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11 **SUPERIOR COURT OF CALIFORNIA**
12 **COUNTY OF SAN FRANCISCO**

13 SHILOH BORSH, on behalf of herself and all)
others similarly situated,)
14)
Plaintiff,)
15)
vs.)
16)
GUESS?, Inc., a DELAWARE Corporation; and)
17)
DOES 1-100, inclusive,)
18)
Defendants.)
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ENDORSED FILED
Superior Court of California
County of San Francisco
MAY 04 2016
CLERK OF THE COURT
BY: ROSSALY DE LA VEGA
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CGC 16-551789

CASE NO.
CLASS ACTION COMPLAINT FOR:
1. Violation of California's Unfair Competition Laws ("UCL"); California Business & Professions Code Sections 17200, *et seq.*
2. Violation of California's False Advertising Laws ("FAL"); California Business & Professions Code Sections 17500, *et seq.*
3. Violations of California Consumer Legal Remedies Act ("CLRA"); Civ. Code § 1750, *et seq.*

[DEMAND FOR JURY TRIAL]

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1 Plaintiff Shilo Borsh, on behalf of herself and all others similarly situated, complains and
2 alleges upon information and belief based, among other things, upon the investigation made by
3 Plaintiff and by and through her attorneys against Guess?, Inc. and Does 1-100 ("Defendants") as
4 follows:

5 I.

6 INTRODUCTION

7 1. This is a class action regarding Defendants' false and misleading advertisement of
8 "market" prices, and corresponding phantom "savings" on fashion apparel sold in their "Outlet"
9 or "Factory" stores.

10 2. According to Defendants, Guess is a "global lifestyle brand with a full range of
11 denim, apparel and accessories offered in over 80 countries around the world."

12 3. As part of its retail operations, Defendants operate several "outlet" style stores
13 throughout the State of California, as well as the rest of the United States.

14 4. "Outlet" stores, also known as "factory outlets", are commonly understood by the
15 public to be selling the same merchandise that the manufacturer typically sells at its retail stores,
16 but at a discount. According to the Business Insider, "[t]he common assumption about outlet
17 stores is that you're getting the same goods that are in a regular retail store without the big price
18 tag." See <http://www.businessinsider.com/outlet-stores-arent-a-good-deal-2014-5>.

19 5. But today, outlet stores typically sell *different* merchandise than their retail
20 counterparts, without informing customers that this is the case. The Federal Trade Commission
21 ("FTC") felt that the practice needed to be brought to the attention of consumers, issuing a
22 warning in March 2014 that the merchandise sold at outlet stores can be manufactured
23 exclusively for the outlet and be of inferior quality than that sold in the manufacturer's non-
24 outlet or non-factory store locations. See [https://www.ftc.gov/news-events/press-](https://www.ftc.gov/news-events/press-releases/2014/03/ftc-advice-how-shop-wisely-outlet-malls)
25 [releases/2014/03/ftc-advice-how-shop-wisely-outlet-malls](https://www.ftc.gov/news-events/press-releases/2014/03/ftc-advice-how-shop-wisely-outlet-malls).

26 6. While the FTC felt that the need to warn customers about the different, inferior
27 products sold at outlet stores or factory stores, companies, such as Defendants, actually take
28 advantage of the public's misconceptions about outlets and falsely compare their inferior outlet

1 products to the higher-end retail products sold in their non-outlet or non-factory store locations in
2 order to induce customers to purchase the “discounted” products.

3 7. In this case, Defendants have misled consumers by advertising items at
4 discounted prices (“savings”) by placing tags on its products sold at its California outlet locations
5 that provide consumers with an item’s alleged “retail price” and then selling the items at a price
6 lower than the represented “retail price.” The reality, however, is that the represented “retail
7 price” on items sold at Defendants’ outlet locations is not reflective of the price at which the item
8 at the outlet store has been or is being sold. Rather, the represented “retail price” is an inflated
9 price that a different and superior product, bearing the manufacturer’s logo, is being sold for at
10 normal, retail locations, or is simply an inflated price that was inserted by Defendants to induce
11 the public into believing that the item’s “sale” price is a bargain. The “comparison” made by
12 Defendants’ “discount” representation is truly one of apples to oranges, and any “savings” are
13 illusory.

14 8. Defendants’ practice has been specifically addressed by the FTC. In the Code of
15 Federal Regulations, under Title 16, which addresses Commercial Practices (“Guide Against
16 Deceptive Pricing”), the FTC specifically states:

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

24 16 C.F.R. 233.3(a). The FTC concludes:

25 It bears repeating that the manufacturer, distributor or retailer must in every case
26 act honestly and in good faith in advertising a list price, and not with the intention
27 of establishing a basis, or creating an instrumentality, for a deceptive comparison
28 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(i).

9. In addition, under California law, specifically California Business and Professions
Code Section 17501, entitled “*Value determinations; Former price advertisement,*” when a

1 retailer presents purported reduced “sale” prices and compares those prices to former, “original”
2 prices, the purported “original” or “market” price must have been the prevailing market retail
3 price of the article so advertised within the three months next immediately preceding the
4 publication of the advertised former prices. Specifically, California Business and Professions
5 Code Section 17501 states: “[N]o price shall be advertised as a former price of any advertised
6 thing, unless the alleged former prices was the prevailing market price... within three months
7 next immediately preceding the publication of the advertisement or unless the date when the
8 alleged former price did prevail is clearly, exactly, and conspicuously stated in the
9 advertisement.” Cal. Bus. & Prof. Code § 17501.

10 10. The unlawful practice described above, utilized by Defendants and others, has
11 caused a growing concern for consumer watchdogs. In early 2014, four members of Congress
12 wrote a letter to the FTC requesting that the agency look into claims that merchants may be
13 selling lower quality items produced specifically for their outlet stores without properly
14 informing consumers about the difference between those items and the higher-quality products
15 found in regular retail stores. *See www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-*
16 *outlet-stores-may-be-misleading-consumers.*

17 11. Plaintiff herein alleges that under California law, the purported “retail price”
18 advertised in Defendants’ California outlet store locations never existed and/or did not constitute
19 the prevailing market retail prices for such products within the three months next immediately
20 preceding the publication of the sales tag. By representing that there is a difference between the
21 “sale price” and the “retail price,” Defendants are engaging in a false advertising campaign
22 calculated to lure consumers into purchasing products they believe are significantly discounted.

23 12. Through its false and misleading marketing, advertising and pricing scheme
24 Defendants have violated, and continue to violate, California law prohibiting advertising goods
25 for sale as discounted from former prices, when in fact, such representations are false and
26 misleading. Specifically, Defendants violated, and continue to violate, California’s Business &
27 Professions Code §§ 17200, *et seq* (the “UCL”), California’s Business & Professions Code §§
28 17500, *et seq* (the “FAL”), and the California Consumers’ Legal Remedies Act, California Civil

1 Code §§1750, *et seq* (the “CLRA”).

2 13. Plaintiff brings this action on behalf of herself and other similarly situated
3 consumers who have purchased one or more items at Defendants’ outlet stores that were
4 deceptively represented as discounted from false prices. Plaintiff, on behalf of herself and all
5 other similarly situated individuals, seeks to stop the practice of falsely giving the public the
6 impression that “outlets” are providing them with significant savings, when, in fact, the outlets
7 are really just selling a company’s own “knock-off”, inferior products that truly are worth less
8 than the original, higher-quality retail items offered for sale by the company and by advertising
9 false sales to give the impression that there is any savings going on. By providing false price
10 comparisons, Defendants are deceiving the public and are breaking the law. Plaintiff seeks an
11 order certifying this as a class action, giving restitution and damages to the Class, and enjoining
12 Defendants from continuing with their false-information campaign.

13 **II.**

14 **JURISDICTION AND VENUE**

15 14. Defendant Guess?, Inc. has conducted business in the County of San Francisco,
16 which has caused both obligations and liability of Defendant Guess?, Inc. to arise in the County
17 of San Francisco.

18 15. The amount of controversy exceeds the jurisdictional minimum of this Court.

19 **III.**

20 **THE PARTIES**

21 **A. Plaintiff Shiloh Borsh**

22 16. Plaintiff resides in Sacramento County. Within the last three years, Plaintiff, in
23 reliance on Defendants’ false and deceptive advertising, marketing and “discount” pricing
24 schemes, purchased, among others, a dress for approximately \$22.49 at Defendants’ outlet store
25 in Folsom, California. The dress was advertised and represented by Defendants as having a
26 “retail price” of approximately “29.99”. That price was discounted and represented to Plaintiff
27 as being sold as “25% Off” the represented “retail price” of \$29.99 according to the price tag and
28 related signage. However, this product was never offered for sale at the represented “retail

1 price” of \$29.99 at Defendants’ California retail stores, nor was it offered at that price within the
2 ninety (90) day time period immediately preceding Plaintiff’s purchase at any other retailer who
3 sold this specific product. In fact, the product purchased by Plaintiff was never offered for sale
4 by Defendants at any of their retail stores; rather, the item was only sold by Defendants at their
5 California outlet or factory store locations and \$29.99 was not the prevailing market price for this
6 item. Thus, Plaintiff was damaged by her purchase of the product that she believed to have been
7 steeply discounted.

8 **B. Defendant Guess?, Inc.**

9 17. Plaintiff is informed and believes, and upon such information and belief alleges,
10 Defendant Guess?, Inc. is a Delaware corporation with its principal executive offices in
11 California.

12 **C. Doe Defendants**

13 18. Plaintiff does not know the true names or capacities of the persons or entities sued
14 herein as DOES 1-100, inclusive, and therefore sues such Defendants by such fictitious names.
15 Plaintiff is informed and believes, and upon such information and belief alleges, that each of the
16 DOE Defendants is in some manner legally responsible for the damages suffered by Plaintiff and
17 the Class members as alleged herein. All Defendants were at all relevant times acting as actual
18 agents, conspirators, aiders and abettors who provided substantial assistance with knowledge of
19 the wrongful conduct, ostensible agents, partners and/or joint venturers and employees of all
20 other Defendants, and that all acts alleged herein occurred within the course and scope of said
21 agency, employment, partnership, joint venture, conspiracy and/or enterprise, and with the
22 express and/or implied permission, knowledge, consent, authorization and ratification of their
23 Co-Defendants; however, this allegation is pleaded as an “alternative” theory wherever not doing
24 so would result in a contradiction with other allegations. Plaintiff will amend this Complaint to
25 set forth the true names and capacities of these Defendants when they have been ascertained,
26 along with appropriate charging allegations, as may be necessary.

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IV.

FACTUAL BACKGROUND

19. Within the last three (3) years, Plaintiff shopped at Defendant's outlet store in Folsom, California to purchase clothing and related apparel for personal use.

20. Upon examining a dress at Defendants' outlet store, Plaintiff viewed a representation by Defendants' that the dress had a "retail price" of \$29.99. The represented "retail price" was set forth on the product tag for the dress she was considering purchasing.

21. Plaintiff observed signage adjacent and above to the dress she was considering purchasing which represented that the dress was on sale for "25% off" – a discount and savings of \$7.50 as compared to the represented "retail price" of \$29.99.

22. Relying upon Defendants' misrepresentations and false and deceptive advertising and believing that she was receiving a significant value by purchasing the dress for 25% less than the alleged "retail price" of \$29.99, Plaintiff decided to purchase the dress and proceeded to the cash register where she did in fact purchase the dress.

23. Plaintiff would not have purchased the dress without the misrepresentations made by Defendants. As a result, Plaintiff has been personally victimized by and suffered economic injury as a direct result of Defendants' unlawful, unfair and fraudulent conduct.

24. Defendants know that their comparative price advertising is false, deceptive, misleading and unlawful under California law.

25. Defendants fraudulently concealed from and intentionally failed to disclose to Plaintiff and other members of the proposed Class the truth about the advertised price and former prices.

26. At all relevant times, Defendants have been under a duty to Plaintiff and the proposed Class to disclose the truth about the false discounts.

27. Plaintiff relied upon Defendants' misrepresentation as to the product's "retail price" and false discount when purchasing the dress. Plaintiff would not have made such a purchase but for Defendants' representation of a purported "retail price" which caused Plaintiff to reasonably believe that she was receiving a substantial discount and was making a bargain

1 purchase.

2 28. Plaintiff and the Class reasonably and justifiably acted and relied on the
3 substantial price differences that Defendants advertised, and made purchases believing that they
4 were receiving a substantial discount on an item of greater value than it actually was. Plaintiff,
5 like other Class members, was lured in, relied on, and damaged by these pricing schemes that
6 Defendants carried out.

7 29. Defendants intentionally concealed and failed to disclose material facts regarding
8 the truth about its "retail price" advertising in order to entice Plaintiff and the proposed Class to
9 purchase products in their California outlet locations.

10 V.

11 **CLASS ALLEGATIONS**

12 30. Plaintiff brings this action on behalf of herself, and all others similarly situated,
13 pursuant to Section 382 of the California Code of Civil Procedure and seeks certification of the
14 following Class and Subclass against Defendants for violations of California state laws:

15 Class: All individuals who, in the State of California, purchased any item at one
16 of Defendants' outlet or factory stores located in the State of California during the
17 four (4) year period preceding the filing of this Class Action Complaint, and who
did not subsequently return the purchased item to Defendants (the "Class").

18 CLRA Subclass: All individuals who, in the State of California, purchased any
19 item at one of Defendants' outlet or factory stores located in the State of
20 California during the three (3) year period preceding the filing of this Class
Action Complaint through the present, and who did not subsequently return the
purchased item to Defendants (the "CLRA Subclass").¹

21 Excluded from the Class are Defendants, as well as its officers, employees, agents or affiliates,
22 and any judge who presides over this action, as well as all past and present employees, officers
23 and directors of Defendants. Plaintiff reserves the right to expand, limit, modify, or amend these
24 class definitions, including the addition of one or more subclasses, in connection with her motion
25 for class certification, or at any other time, based upon, *inter alia*, changing circumstances and/or
26 new facts obtained during discovery.

27

28 ¹ Plaintiff is a representative and member of both the Class and the CLRA Subclass. Because all members of the
CLRA Subclass are also members of the Class, both will be referred to as the "Class" unless otherwise noted.

1 31. The members of the Class are so numerous that joinder of all members is
2 impracticable. While the exact number of Class members is unknown to Plaintiff at this time,
3 such information can be ascertained through appropriate discovery and from records maintained
4 by Defendants and their agents. Specifically, Defendants keep extensive computerized records
5 of its customers through, *inter alia*, customer loyalty programs, co-branded credit cards and
6 general marketing programs. Defendants have one or more databases through which a
7 significant majority of Class members may be identified and ascertained, and they maintain
8 contact information, including email and home addresses, through which notice of this action
9 could be disseminated in accordance with due process requirements.

10 32. There is a well-defined community of interest among the Class because common
11 questions of law and fact predominate, Plaintiff's claims are typical of the members of the Class,
12 and Plaintiff can fairly and adequately represent the interests of the Class.

13 33. Common questions of law and fact exist as to all members of the Class and
14 predominate over any questions affecting solely individual members of the Class. Among the
15 questions of law and fact common to the class are, but not limited to, the following:

16 a. Whether, during the Class Period, Defendants' used false "retail prices" or
17 misleading price labels and falsely advertised price discounts on the products sold in their
18 California retail outlet stores;

19 b. Whether, during the Class Period, the "retail prices" advertised by
20 Defendants were the prevailing market prices for the respective products during the three month
21 period preceding the dissemination and/or publication of the advertised "retail prices";

22 c. Whether Defendants engaged in unfair, unlawful and/or fraudulent
23 business practices in violation of California Business and Professions Code Section 17200;

24 d. Whether Defendants engaged in false or misleading advertising in
25 violation of California Business and Professions Code Section 17500;

26 e. Whether Defendants engaged in unfair competition or deceptive acts or
27 practices in violation of the Consumers' Legal Remedies Act;

28 f. Whether Plaintiff and Class members are entitled to damages and/or

1 restitution and the proper measure of that loss; and

2 g. Whether an injunction is necessary to prevent Defendants from continuing
3 to use false, misleading or illegal price comparisons, discounts, or fabricated "retail prices".

4 34. Plaintiff's claims are typical of those of the other Class members because
5 Plaintiff, like every other Class member, was exposed to virtually identical conduct and injury.

6 35. Plaintiff will fairly and adequately represent and protect the interests of the Class
7 in that they have no disabling conflicts of interest that would be antagonistic to those of the other
8 members of the Class. Plaintiff seeks no relief that is antagonistic or adverse to the members of
9 the Class and the infringement of the rights and the damages they have suffered are typical of all
10 other Class members. Plaintiff has retained competent counsel, experienced in class action
11 litigation and consumer protection law.

12 36. The nature of this action and the nature of laws available to Plaintiff and the Class
13 make the use of the class action device a particularly efficient and appropriate procedure to
14 afford relief to Plaintiff and the Class for the wrongs alleged because:

15 a. The individual amounts of damages involved, while not insubstantial, are
16 such that individual actions or other individual remedies are impracticable and litigating
17 individual actions would be too costly;

18 b. If each Class member was required to file an individual lawsuit, the
19 Defendants would necessarily gain an unconscionable advantage since they would be able to
20 exploit and overwhelm the limited resources of each individual Class member with vastly
21 superior financial and legal resources;

22 c. The costs of individual suits could unreasonably consume the amounts that
23 would be recovered;

24 d. Proof of a common factual pattern that Plaintiff experienced is
25 representative of that experienced by the Class and will establish the right of each member of the
26 Class to recover on the cause of action alleged; and

27 e. Individual actions would create a risk of inconsistent results and would be
28 unnecessary and duplicative of this litigation.

1 37. Plaintiff and Class members have all similarly suffered irreparable harm and
2 damages as a result of Defendants' unlawful and wrongful conduct. This action will provide
3 substantial benefits to Plaintiff, the Class and the public because, absent this action, Plaintiff and
4 Class members will continue to suffer losses, thereby allowing Defendants' violations of law to
5 proceed without remedy, and allowing Defendants to retain proceeds of its ill-gotten gains.

6 38. All Class members, including Plaintiff, were exposed to one or more of
7 Defendants' misrepresentations or omissions of material fact claiming that the represented "retail
8 prices" were in existence. Due to the scope and extent of Defendants' consistent false price
9 advertising scheme, disseminated in a years-long campaign to California consumers via a
10 number of different platforms – in-store displays, print advertisements, and the like – it can be
11 reasonably inferred that such misrepresentations or omissions of material fact were uniformly
12 made to all members of the Class. In addition, it can be reasonably presumed that all Class
13 members, including, Plaintiff, affirmatively acted in response to the representations contained in
14 Defendants' false advertising scheme when purchasing merchandise at Defendant's outlet stores.

15 VI.

16 **FIRST CAUSE OF ACTION**
17 **Violation Unfair Competition Law**
18 **Business and Professions Code § 17200 et seq.**
19 **(On Behalf of the Class Against Defendants)**

20 39. Plaintiff and the Class incorporate by reference each and every paragraph of this
21 Class Action Complaint as if fully set forth herein.

22 40. The UCL prohibits any business practice that is "unlawful, unfair or fraudulent",
23 as well as any "unfair, deceptive, untrue or misleading" advertising.

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

28 42. Defendants' actions constitute "unfair" business acts or practices because, as
alleged above, Defendants engaged in misleading and deceptive price comparison advertising

1 that represented false "retail prices" that were fabricated so that Defendants could represent
2 phantom markdowns. Defendants' acts and practices offended an established public policy, and
3 engaged in immoral, unethical, oppressive, and unscrupulous activities that are substantially
4 injurious to consumers.

5 43. The harm to Plaintiff and Class members outweighs the utility of Defendants'
6 practices. There were reasonably available alternatives to further Defendants' legitimate
7 business interests, other than the misleading and deceptive conduct described herein. Thus,
8 Defendants' conduct, as alleged herein, is unfair under the UCL.

9 44. A business act or practice is "fraudulent" under the UCL if it is likely to deceive
10 members of the consuming public.

11 45. Defendants' acts and practices alleged above have deceived Plaintiff and are
12 likely to deceive members of the public. 16 C.F.R. 233.3 explains the use of a MSRP as follows:

13 Many members of the purchasing public believe that a manufacturer's list price,
14 or suggested retail price, is the price at which an article is generally sold.
15 Therefore, if a reduction from this price is advertised, many people will believe
16 that they are being offered a genuine bargain. To the extent that list or suggested
17 retail prices do not in fact correspond to prices at which a substantial number of
18 sales of the article in question are made, the advertisement of a reduction may
19 mislead the consumer.

20 16 C.F.R. 233.3(a). It concludes:

21 It bears repeating that the manufacturer, distributor or retailer must in every case
22 act honestly and in good faith in advertising a list price, and not with the intention
23 of establishing a basis, or creating an instrumentality, for a deceptive comparison
24 in any local or other trade area. For instance, a manufacturer may not affix price
25 tickets containing inflated prices as an accommodation to particular retailers who
26 intend to use such prices as the basis for advertising fictitious price reductions.

27 16 C.F.R. 233.3(i).

28 46. California law also expressly prohibits false pricing schemes. California Business
and Professions Code Section 17501 entitled "*Value determinations; Former price
advertisement,*" states:

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

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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.]

47. Plaintiff relied on Defendants' fraudulent and deceptive representations regarding the "retail prices" it represented and the corresponding "discounts" for the items that Defendants sell at their retail outlet stores. Plaintiff relied upon these misrepresentations to her detriment, they were a substantial cause in influencing Plaintiff's decision to purchase her product, and Plaintiff would not have purchased the product but for Defendants' misrepresentations.

48. Thus, Defendants' conduct, as alleged herein, is "fraudulent" under the UCL.

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

50. As detailed in Plaintiff's Third Cause of Action, California Civil Code Section 1770(a)(9), prohibits a business from "[a]dvertising goods or services with intent not to sell them as advertised," and subsection (a)(13) prohibits a business from "[m]aking false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions."

51. Defendants' practices, as set forth herein, are misleading and will continue to mislead in the future. Consequently, Defendants' practices constitute an unlawful business practices within the meaning of the UCL.

52. Defendants' violation of the UCL through their unlawful, unfair and fraudulent business practices are ongoing and present a continuing threat that members of the public will be deceived into purchasing products based on price comparisons of arbitrary and inflated "retail prices" to "sale" prices. Plaintiff and the class are entitled to preliminary and permanent injunctive relief ordering Defendants to cease this unfair competition, as well as restitution to Plaintiff and the Class of all of monies spent associated with the unfair competition, or such portion of those monies as the Court may find equitable.

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VII.

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

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53. Plaintiff and the Class incorporate by reference each and every paragraph of this Class Action Complaint as if fully set forth herein.

54. California Business and Professions Code section 17500 (the "FAL") provides that "[i]t is unlawful for any...corporation...with intent...to dispose of...personal property...to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated...from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement...which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading...."

55. The "intent" required by the FAL is the intent to dispose of property, and not the intent to mislead the public in the disposition of such property.

56. As stated above, the FAL provides: "[N]o price shall be advertised as a former price of any advertised thing, unless the alleged former price was the prevailing market price...within three months next immediately preceding the publication of the advertisement or unless the date when the alleged former price did prevail is clearly, exactly, and conspicuously stated in the advertisement." Cal. Bus. & Prof. Code § 17501.

57. Defendants' advertising of discounted prices based upon "retail prices" as to their outlet store products were false and misleading misrepresentations as such purported "retail prices" were never the true prevailing prices for the goods sold by Defendants at its California outlet locations. Therefore, this advertising was, and is, an unfair, untrue and misleading practice. This deceptive marketing practice gave consumers the false impression that the products were regularly sold on the market for a substantially higher price than they actually were and were worth more than they actually were.

58. Defendants misled consumers by making untrue and misleading statements and

1 failing to disclose what is required as stated in California Business and Professions Code Section
2 17500 *et seq.*, as alleged herein.

3 59. As a direct and proximate result of Defendants' misleading and false
4 advertisements, Plaintiff has suffered injury in fact and has lost money. As such, Plaintiff
5 requests that this Court order Defendants to restore to Plaintiff and all members of the Class all
6 monies Defendants wrongfully received, and to enjoin Defendants from continuing these unfair
7 practices in violation of the FAL in the future. Otherwise, Plaintiff, Class members and the
8 broader general public will be irreparably harmed and/or denied an effective and complete
9 remedy.

10 **VIII.**

11 **THIRD CAUSE OF ACTION**
12 **Violation of the Consumers Legal Remedies Act ("CLRA"),**
13 **California Civil Code § 1750, *et seq.***
14 **(On Behalf of the CLRA Subclass Against Defendants)**

15 60. Plaintiff and the CLRA Subclass incorporate by reference each and every
16 preceding paragraph of this Class Action Complaint as if fully set forth herein.

17 61. This cause of action is brought pursuant to the Consumers Legal Remedies Act
18 ("CLRA"), codified in California Civil Code Section 1750, *et seq.* Plaintiff and each member of
19 the proposed CLRA Subclass are "consumers" as defined by California Civil Code § 1761(d).

20 62. Defendants' sale of the products at its factory outlet stores to Plaintiff and the
21 Class were "transactions" within the meaning of California Civil Code § 1761(e).

22 63. The products purchased by Plaintiff and the Class are "goods" within the meaning
23 of California Civil Code § 1761(a).

24 64. Defendants violated, and continue to violate, the CLRA by engaging in the
25 following practices proscribed by California Civil Code § 1770(a) in transactions with Plaintiff
26 and the CLRA Subclass which were intended to result in, and did result in, the sale products:

27 a. Advertised goods or services with intent not to sell them as advertised
28 (Cal. Civ. Code Section 1770(a)(9)); and

b. Making false or misleading statements of fact concerning reasons for,
existence of, or amounts of price reductions (Cal. Civ. Code Section 1770(a)(13)).

1 § 1780(e)) and Cal. Civ. Proc. Code § 1021.5; and

2 h. For such other and further relief as the Court may deem necessary or
3 appropriate.

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5
6 Dated: April 28, 2016

STONEBARGER LAW, APC

KEARNEY LITTLEFIELD, LLP

8
9 By: 

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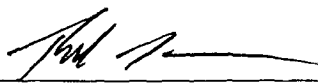
13 **DEMAND FOR JURY TRIAL**

14 Plaintiff hereby demands a jury trial for all of the claims so triable.

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16 Dated: April 28, 2016

STONEBARGER LAW, APC

KEARNEY LITTLEFIELD, LLP

18
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