 existence and amount of price reductions. Specifically, Guess committed fraud and is liable for
14 under California Code of Civil Procedure §§ 1709 and 3294, and violated (and continues to violate)
15 California’s *Business & Professions Code* §§ 17200, *et seq.* (the “UCL”), California’s *Business and*
16 *Professions Code* §§ 17500, *et seq.* (the “FAL”), the California Consumers’ Legal Remedies Act,
17 *Civil Code* §§1750, *et seq.* (the “CLRA”), and the Federal Trade Commission Act (“FTCA”), which
18 prohibits “unfair or deceptive acts or practices in or affecting commerce” and specifically prohibits
19 false advertisements. 15 U.S.C. §§ 52(a) and 15 U.S.C. § 45(a)(1).

20 23. Plaintiffs, individually and on behalf of all others similarly situated, seek damages,
21 restitution and other equitable remedies, including an injunction under the UCL, FAL and CLRA.

22 **PARTIES**

23 24. Plaintiff, Serena Adame is an individual who is a citizen of the City of El Monte,
24 County of Los Angeles, California. In reliance on Defendants’ false and deceptive advertising,
25 marketing and pricing schemes, Ms. Adame purchased two items from the Guess Outlet located in
26 Camarillo, California, and as detailed herein, was damaged as a result thereof.

1 Court, has jurisdiction of this class action, because Plaintiffs' claims fall within the provisions of 29
2 U.S.C. § 1332(d)(4)(a) (a provision of the Class Action Fairness Act) for the following reasons:

3 (a) more than two-thirds of the members of the Plaintiff Class are citizens of the
4 State of California;

5 (b) Guess?, Inc. and Guess? Retail, Inc. are defendants: (i) from whom significant
6 relief is sought by members of the proposed class, (ii) whose alleged conduct forms a significant
7 basis for the claims asserted by the proposed class, and (iii) who are citizens of the State of
8 California;

9 (c) the principal injuries resulting from the alleged conduct or any related conduct
10 of each defendant were incurred in the State of California; and

11 (d) during the 3-year period preceding the filing of the original complaint in this
12 class action, no other class actions have been filed asserting the same or similar factual allegations
13 against any of the defendants on behalf of the same or other person.

14 30. Moreover, the California Superior Court has jurisdiction over Guess because it is a
15 California citizen and it has sufficient minimum contacts and nerve center(s) within California,
16 and/or entities that have otherwise intentionally availed themselves of the California market so as to
17 render the exercise of jurisdiction over it by the California court consistent with traditional notions
18 of fair play and substantial justice. Furthermore, Defendants have purposefully availed themselves of
19 the benefits and protections of the laws within the State of California and within Los Angeles
20 County, having sufficient contacts such that the exercise of jurisdiction would be consistent with
21 traditional notions of fair play and substantial justice. Plaintiff Adame is also located in Los Angeles
22 County, State of California and all putative class members are located in the State of California.

23 31. Venue is appropriate in Los Angeles County as Guess has its primary business
24 headquarters and its principal place of business located at 1444 South Alameda Street, Los Angeles,
25 California 90021; Plaintiff Adame is also a resident of Los Angeles County.

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1 **FACTUAL ALLEGATIONS**

2 32. Traditionally, retail outlet stores were located in remote areas and typically
3 maintained an inventory of defective and excess merchandise. Customers often flocked to these
4 outlets in hopes of finding steep discounts and bargains. *See*
5 <http://www.forbes.com/sites/investopedia/2012/12/29/7-tips-for-outlet-mall-shopping/> (last visited
6 July 11, 2014).

7 33. However, in an effort to increase profits, major retailers such as Guess have, without
8 notice to consumers, begun using company-owned “outlet” stores to sell made-for-outlet goods that
9 are never intended to be sold at non-outlet stores.

10 34. In California, such “outlet” stores are located in purpose-built malls touted as
11 “outlets,” or “premium outlets.” For example, Plaintiff Adame purchased her Guess Outlet Products
12 at the Premium Outlets in Camarillo. The very term “outlet” conveys to reasonable consumers that at
13 least some products are comprised of merchandise formerly offered for sale at full-price retail
14 locations. The location of Guess Outlets in “outlet” malls deceives reasonable consumers into
15 believing they are receiving true “outlet” merchandise, when they are not. In a further illustration,
16 the outlet complex at which Named Plaintiff Versil Milton purchased his Guess items, Las Americas
17 Premium Outlets, advertises “Exceptional Brands,” and “extraordinary savings of 25% to 65%. For
18 shopping that is always worth the trip.” The Las Americas Premium Outlets complex also purports
19 to offer “impressive” savings at “125 Outlet Stores” (including Guess).

20 35. Instead, retailers like Guess Outlet create the illusion of traditional outlet discounts
21 and bargains by offering the made-for-outlet goods at prices reduced from fabricated, arbitrary, and
22 false prices. In short, outlet stores such as Guess Outlet are using false and fraudulent price
23 comparison tactics. *See* [http://www.buzzfeed.com/sapna/customers-finally-aware-that-most-outlet-](http://www.buzzfeed.com/sapna/customers-finally-aware-that-most-outlet-merchandise-is-now)
24 [merchandise-is-now](http://www.buzzfeed.com/sapna/customers-finally-aware-that-most-outlet-merchandise-is-now) (last visited July 11, 2014). *See also,*
25 [http://www.click2houston.com/news/could-you-be-getting-knockoffs-at-outlet-](http://www.click2houston.com/news/could-you-be-getting-knockoffs-at-outlet-malls_20151123151558550)
26 [malls_20151123151558550](http://www.click2houston.com/news/could-you-be-getting-knockoffs-at-outlet-malls_20151123151558550) (last visited December 30, 2015) (article details how a consumer expert
27 purchased a pair of men’s Guess shorts at the outlet costing \$34.99 and a pair that appeared the same
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1 was \$47.70 at the Guess retail store. The consumer expert reported that the mainline retail product
2 was manufactured with a pricier fabric than what was sold at the outlet store.)

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

14 37. This is precisely the practice used by Guess in its Guess Outlet Stores. Indeed, the
15 fact that Guess offered some products with plain price tags and others with “MSR” or “Value Was”
16 tags indicates that Guess intentionally sought to convey to consumers that they were receiving a true
17 markdown off a former price. If Guess sought only to offer good prices on clothing items
18 purportedly similar to other clothing items in the marketplace, it would have labelled all of its
19 products with simple price tags.

20 **Plaintiffs’ Purchases**

21 38. On April 11, 2015, Plaintiff Adame entered the Guess Outlet located in Camarillo,
22 California. She observed that merchandise was advertised with price tags that represented a “MSR”
23 price next to a significantly reduced OUR PRICE. She also observed that other items in the store did
24 not make these price-reduction representations on their price tags. Ms. Adame understood that the
25 items with the “MSR” price tags represented a true bargain, while the items with plain pricing did
26 not. Enticed by the idea of paying significantly less than the “MSR” price charged outside of Guess
27 Outlets, and by receiving a true bargain, Plaintiff Adame was induced to purchase a RHEA SLG

1 Slim Clutch bearing Style Number VY500051 with a “MSR” price of \$40.00 and an OUR PRICE of
2 \$24.99. She was also induced to purchase one Agata Crossbody bearing Style Number LE602814
3 with a MSR price of \$78.00 and an “MSR” price of \$54.99.

4 39. By purchasing a RHEA SLG Slim Clutch bearing Style Number VY500051 for the
5 OUR PRICE of \$24.99 instead of the “MSR” price of \$40.00, Plaintiff Adame was led to believe
6 that she saved on her purchase. In reality, Guess never intended, nor did they ever, sell the item at
7 the represented “MSR” price. Thus, Plaintiff Adame was deceived by the false price comparison into
8 making a full retail purchase with no discount. Likewise, by purchasing an Agata Crossbody bearing
9 Style Number VY500051 for the OUR PRICE of \$54.00, Plaintiff Adame was led to believe that she
10 saved on her purchase. In reality, Guess never intended, nor did it ever, sell the item at the
11 represented “MSR” price. Thus, Plaintiff Adame was deceived by the false price comparison into
12 making a full retail purchase with no discount.

13 40. Additionally, Plaintiff Milton entered the Guess Outlet located in San Ysidro,
14 California. He observed that merchandise was advertised with price tags that represented a MSR or
15 “Value Was” price next to a significantly reduced OUR PRICE. He also observed that other items in
16 the store did not make these price-reduction representations on their price tags. Mr. Milton
17 understood that the items with the “MSR” or “Value Was” price tags represented a true bargain,
18 while the items with plain pricing did not. Enticed by the idea of paying significantly less than the
19 “MSR” or “Value Was” price charged outside of Guess Outlets, and by receiving a true bargain,
20 Plaintiff Milton was induced to purchase a Hawthorne Full Zip jacket for \$35.00, a Speyer
21 Destination shirt for \$9.75, a Varick print shirt for \$15.00 and a pair of Mayday sweatpants for
22 \$27.99. The price tag for each of these items had a “MSR” or “Value Was” listing that was higher
23 than the “OUR PRICE” listed.

24 41. By purchasing the jacket, two shirts and pair of sweatpants at the reduced OUR
25 PRICE instead of the higher “MSR” or “Value Was” price, Plaintiff Milton was led to believe that
26 he saved on his purchase. In reality, Guess never intended, nor did it ever, sell the items at the
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1 represented “MSR” or “Value Was” prices. Thus, Plaintiff Milton was deceived by the false price
2 comparison into making a full retail purchase with no discount.

3 42. Plaintiffs did not understand the “MSR” or “Value Was” prices to indicate a
4 comparison to a non-identical product, because the price tag did not specify that the savings was in
5 relation to a different product, nor did it specify what that different product might have been.

6 43. Plaintiffs specifically selected certain products over other products because the price
7 tags represented price savings.

8 44. Plaintiffs would not have purchased the products, or would not have paid the price
9 they did, if they had known they were not truly receiving a discount off a true former price, as
10 specified.

11 45. Plaintiffs’ and class members’ reliance on Defendants’ false price comparison
12 advertising was reasonable. In fact, empirical marketing studies provide an incentive for retailers to
13 engage in this false and fraudulent behavior:

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

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

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

23 *Id.* at 55, 56.

24 44. Despite the MSR/OUR PRICE Scheme used at Guess Outlets, Plaintiffs would
25 purchase Guess Outlet Products in the future from Guess Outlet stores and/or other retail
26 establishments, if product labels accurately reflect “former” prices and discounts. If the Court were
27 to issue an injunction ordering Guess to comply with California’s comparative price advertising

1 laws, and prohibiting Guess' use of the deceptive practices discussed herein, Plaintiffs would likely
2 shop for Guess Outlet Products again in the near future at Guess Outlets.

3 **CLASS ALLEGATIONS**

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

6 46. The Class that Plaintiffs seek to represent defined as follows (the "Nationwide
7 Class"):

8 **All individuals residing in the United States and its territories who, within the**
9 **applicable statute of limitations preceding the filing of this action, purchased**
10 **Guess Outlet Products from a Guess Outlet store.**

11 47. Plaintiffs also bring this individually and as a Class action on behalf of the following
12 subclass of persons located within the state of California (the "California Class"):

13 **All individuals in the State of California who, within the applicable**
14 **statute of limitations preceding the filing of this action, purchased Guess**
15 **Outlet Products from a Guess Outlet store in California.**

16 48. Plaintiffs reserve the right to redefine the Classes prior to certification.

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

21 50. The members of the Class are so numerous that joinder is impractical. The Class
22 consists of thousands of members, the precise number which is within the knowledge of and can be
23 ascertained only by resort to Guess' records.

24 51. There are numerous questions of law and fact common to the Class which
25 predominate over any questions affecting only individual members of the Class. Among the
26 questions of law and fact common to the Class are:

- 27 (a) Whether, during the Class Period, Guess used false price representations and falsely
28 advertised price discounts on its merchandise sold at Guess Outlet stores;

- 1 (b) Whether, during the Class Period, the price tags affixed to all items sold at Guess
2 Outlets contain misrepresentations and omissions;
- 3 (c) Whether, during the Class Period, such misrepresentations and omissions are
4 material;
- 5 (d) Whether, during the Class Period, Guess made such misrepresentation and omissions
6 with the intent to induce the reliance of Plaintiff Class, and whether the Guess'
7 conduct as alleged herein was knowing and intentional;
- 8 (e) Whether such misrepresentation and omissions were disseminated to Plaintiff Class in
9 uniform, written form;
- 10 (f) Whether, during the Class Period, the MSR or Value Was prices advertised by Guess
11 were the prevailing market prices for the respective merchandise sold at Guess Outlet
12 stores during the three month periods preceding the dissemination and/or publication
13 of the advertised former prices;
- 14 (g) Whether Guess' use of false or deceptive price advertising constituted false
15 advertising under California Law;
- 16 (h) Whether Guess engaged in unfair, unlawful and/or fraudulent business practices
17 under California law;
- 18 (i) Whether Guess misrepresented and/or failed to disclose material facts about its
19 product pricing and discounts.
- 20 (j) Whether Guess has made false or misleading statements of fact concerning the
21 reasons for, existence of, or amounts of price reductions;
- 22 (k) Whether Guess' conduct, as alleged herein, was intentional and knowing;
- 23 (l) Whether Class members are entitled to damages and/or restitution, and in what
24 amount;
- 25 (m) Whether Guess is likely to continue using false, misleading or illegal price
26 comparisons such that an injunction is necessary; and
27
28

1 (n) Whether Plaintiffs and Class members are entitled to an award of reasonable
2 attorneys' fees, pre-judgment interest and costs of suit.

3 52. Plaintiffs' claims are typical of the claims of the members of the Class and, like all
4 members of the Class, purchased goods from a Guess Outlet that falsely conveyed a MSR price and
5 a fictitious discount. Accordingly, Plaintiffs have no interests antagonistic to the interests of any
6 other member of the Class.

7 53. Plaintiffs are representatives who will fully and adequately assert and protect the
8 interests of the Class, and has retained counsel who is experienced in prosecuting class actions.
9 Accordingly, Plaintiffs are an adequate representative and will fairly and adequately protect the
10 interests of the Class.

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

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

24 56. The conduct of Guess is generally applicable to the Class as a whole and Plaintiffs
25 seek, *inter alia*, equitable remedies with respect to the Class as a whole. As such, the systematic
26 policies and practices of Guess make declaratory relief with respect to the Guess California Subclass
27 as a whole appropriate.

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Deceit (Fraud, on behalf of California Subclass)**

4 57. Plaintiffs incorporate by reference paragraphs 1-56 as though fully set forth herein.

5 58. As alleged herein, Guess made material misrepresentations to, and concealed and
6 suppressed facts from, the Plaintiffs and the other members of the Plaintiff Class.

7 59. As alleged herein, Guess knew these misrepresentations were false, and Guess knew
8 that the facts it concealed and suppressed were necessary to make material statements made by
9 Guess not misleading.

10 60. As alleged herein, Guess made these misrepresentations, and concealed and
11 suppressed these facts, with the intent to induce the reliance of and to defraud the Plaintiffs and the
12 other the members of the Plaintiff Class.

13 61. Guess' misrepresentations and omissions were conveyed through uniform writings
14 given to the Plaintiffs and each member of the Plaintiff Class.

15 62. The Plaintiffs and the other members of the Plaintiff Class believed that Guess'
16 misrepresentations and statements rendered misleading by concealment and suppression of facts
17 were true or were ignorant of their falsity or misleading nature.

18 63. In reliance on Guess' misrepresentations and omissions, the Plaintiffs and the other
19 members of the Plaintiff Class, were induced to, and did in fact, purchase clothing and other items
20 they would not have otherwise purchased, and/or pay more for such clothing and items than they
21 otherwise would have. Had the Plaintiffs and the other members of the Plaintiff Class known the
22 truth, they would not have taken such actions.

23 64. The reliance of the Plaintiffs, and of the other members of the Plaintiff Class, was
24 reasonable and justified.

25 65. As a proximate result of Guess' fraudulent conduct as alleged herein, the Plaintiffs
26 and the other members of the Plaintiff Class have been injured.

27 66. Pursuant to California Code of Civil Procedure § 1709, Guess is liable for the
28 damages suffered by the Plaintiffs and the other members of the Plaintiff Class.

1 The actions of Guess as alleged herein constitute oppression, fraud, or malice, as those terms
2 are defined in California Civil Code § 3294, thus entitling the Plaintiffs and the other members of the
3 Plaintiff Class, and each of them, to an award of punitive damages.

4 **SECOND CAUSE OF ACTION**
5 **(Violation of the “Unfair” Prong of the UCL, on behalf of California Subclass)**

6 67. Plaintiffs incorporate by reference paragraphs 1-56 as though fully set forth herein.

7 68. The UCL defines unfair business competition to include any “unlawful, unfair or
8 fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising.
9 *Business & Professions Code § 17200.*

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

12 70. Guess has violated the “unfair” prong of the UCL by representing a false MSR price
13 and corresponding OUR PRICE for goods exclusively manufactured for sale at Guess Outlet stores.
14 As a result, the inflated MSR or “Value Was” price and corresponding OUR PRICE was nothing
15 more than a false, misleading and deceptive illusion of a discount.

16 71. These acts and practices are unfair because they caused Plaintiffs, and are likely to
17 cause consumers, to falsely believe that Guess Outlet is offering value, discounts or bargains from
18 the prevailing market worth of the products sold that did not, in fact, exist. As a result, purchasers,
19 including Plaintiffs, reasonably perceived that they were receiving products that regularly sold in the
20 non-outlet retail marketplace at substantially higher prices (and were, therefore, worth more) than
21 what they paid. This perception has induced reasonable purchasers, including Plaintiffs, to buy such
22 products, which they otherwise would not have purchased.

23 72. The gravity of the harm to members of the Class resulting from these unfair acts and
24 practices outweighed any conceivable reasons, justifications and/or motives of Guess for engaging in
25 such deceptive acts and practices. By committing the acts and practices alleged above, Guess
26 engages in unfair business practices within the meaning of California Business & Professions Code
27 §§ 17200, *et seq.*

28 73. Through its unfair acts and practices, Guess has improperly obtained money from

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

6 **THIRD CAUSE OF ACTION**
7 **(Violation of the “Fraudulent” Prong of the UCL, on behalf of California Subclass)**

7 74. Plaintiffs incorporate by reference paragraphs 1-56 as though fully set forth herein.

8 75. The UCL defines unfair business competition to include any “unlawful, unfair or
9 fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal.
10 Bus. & Pro. Code § 17200.

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

13 77. Guess’ labels and advertising materials concerning false former prices were
14 fraudulent within the meaning of the UCL because they deceived Plaintiffs, and were likely to
15 deceive members of the class, into believing that Guess was offering value, discounts or bargains at
16 Guess Outlet stores from the prevailing market value or worth of the products sold that did not, in
17 fact, exist.

18 78. Guess deceived consumers into believing that it was offering value, discounts or
19 bargains at Guess Outlet stores from the prevailing market value or worth of the products sold that
20 did not, in fact, exist.

21 79. As a result, purchasers, including Plaintiffs, reasonably perceived that they were
22 receiving products that regularly sold in the non-outlet retail marketplace at substantially higher
23 prices (and were, therefore, worth more) than what they paid. This perception induced reasonable
24 purchasers, including Plaintiffs, to buy such products from Guess Outlet stores, which they
25 otherwise would not have purchased.

26 80. Guess’ acts and practices as described herein have deceived Plaintiffs and were
27 highly likely to deceive members of the consuming public. Specifically, in deciding to purchase

1 merchandise from a Guess Outlet store, Plaintiffs relied on Guess' misleading and deceptive
2 representations regarding its MSR or "Value Was" price and OUR PRICE. Each of these factors
3 played a substantial role in Plaintiffs' decision to purchase those products, and Plaintiffs would not
4 have purchased those items in the absence of Guess' misrepresentations. Accordingly, Plaintiffs
5 suffered monetary loss as a direct result of Guess' pricing practices described herein.

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

10 82. Through its unfair acts and practices, Guess has improperly obtained money from
11 Plaintiffs and the Class. As such, Plaintiffs request that this court cause Guess to restore this money
12 to Plaintiffs and all Class members, and to enjoin Guess from continuing to violate the UCL as
13 discussed herein and/or from violating the UCL in the future. Otherwise, Plaintiffs and the Class
14 may be irreparably harmed and/or denied an effective and complete remedy if such an order is not
15 granted.

16 **FOURTH CAUSE OF ACTION**
17 **(Violation of the "Unlawful" Prong of the UCL, on behalf of California Subclass)**

18 83. Plaintiffs incorporate by reference paragraphs 1-56 as though fully set forth herein.

19 84. The UCL defines unfair business competition to include any "unlawful, unfair or
20 fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading" advertising.

21 *Business & Professions Code* § 17200.

22 85. A business act or practice is "unlawful" under the UCL if it violates any other law or
23 regulation.

24 86. California statutory and regulatory law also expressly prohibits false former pricing
25 schemes. *Business & Professions Code* § 17501, entitled "*Value determinations; Former price*
26 *advertisements,*" states:

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

1 retail, at the time of publication of such advertisement in the locality wherein the
2 advertisement is published.

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

8 87. *Civil Code* § 1770, subsection (a)(9), prohibits a business from “[a]dvertising goods
9 or services with intent not to sell them as advertised,” and subsection (a)(13) prohibits a business
10 from “[m]aking false or misleading statements of fact concerning reasons for, existence of, or
11 amounts of price reductions.”

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

16 89. The FTCA prohibits “unfair or deceptive acts or practices in or affecting commerce”
17 and specifically prohibits false advertisements. (15 U.S.C. § 45(a)(1) and 15 U.S.C. § 52(a)). The
18 FTC has established Guidelines which prohibit false pricing schemes, similar to Guess’
19 MSR/VALUE WAS/OUR PRICE Scheme in material respects, as deceptive practices that would
20 violate the FTCA:

21 (a) Many members of the purchasing public believe that a manufacturer's list
22 price, or suggested retail price, is the price at which an article is generally
23 sold. Therefore, if a reduction from this price is advertised, many people will
24 believe that they are being offered a genuine bargain. To the extent that list or
25 suggested retail prices do not in fact correspond to prices at which a
26 substantial number of sales of the article in question are made, the
27 advertisement of a reduction may mislead the consumer. A former price is not
28 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.

(i) 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

1 intention of establishing a basis, or creating an instrumentality, for a deceptive
2 comparison in any local or other trade area. For instance, a manufacturer may
3 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.

4 16 C.F.R. § 233.3.

5 90. Guess' use of and reference to a materially false MSR or "Value Was" price in
6 connection with its marketing and advertisements concerning the merchandise sold at Guess Outlet
7 stores violated and continues to violate the FTCA, 15 U.S.C. § 45(a)(1) and 15 U.S.C. § 52(a), as
8 well as FTC Guidelines published at 16 C.F.R. § 233.

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

13 92. Through its unlawful acts and practices, Guess has improperly obtained money from
14 Plaintiffs and the Class. As such, Plaintiffs request that this court cause Guess to restore this money
15 to Plaintiffs and all Class members, and to enjoin Guess from continuing to violate the UCL as
16 discussed herein and/or from violating the UCL in the future. Otherwise, Plaintiffs and the Class
17 may be irreparably harmed and/or denied an effective and complete remedy if such an order is not
18 granted.

19 **FIFTH CAUSE OF ACTION**
20 **(Violation of the California False Advertising Law,**
California Business & Professions Code Sections 17500, et seq.
21 **on behalf of California Subclass)**

22 93. Plaintiffs incorporate by reference paragraphs 1-56 as though fully set forth herein.

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

26 95. Guess' practice of advertising MSR or "Value Was" prices on exclusive, made for
27 Guess Outlet merchandise, which were materially greater than the actual prices of those products
28 was an unfair, deceptive and misleading advertising practice because it gave the false impression

1 that the products sold at Guess Outlet stores were regularly sold in the non-outlet retail marketplace
2 at substantially higher prices (and were, therefore, worth more) than they actually were. In fact, the
3 exclusive, made for Guess Outlet merchandise did not have a prevailing market price anywhere
4 close to the MSR or “Value Was” price advertised because the merchandise was always sold under
5 the OUR PRICE or discounted further from the OUR PRICE when placed on sale at the Guess
6 Outlets.

7 96. Through its unfair acts and practices, Guess has improperly obtained money from
8 Plaintiffs and the Class. As such, Plaintiffs request that this court cause Guess to restore this money
9 to Plaintiffs and all Class members, and to enjoin Guess from continuing to violate the FAL as
10 discussed herein and/or from violating the FAL in the future. Otherwise, Plaintiffs and the Class may
11 be irreparably harmed and/or denied an effective and complete remedy if such an order is not
12 granted.

13 **SIXTH CAUSE OF ACTION**
14 **(Violation of the Consumers Legal Remedies Act,
California Civil Code Sections 1750, et seq., on behalf of California Subclass)**

15 97. Plaintiffs incorporate by reference paragraphs 1-56 as though fully set forth herein.

16 98. This cause of action is brought pursuant to the CLRA.

17 99. Plaintiffs and each member of the proposed classes are “consumers” within the
18 meaning of California Civil Code § 1761(d).

19 100. Guess’ selling of goods manufactured exclusively for sale at Guess Outlets to
20 Plaintiffs and the Class were “transactions” within the meaning of California *Civil Code* § 1761(e).
21 The products purchased by Plaintiffs and the Class are “goods” within the meaning of California
22 Civil Code §1761(a).

23 101. As described herein, Guess violated the CLRA by falsely representing the nature,
24 existence and amount of price discounts by fabricating inflated labeled MSR prices. Such a pricing
25 scheme is in violation of Cal. Civ. Code § 1770, subsection (a)(9) (“[a]dvertising goods or services
26 with intent not to sell them as advertised”) and subsection (a)(13) (“[m]aking false or misleading
27 statements of fact concerning reasons for, existence of, or amounts of price reductions”).

1 102. Plaintiffs relied on Guess' false representations in deciding to purchase goods at
2 Guess Outlet stores. Plaintiffs would not have purchased such items absent Guess' unlawful conduct.

3 103. On April 20, 2015, counsel for Plaintiff Adame provided proper notice of Plaintiffs
4 intent to pursue claims under the CLRA and an opportunity to cure to Defendants via certified mail
5 to the store where the purchase occurred at Guess Camarillo Premium Outlet, 910 Camarillo Center
6 Drive, Space 822, Camarillo, California 93010-7741. The domestic return receipt indicates the letter
7 was delivered and signed-for on April 25, 2015; no response to the CLRA letter has been received
8 by Plaintiffs as of the date of this filing.

9 104. Plaintiffs request this Court enjoin Defendants from continuing to violate the CLRA
10 as discussed herein and/or from violating the UCL in the future and to order restitution to Plaintiffs
11 and each member of the proposed class. Otherwise, Plaintiffs, the Class and members of the general
12 public may be irreparably harmed and/or denied effective and complete remedy if such an order is
13 not granted.

14 **SEVENTH CAUSE OF ACTION**
15 **Unjust Enrichment (on Behalf of the Classes,**
16 **or in the Alternative, on behalf of the California Class)**

17 105. Plaintiffs incorporate by reference paragraphs 1-56 as though fully set forth herein.

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

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

108. At all times relevant hereto, Defendants deceptively priced, marketed, advertised, and

1 sold Guess Outlet Products to Plaintiffs and the Classes.

2 109. Plaintiffs and members of the Classes conferred upon Defendant nongratuitous
3 payments for merchandise that they would not have if not for Defendant’s deceptive pricing,
4 advertising, and marketing. Defendants accepted or retained the nongratuitous benefits conferred by
5 Plaintiffs and members of the Classes, with full knowledge and awareness that, as a result of
6 Defendants’ deception, Plaintiffs and members of the Classes were not receiving a product of the
7 quality, nature, fitness, or value that had been represented by Defendants and reasonable consumers
8 would have expected.

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

15 111. Retaining the non-gratuitous benefits conferred upon Defendants by Plaintiffs and
16 members of the Classes under these circumstances made Defendants’ retention of the non-gratuitous
17 benefits unjust and inequitable. Thus, Defendants must pay restitution to Plaintiffs and members of
18 the Classes for unjust enrichment, as ordered by the Court.

19 **EIGHTH CAUSE OF ACTION**
20 **(Violation of the UCL, California Business & Professions Code § 17200, *et seq.*,
on behalf of the Nationwide Class)**

21 112. Plaintiffs incorporate by reference paragraphs 1-56 as though fully set forth herein.

22 113. California’s Unfair Competition Law, Business & Professions Code § 17200, *et seq.*,
23 prohibits acts of unlawful and unfair competition, including: any “unlawful, unfair or fraudulent
24 business act or practice”; “unfair, deceptive, untrue or misleading advertising”; and/or any act
25 prohibited by California Business & Professions Code § 17500.

26 114. Guess has committed unlawful, unfair, and fraudulent business acts and practices by
27 engaging in the conduct alleged herein.

1 115. The conduct of Guess as alleged herein, including in ¶¶ 1-56, above, constitutes
2 unfair and unlawful business acts and practices because such conduct violates California Civil Code
3 §§ 1709, 1710, 1770(a)(2), 1770(a)(7), 1770(a)(9), and 1770(a)(13); and California Business &
4 Professions Code §§ 17500 and 17501 – as detailed in Causes of Action [I, II, III, IV, V, and VI],
5 above [fraud, “Unlawful” UCL, False Advertising Law (17500), and CLRA counts].

6 116. The conduct of Guess as alleged herein constitutes fraudulent business acts and
7 practices because Guess made material misrepresentations to, and concealed and suppressed facts
8 from, Plaintiffs and the other members of the Nationwide Class. Guess’ labels and advertising
9 materials concerning false former prices were fraudulent within the meaning of the UCL because
10 they deceived Plaintiffs, and were likely to deceive members of the Nationwide Class, into believing
11 that Guess was offering value, discounts or bargains at Guess Outlet stores from the prevailing
12 market value or worth of the products sold that did not, in fact, exist.

13 117. The conduct of Guess as alleged herein also constitutes unfair competition in that
14 Guess’ acts and practices offend public policy and are unethical, oppressive, and unscrupulous, and
15 are substantially injurious to the public.

16 118. The conduct of Guess as alleged herein was a proximate cause of the injuries of
17 Plaintiffs and the other members of the Nationwide Class, and such conduct caused and continues to
18 cause substantial injury to Plaintiffs and the other members of the Nationwide Class.

19 119. By its conduct as alleged herein, Guess has improperly obtained money and property
20 from Plaintiffs and the other members of Nationwide Class and Plaintiffs and the other members of
21 the Nationwide Class have been injured in fact, and have lost money and property, as the result of
22 Guess’ conduct as alleged herein.

23 120. As such, Plaintiffs request that this Court cause Guess to restore this money to
24 Plaintiffs and all members of the Nationwide Class, and to enjoin Guess from continuing to violate
25 the UCL as discussed herein and/or from violating the UCL in the future. Otherwise, Plaintiffs and
26 the Class may be irreparably harmed and/or denied an effective and complete remedy.

1 121. Application of California's UCL to the claims of the Nationwide Class is appropriate
2 because California has significant contact or aggregation of contacts with the claims of the
3 Nationwide Class, creating a substantial state interest in these claims. Sufficient contacts with
4 California to allow constitutional application of California law to the claims of the Nationwide Class
5 exist because Guess' principal office is located in Los Angeles, California; Guess does business in
6 California; a significant number of class members are located in California; and Guess' agents who
7 prepared the fraudulent marketing materials at issue in this case did so from its Los Angeles
8 headquarters.

9 122. For example, Guess' Fiscal 2014 Annual Report States: "Since our inception, Paul
10 Marciano has had principal responsibility for the GUESS brand image and creative vision. Under
11 the direction of Mr. Marciano, our Los Angeles-based advertising department is responsible for
12 overseeing all worldwide advertising."

13 123. Accordingly, the fraudulent misrepresentations and unfair business acts and practices
14 forming the basis of the claim of every member of the Nationwide Class were formulated in, and
15 emanated from, California, and California's interest in deterring fraudulent conduct by businesses
16 headquartered within its borders and protecting consumers from fraudulent misrepresentations
17 emanating from California overrides any possible interest of any other state in application of its own
18 laws to its residents' claims.

19 **NINTH CAUSE OF ACTION**
20 **(Violation of the California False Advertising Law, California Business & Professions Code §**
21 **17500, et seq., on behalf of the Nationwide Class)**

22 124. Plaintiffs incorporate by reference paragraphs 1-56 as though fully set forth herein.

23 125. California's Business and Professions Code §§ 17500, et seq., prohibits unfair,
24 deceptive, untrue, or misleading advertising, including, but not limited to, false statements as to
25 worth, value and former price.

26 126. Guess' practice of advertising MSR prices on exclusive, made for Guess Outlet
27 merchandise, which were materially greater than the actual prices of those products was an unfair,
28 deceptive and misleading advertising practice because it gave the false impression that the products

1 sold at Guess Outlet stores were regularly sold in the non-outlet retail marketplace at substantially
2 higher prices (and were, therefore, worth more) than they actually were. In fact, the exclusive, made
3 for Guess Outlet merchandise did not have a prevailing market price anywhere close to the MSR or
4 “Value Was” price advertised because the merchandise was always sold under the OUR PRICE or
5 discounted further from the OUR PRICE when placed on sale at the Guess Outlets.

6 127. Through its unfair acts and practices, Guess has improperly obtained money from
7 Plaintiffs and the other members of the Nationwide Class. As such, Plaintiffs request that this court
8 cause Guess to restore this money to Plaintiffs and all members of the Nationwide Class, and to
9 enjoin Guess from continuing to violate the FAL as discussed herein and/or from violating the FAL
10 in the future. Otherwise, Plaintiffs and the Nationwide Class may be irreparably harmed and/or
11 denied an effective and complete remedy.

12 128. Application of California’s FAL to the claims of the Nationwide Class is appropriate
13 because California has significant contact or aggregation of contacts with the claims of the
14 Nationwide Class, creating a substantial state interest in these claims. Sufficient contacts with
15 California to allow constitutional application of California law to the claims of the Nationwide Class
16 exist because Guess’ principal office is located in Los Angeles, California; Guess does business in
17 California; a significant number of class members are located in California; and Guess’ agents who
18 prepared the fraudulent marketing materials at issue in this case did so from its Los Angeles
19 headquarters.

20 129. Accordingly, the fraudulent misrepresentations and false advertising practices
21 forming the basis of the claim of every member of the Nationwide Class were formulated in, and
22 emanated from, California, and California’s interest in deterring such conduct by businesses
23 headquartered within its borders and protecting consumers from fraudulent misrepresentations
24 emanating from California overrides any possible interest of any other state in application of its own
25 laws to its residents’ claims.

26 **TENTH CAUSE OF ACTION**
27 **(Violation of the California Consumers Legal Remedies Act, California Civil Code § 1750, et**
28 **seq., on behalf of the Nationwide Class)**

1 130. Plaintiffs incorporate by reference paragraphs 1-56 as though fully set forth herein.

2 131. This cause of action is brought pursuant to the CLRA.

3 132. Plaintiffs and each member of the Nationwide Class are “consumers” within the
4 meaning of California Civil Code § 1761(d).

5 133. Guess’ selling of goods manufactured exclusively for sale at Guess Outlets to
6 Plaintiffs and the Nationwide Class were “transactions” within the meaning of California Civil Code
7 § 1761(e). The products purchased by Plaintiffs and the Nationwide Class are “goods” within the
8 meaning of California Civil Code §1761(a).

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

14 135. On April 20, 2015, counsel for Plaintiff Adame provided proper notice of Plaintiffs
15 intent to pursue claims under the CLRA and an opportunity to cure to Defendants via certified mail
16 to the store where the purchase occurred at Guess Camarillo Premium Outlet, 910 Camarillo Center
17 Drive, Space 822, Camarillo, California 93010-7741. The domestic return receipt indicates the letter
18 was delivered and signed-for on April 25, 2015; no response to the CLRA letter has been received
19 by Plaintiffs as of the date of this filing.

20 136. Plaintiffs relied on Guess’ false representations in deciding to purchase goods at
21 Guess Outlet stores. Plaintiffs would not have purchased such items absent Guess’ unlawful
22 conduct.

23 137. Plaintiffs request that this Court enjoin Defendants from continuing to violate the
24 CLRA as discussed herein and/or from violating the CLRA in the future and to order restitution to
25 Plaintiffs and each member of the Nationwide class. Otherwise, Plaintiffs, the Nationwide Class and
26 members of the general public may be irreparably harmed and/or denied effective and complete
27 remedy.

28

1 143. Guess' misrepresentations and omissions were conveyed through uniform writings,
2 namely, price tags displaying fictitious discounts or bargains, given to Plaintiffs and each member of
3 the Nationwide Class.

4 144. In reliance on Guess' misrepresentations and omissions, Plaintiffs and the other
5 members of the Nationwide Class, were induced to, and did in fact, purchase clothing and other
6 items they would not have otherwise purchased. Had Plaintiffs and the other members of the
7 Nationwide Class known the truth, they would not have taken such actions.

8 145. The reliance of Plaintiffs, and of the other members of the nationwide Class, was
9 reasonable and justified.

10 146. As a proximate result of Guess' fraudulent conduct as alleged herein, Plaintiffs and
11 the other members of the Nationwide Class have been injured.

12 147. Pursuant to California Code of Civil Procedure § 1709, Guess is liable for the
13 damages suffered by Plaintiffs and the other members of the Nationwide Class.

14 148. The actions of Guess as alleged herein constitute oppression, fraud, or malice, as
15 those terms are defined in California Civil Code § 3294, thus entitling Plaintiffs and the other
16 members of the Nationwide Class, and each of them, to an award of punitive damages.

17 149. Application of California's fraud law to the claims of the Nationwide Class is
18 appropriate because California has significant contact or aggregation of contacts with the claims of
19 the Nationwide Class, creating a substantial state interest in these claims. Sufficient contacts with
20 California to allow constitutional application of California law to the claims of the Nationwide Class
21 exist because Guess' principal office is located in Los Angeles, California; Guess does business in
22 California; a significant number of class members are located in California; and Guess' agents who
23 prepared the fraudulent marketing materials at issue in this case did so from its Los Angeles
24 headquarters.

25 150. Accordingly, the fraudulent misrepresentations and omissions forming the basis of
26 the claim of every member of the Nationwide Class were formulated in, and emanated from,
27 California, and California's interest in deterring such conduct by businesses headquartered within its
28

1 borders and protecting consumers from fraudulent misrepresentations emanating from California
2 overrides any possible interest of any other state in application of its own laws to its residents'
3 claims.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs and the members of the Class demand a jury trial on all claims so
6 triable and judgment against Defendants, Guess?, Inc., Guess? Retail, Inc., and DOES 1 through
7 100, inclusive, as follows:

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

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

14 C. An order that Defendants provide full and adequate notice as required in class actions
15 to all members of the Plaintiff Classes;

16 D. An order that this action and the Plaintiff Classes be further designated, respectively,
17 as a representative action and representative class under California Business & Professions Code §
18 17200, *et seq.*;

19 E. An order that Defendants, pursuant to California Business and Professions Code §
20 17200, *et seq.*, be ordered to make full restitution of all amounts received by Guess as a result of the
21 conduct alleged herein;

22 F. An order that in addition to any constitutionally sufficient notice that is or might
23 otherwise be required in a class action under California law, Defendants be ordered to pay for all
24 necessary efforts to actually locate members of the representative class under Business and
25 Professions Code § 17200, *et seq.*;

1 G. An order that this Court determine, and provide its declaratory judgment, that the
2 practices complained of herein were done willfully, knowingly, and intentionally;

3 H. An order issuing a permanent injunction, on terms the Court may deem appropriate
4 and necessary, prohibiting Defendants from engaging in the practices complained of herein,
5 requiring Defendants to make appropriate reports to the Court or its appointed agent or expert
6 regarding its compliance with said injunction, and requiring Defendants to pay all costs associated
7 with said monitoring said injunction;
8

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

12 J. For such other legal and equitable relief as the Court may deem just and proper.
13

14 DATED: January 4, 2016

LAW OFFICES OF WAYNE S. KREGER, P.A.

17 By: Wayne S. Kreger
18 Wayne S. Kreger
Attorneys for Plaintiffs

19 DATED: January 4, 2016

AIMAN-SMITH & MARCY

22 By: Hallie Von Rock
23 Hallie Von Rock
24 Attorneys for Plaintiffs

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JURY TRIAL DEMANDED

Plaintiffs and the members of the Class demand a jury trial on all triable issues.

DATED: January 4, 2016

LAW OFFICES OF WAYNE S. KREGER, P.A.

By: Wayne S. Kreger
Wayne S. Kreger
Attorneys for Plaintiffs