

1 Rosemary M. Rivas (State Bar No. 209147)

2 Email: rrivas@finkelsteinthompson.com

3 **FINKELSTEIN THOMPSON LLP**

4 1 California Street, Suite 900

5 San Francisco, California 94111

6 Telephone: (415) 398-8700

7 Facsimile: (415) 398-8704

8 *Attorneys for Individual and Representative*

9 *Plaintiff Todd Benson*

10 **UNITED STATES DISTRICT COURT**

11 **NORTHERN DISTRICT OF CALIFORNIA**

12 TODD BENSON, on behalf of himself and all
13 others similarly situated,

14 Plaintiff,

15 vs.

16 MACY'S, INC., MACY'S WEST STORES, INC.,
17 and BLOOMINGDALE'S, INC.,

18 Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff TODD BENSON ("Plaintiff"), on behalf of himself and the proposed Class defined
2 herein, brings this class action suit against Defendants Macy's, Inc., Macy's West Stores, Inc., and
3 Bloomingdale's Inc. (collectively "Defendants"). In support of this Class Action Complaint, Plaintiff
4 alleges, based on his personal knowledge and the investigation of his counsel, as follows:

5 **NATURE OF THE ACTION**

6 1. This action arises out of a deceptive advertising scheme by Defendants to
7 induce consumers into purchasing their products through the use of an illusory cost-saving deal.
8 Defendants, in both their regular and outlet stores (the "Stores"), achieve this by advertising
9 merchandise tagged with inflated or fabricated "original," "regular" or "compare at" prices so
10 consumers are misled into believing the listed "sale" or "discount" price is worth taking advantage of.
11 However, the reality is that the "original," "regular" or "compare at" prices are artificially inflated to
12 make the "sale" or "discounted" price appear more attractive to consumers. Defendants are taking
13 advantage of consumers through their ability to misrepresent original prices unbeknownst to consumers.

14 2. Defendants engage in this company-wide scheme in order to mislead consumers through
15 a person's inherent inclination to perform and be influenced by a price comparison analysis when
16 shopping. However, if consumers were aware that, in some instances, the Defendants' represented
17 "original" price was more than two times the manufacturer's suggested retail price ("MSRP"), the
18 consumer would not be enticed by a 50% off "discount." Defendants' calculated advertising scheme
19 economically harms consumers by luring them into purchasing merchandise they otherwise would not
20 purchase.

21 3. Plaintiff alleges causes of action for: unlawful business practices in violation of the
22 Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*; violations of the False Advertising
23 Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*; and violations of the California Consumers Legal
24 Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*

25 **THE PARTIES**

26 4. Plaintiff Todd Benson is a citizen and resident of San Diego, California.

27 5. Defendant Macy's West Stores, Inc. ("Macy's") is an Ohio corporation with its
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headquarters and principal place of business in Cincinnati, Ohio. Macy's operates department stores in San Francisco, among other cities.

6. Defendant Macy's, Inc., the parent company of Macy's West Stores, Inc., is a Delaware corporation with its headquarters and principal place of business in Cincinnati, Ohio.

7. Defendant Bloomingdale's, Inc. ("Bloomingdale's") is a wholly owned subsidiary of Macy's Inc. and is an Ohio corporation with its headquarters and principal place of business in Cincinnati, Ohio. Bloomingdale's operates luxury department stores nationwide, including in San Francisco, among other cities.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because the aggregate amount in controversy exceeds \$5 million, exclusive of interests and costs; the number of members of the proposed Class exceeds 100; and Plaintiff and at least one Defendant are citizens of different states.

9. This Court has in personam jurisdiction over Defendants because Defendants are present and licensed to do business in this Judicial District, regularly conduct business in this Judicial District, and/or have extensive contacts with this forum.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391. Defendants transact substantial business in this District (including sales and advertising).

11. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

FACTUAL ALLEGATIONS

Background of Defendants' Operations

12. Macy's, originally R.H. Macy & Co., is a chain of department stores owned by Macy's, Inc. Macy's operates more than 700 department store locations in the continental United States. As of 2015, Macy's was the largest U.S. department store company by retail sales and was the 15th-largest retailer in the United States in terms of revenue. Macy's prominent Herald Square flagship location is in Midtown Manhattan, New York City. In California, there are 132 Macy's retail and outlet stores.

13. Bloomingdale's is an American chain of luxury department stores that was founded in

1861. It is known for its large selection of designer brands and expensive merchandise. Bloomingdale's has approximately 40 locations in the United States and competes with other high-end retail stores such as Saks Fifth Avenue and Neiman Marcus. In California, there are 12 Bloomingdale's retail and outlet stores.

Defendants' Deceptive Pricing Scheme

14. Defendants sell a wide variety of items, including those manufactured by high-end brands, ranging from men's, women's and children's clothing, accessories, shoes, jewelry, watches, make-up, furniture, home goods, beds, kitchen products, and electronics to list a few. Defendants oftentimes represent, on the price tags of their Store items, "original," "regular" or "compare at" prices that are artificially inflated. The prices listed on the tags do not, however, reflect the bona fide price at which the Defendants previously sold the merchandise, the MSRP or the prevailing market price for such items. Defendants manipulate consumers into believing the advertised items are being sold at a "sale" price, usually significantly under, the "original," "regular" or "compare at" price.

15. One way Defendants create this illusion is by placing the "sale" or "discount" price on the tag along with the artificially increased and inflated "original," "regular" or "compare at" price. Defendants also have the practice of placing "sale" signs above the originally priced products to attract customers through a false price comparison trap. However, the price comparison presented to consumers is disingenuous considering the "original," "regular," and "compare at" prices listed are false and inflated.

16. Defendants' merchandise is not generally sold at the "original," "regular" or "compare at" prices listed on their product labels, or at least not a substantial number of such items, including not within 90 days of the advertised or represented "original," "regular" or "compare at" price. Defendants fabricate the "original," "regular" or "compare at" prices in order to trick consumers into believing a particular "sale" should not to be passed up.

17. The Federal Trade Commission ("FTC") has described this type of fictitious pricing scheme as deceptive:

- (a) Many members of the purchasing public believe that a manufacturer's list price, or suggested retail price, is the price at which an article is generally sold. Therefore, if a reduction from this price is advertised,

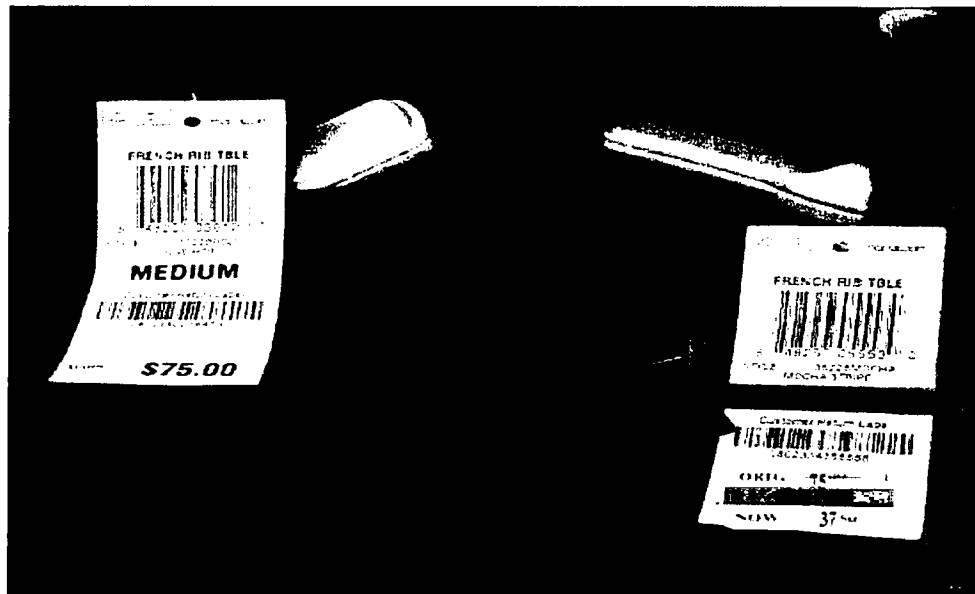
many people will believe that they are being offered a genuine bargain. To the extent that list or suggested retail prices do not in fact correspond to prices at which a substantial number of sales of the article in question are made, the advertisement of a reduction may mislead the consumer.

- (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 intention of establishing a basis, or creating an instrumentality, for a deceptive comparison in any local or other trade area. For instance, a manufacturer may not affix price tickets containing inflated prices as an accommodation to particular retailers who intend to use such prices as the basis for advertising fictitious price reductions.

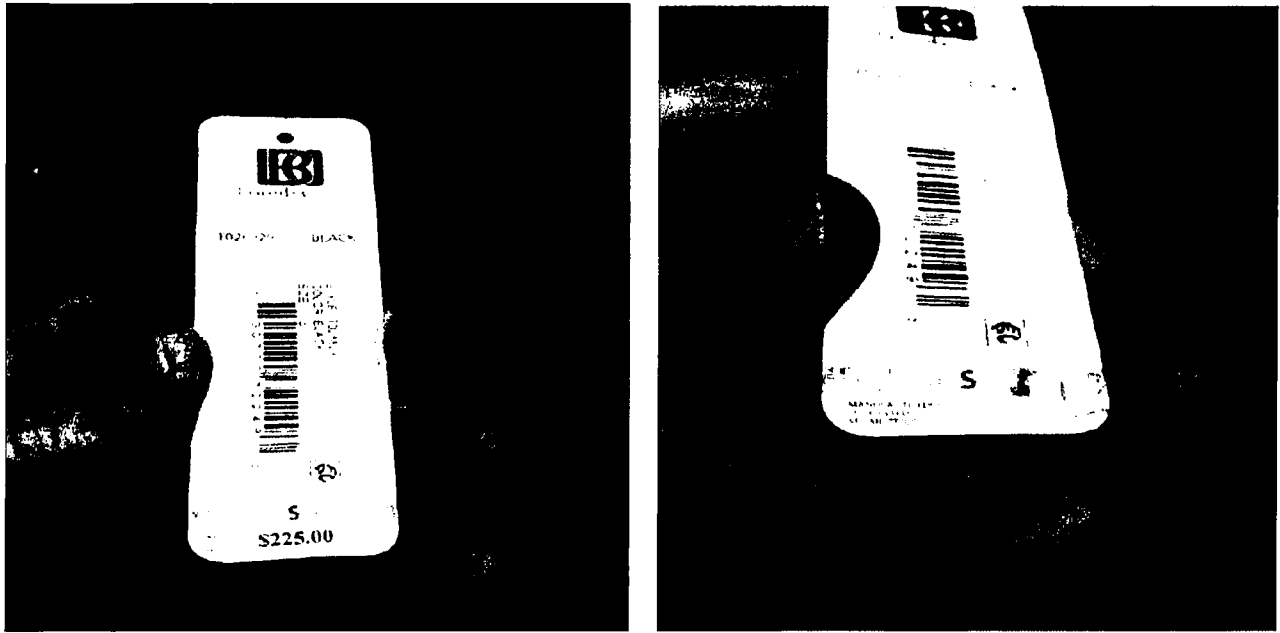
16 C.F.R. § 233.3 (emphasis added).

18. Macy's and Bloomingdale's deceptive advertising scheme is systematically effectuated across their stores through the use and placement of tags and signs to direct consumers to the "discounted" merchandise.

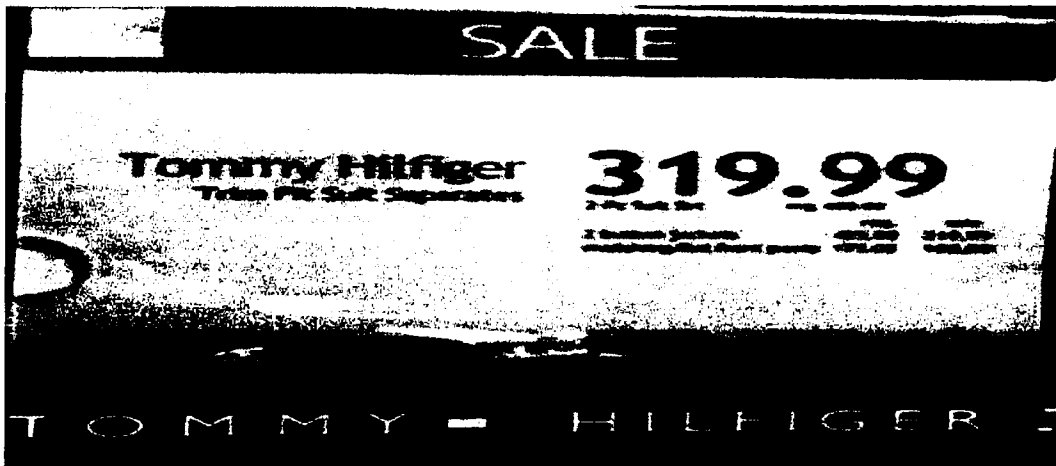
19. One way in which Defendants implement their deceptive advertising scheme is to add a sticker reflecting both "original" and "sale" prices to the merchandise tag. The added sticker encourages consumers to compare the inflated "original" price with the seemingly discounted current price, and then ultimately purchase such items. For example, in the photo below, the added sticker to the price tag includes an "original" price and the "Now" sale price, which appears as a 50% discount to a reasonable consumer.



20. Another deceptive method implemented by Macy's is to place a sticker over the tag, typically over the section of the tag reflecting the MSRP. The added sticker, however, presents an inflated MSRP. Macy's then typically places a "sale" sign above the displayed merchandise purporting to advertise a "sale" on the items. However, if the added sticker is removed from the price tag, a consumer would see that there was in fact no MSRP listed. For example, the photos below show this particular deceptive method of completely fabricating a MSRP.



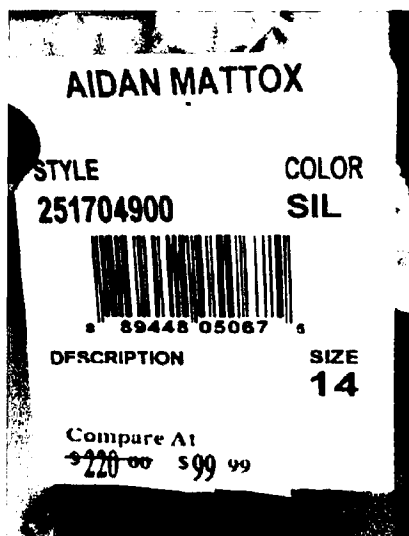
Below is a photo showing a sample of a posted sale sign designed to attract consumers.



21. At Bloomingdale's locations, Defendants also have a practice of adding a sticker over an outside manufacturer's label showing a "Compare at" price that is lined through. The added sticker purports to represent the reduced price at which the Defendant is selling the item. For example, in the photo below, the "Compare at" price is lined through to make the price appear more attractive to the consumer.



However, if the added sticker is removed, it is revealed that the manufacture's MSRP is actually the represented discount price. Thus, the "compare at" price is fictional and the "sale" price is merely the MSRP. In the photo below, the actual MSRP of \$99 is noticeable under the added "Compare at" sticker.



22. Upon information and belief, thousands of Defendants' consumers, including Plaintiff, have been victimized by Defendants' deceptive, misleading and unlawful advertising scheme. If Defendants are not enjoined from continuing to implement this deceptive scheme, consumers will continue to be taken advantage of and economically harmed.

23. Defendants fraudulently conceal from, and fail to disclose to Plaintiff and Class members the true facts about the products' "original" prices and the products' "discounted" prices. Defendants' false representations of prices and false representations of purported "savings," "discounts" and "bargains" are objectively material to a reasonable consumer.

24. Plaintiff Todd Benson is a regular shopper at Macy's and has been for several years. In reliance on Macy's false and deceptive advertising scheme, Mr. Benson has been induced to purchase items because of purported in-store "discounts." On one such occasion, in February of 2015, Mr. Benson was shopping at Macy's in its Westfield Mission Valley location in San Diego. Enticed by the idea of paying significantly less than the represented "original" price, Mr. Benson was induced to purchase an INC International Concepts Men's V-Neck Multi-Media Long-Sleeve Shirt that Macy's claimed was "originally" priced at \$39.50 for \$29.62, a purported 25% "discount." However, based upon information and belief, the product purchased by Mr. Benson was not previously sold or at least in a substantial number at Macy's for \$39.50. Additionally, the "original" price was not the prevailing market price within ninety (90) days preceding the date of Mr. Benson's purchase. In fact, the product that Mr. Benson purchased over one year ago is still offered at a 25% "discount" today. Plaintiff Todd Benson was deceived by the false price comparison into making his purchase and was damaged as a result thereof.

25. Plaintiff, individually and on behalf of all others similarly situated, seek restitution and other equitable remedies, including injunctive relief.

Prior Class Action Lawsuits Against Macy's, Inc.

26. This suit is not the first that Macy's has faced involving allegations of false advertising.

27. A class action was filed against Macy's, Inc. by a San Francisco-based "Master Gemologist Appraiser" after discovering in 2008 and 2009 that the gemstones he saw from Macy's were increasingly flawed. *See Mimi Lowe v. Macy's Inc.*, Superior Court of California, County of San

1 Francisco, Case No. CGC-10-495868. The named plaintiff found gems that Macy's represented to be
 2 natural "rubies" were in fact heavily glass filled and often treated with lead. Moreover, the named
 3 plaintiff found that black sapphires were being sold as black diamonds and that many diamonds were
 4 enhanced by laser drilling and their surface cavities and fractures were filled with a foreign substance,
 5 all while Macy's represented them to be natural diamonds. The suit alleged that Macy's was enlarging
 6 its profits by selling inferior quality gems to the public while representing that the stones and gems had
 7 passed an independent quality control.

8 28. On October 10, 2012, another class action was filed against Macy's, Inc. alleging that it
 9 fraudulently sold *gold-plated* jewelry as "Fine Gold" in violation of the FTC standards. *See Barsukova*
 10 *v. Macy's, Inc.*, Massachusetts District Court, Case No. 12-cv-11892. The named plaintiff purchased a
 11 pair of earrings from Macy's that were labeled as "Fine Gold" which Macy's represented to be regularly
 12 priced at \$360, but were discounted to \$129.09 because of a "pre-sale." After the earrings started to
 13 tarnish and turn grey, the named plaintiff took them to a jeweler who confirmed that the earrings were
 14 not "Fine Gold," but were actually sterling silver covered with a microlayer of gold. After this
 15 revelation, the named plaintiff discovered that many people on website forums had complained of being
 16 duped into buying "gold" jewelry from Macy's.

17 CLASS ACTION ALLEGATIONS

18 29. Pursuant to Fed. R. Civ. P. 23(a), (b)(2), (b)(3), and/or (c)(4), Plaintiff seeks certification
 19 of the following class initially defined as:

20 All persons residing in California who purchased one or more products that have not been
 21 refunded or credited from one of Defendants' Stores where the price paid was represented as a "sale" or
 22 "discount" to the "original," "regular" or "compare at" price that was listed on the tag, (the "Class").

23 30. Excluded from the Class are Defendants and their subsidiaries and affiliates;
 24 Defendants' executives, board members, legal counsel, and their immediate families; and any judge to
 25 whom this case is assigned and any member of his or her immediate family.

26 31. Plaintiff reserves the right to amend, modify, or expand the definition of the
 27 Class after having the opportunity to conduct discovery.

28 32. Numerosity. Fed. R. Civ. P. 23(a)(1). The potential members of the Class as

defined are so numerous that joinder of all members is unfeasible and not practicable. While the precise number of members has not been determined at this time, Plaintiff is informed and believes that thousands of consumers have purchased items from Defendants' Stores that were subject to the deceptive advertising scheme.

33. Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3). There are questions of law and fact common to the Class, which predominate over any questions affecting only individual members of the Class. These common questions of law and fact include, without limitation:

- a. Whether Defendants use false "original," "regular" or "compare at prices" on merchandise sold in their Stores;
- b. Whether Defendants falsely advertise discounts on their merchandise sold in their Stores;
- c. Whether Defendants' deceptive advertising scheme constitutes unlawful business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*;
- d. Whether Defendants' deceptive advertising scheme constitutes unfair business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*;
- e. Whether Defendants' deceptive advertising scheme constitutes fraudulent business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*;
- f. Whether Defendants' deceptive advertising scheme is likely to deceive a reasonable person;
- g. Whether Defendants' deceptive advertising scheme constitutes false advertising in violation of Cal. Bus. & Prof. Code §§ 17500, *et seq.*;
- h. Whether Defendants' deceptive advertising scheme violates Cal. Civ. Code §§ 1750, *et seq.*; and
- i. The nature of the relief, including equitable relief, to which Plaintiff and members of the Class are entitled.

34. Typicality. Fed. R. Civ. P. 23(a)(3). Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and members of the Class were exposed to uniform practices and sustained injury arising out of and caused by Defendants' unlawful conduct.

35. Adequacy of Representation. Fed. R. Civ. P. 23(a)(4). Plaintiff will fairly and adequately

1 represent and protect the interests of the members of the Class. Plaintiff's Counsel are competent and
2 experienced in litigating class actions.

3 36. Superiority of Class Action. Fed. R. Civ. P. 23(b)(3). A class action is superior to other
4 available methods for the fair and efficient adjudication of this controversy since joinder of all the
5 members of the Class is impracticable. Furthermore, the adjudication of this controversy through a class
6 action will avoid the possibility of inconsistent and potentially conflicting adjudication of the claims
7 asserted herein. There will be no difficulty in the management of this action as a class action.

8 37. Injunctive and Declaratory Relief. Fed. R. Civ. P. 23(b)(2). Defendants' deceptive
9 advertising scheme implemented in their Stores were uniform as to all members of the Class. Defendants
10 have acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief or
11 declaratory relief as requested herein is appropriate respecting the Class as a whole.

12 38. Issue Certification. Fed. R. Civ. P. 23(c)(4). In the alternative, the common questions of
13 fact and law, set forth in Paragraph 33, are appropriate for issue certification on behalf of the proposed
14 Classes.

15 **FIRST CAUSE OF ACTION**

16 **For Unlawful Business Practices in Violation of the Unfair Competition Law, Cal. Bus. & Prof.**

17 **Code §§ 17200, et seq.**

18 **(On Behalf of Plaintiff and the Class)**

19 39. Plaintiff incorporates by reference each and every allegation set forth above as if fully
20 stated herein.

21 40. The conduct and actions of Defendants complained of herein, namely, the
22 implementation of their systemic and deceptive advertising scheme in order to mislead consumers,
23 constitutes an unlawful business practices in violation of the Unfair Competition Law.

24 41. Defendants' practices constitute unlawful business practices in violation of the UCL
25 because, among other things, the practices violation the FTC's prohibition of "unfair or deceptive acts
26 or practices in or affecting commerce" and specifically prohibits false advertisements. 15 U.S.C. §
27 45(a)(1) and 52(a). The FTC has described Defendants' style of fictitious price reductions, as quoted in
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Paragraph 18, as deceptive. Moreover, Defendants' deceptive advertising scheme also violates California's Consumers Legal Remedies Act and California's False Advertising Law.

42. Plaintiff relied on the stated prices set forth in Defendants' Stores and on the products they bought. As a result of Defendants' misconduct, Plaintiff has lost money or property.

43. Accordingly, Plaintiff and Class members seek equitable relief in the form of an order requiring Defendants to refund Plaintiff and Class members a portion of the price paid for the items bought from Defendants' Stores that were subject to the deceptive advertising scheme and any other relief deemed proper.

SECOND CAUSE OF ACTION

For Unfair Business Practices in Violation of the Unfair Competition Law, Cal. Bus. & Prof. Code

§§ 17200, et seq.

(On Behalf of Plaintiff and the Class)

44. Plaintiff incorporates by reference each and every allegation set forth above as if fully stated herein.

45. The conduct and actions of Defendants complained of herein, namely, the implementation of their systemic and deceptive advertising scheme in order to mislead consumers, constitute unfair business practices in violation of the Unfair Competition Law.

46. Defendants' practices constitute unfair business practices in violation of the UCL because, among other things, they are immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers, and/or any utility of such practices is outweighed by the harm caused to consumers. Defendants' actions are unfair because through the misrepresentation of the original or regular prices listed through the advertising scheme, Plaintiff and the Class falsely believed Defendants were offering items for sale at the purported discount, when in fact, this was not true. As a result, Plaintiff and the Class were induced into purchasing items that they would not have purchased.

47. Defendants' practices caused substantial injury to Plaintiff and Class members, are not outweighed by any benefits, and Plaintiff and Class members could not have reasonably avoided their injuries.

48. Plaintiff relied on the stated prices set forth in Defendants' Stores and on the products they bought. As a result of Defendants' misconduct, Plaintiff has lost money or property.

49. Accordingly, Plaintiff and Class members seek equitable relief in the form of an order requiring Defendants to refund Plaintiff and Class members a portion of the price paid for the items bought from Defendants' Stores that were subject to the deceptive advertising scheme and any other relief deemed proper.

THIRD CAUSE OF ACTION

For Fraudulent Business Practices in Violation of the Unfair Competition Law, Cal. Bus. & Prof.

Code §§ 17200, et seq.

(On Behalf of Plaintiff and the Class)

50. Plaintiff incorporates by reference each and every allegation set forth above as if fully stated herein.

51. The conduct and actions of Defendants complained of herein, namely, the implementation of their systemic and deceptive advertising scheme in order to mislead consumers, constitutes fraudulent business practices in violation of the Unfair Competition Law.

52. Defendants' practices constitute fraudulent business practices in violation of the UCL because, among other things, they are likely to deceive reasonable consumers. Plaintiff and Class members relied on Defendants' representations about the listed "original," "regular," or "compare at" prices when comparing to the sale or discount prices.

53. Plaintiff relied on the stated prices set forth in Defendants' Stores and on the products they bought. As a result of Defendants' misconduct, Plaintiff has lost money or property.

54. Accordingly, Plaintiff and Class members seek equitable relief in the form of an order requiring Defendants to refund Plaintiff and Class members a portion of the price paid for the items bought from Defendants' Stores that were subject to the deceptive advertising scheme and any other relief deemed proper.

FOURTH CAUSE OF ACTION

The False Advertising Law – Cal. Bus. & Prof. Code §§ 17500, et seq.

(On Behalf of Plaintiff and the Class)

55. Plaintiff incorporates by reference each and every allegation set forth above as if fully stated herein.

56. Defendants publicly disseminated untrue or misleading advertising in their Stores in violation of the False Advertising Law, by representing that items for sale had original or regular prices that were materially greater the actual original or regular price with the intent to mislead consumers into believing that the current price of the item was below the normal price and thus a good deal.

57. Defendants committed such violations of the False Advertising Law with actual knowledge or in the exercise of reasonable care should have known their advertising was untrue or misleading.

58. Plaintiff and Class members reasonably relied on Defendants' advertisements regarding the original, regular or compare at prices made in violation of Cal. Bus. & Prof. Code §§ 17500, *et seq.*

59. Plaintiff relied on the stated prices set forth in Defendants' Stores and on the products they bought. As a result of Defendants' misconduct, Plaintiff has lost money or property.

60. Accordingly, Plaintiff and Class members seek equitable relief in the form of an order requiring Defendants to refund Plaintiff and Class members a portion of the price paid for the items bought from Defendants' Stores that were subject to the deceptive advertising scheme and any other relief deemed proper.

FIFTH CAUSE OF ACTION

California Consumers Legal Remedies Act – Cal. Civ. Code §§ 1750, *et seq.*

(On Behalf of Plaintiff and the Class)

61. Plaintiff incorporates by reference each and every allegation set forth above as if fully stated herein.

62. Each Defendant is a "person" within the meaning of Cal. Civ. Code §§ 1761(c) and 1770, and provides "goods" within the meaning of Cal. Civ. Code §§ 1761(a) and 1770. Defendants' customers, including Plaintiff and Class members, are "consumers" within the meaning of Cal. Civ. Code §§ 1761(d) and 1770. Each purchase of Defendants' items by Plaintiff and the Class, that were subject to the deceptive advertisement scheme, constitute a "transaction" within the meaning of Cal. Civ. Code §§ 1761(e) and 1770.

63. The Consumers Legal Remedies Act makes it unlawful for a company to make false or

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

65. Defendants violated Cal. Civ. Code § 1770(a)(13) by intentionally misleading consumers as to what the original or regular price of their in-store items were by representing that the original or regular price was materially greater than it actually was.

64. Plaintiff and Class members reasonably relied on Defendants' misrepresentations. As a result of Defendants' misconduct, Plaintiff has suffered economic injury and Defendants have been unjustly enriched by obtaining profits and revenues that they would not otherwise have obtained absent their false, misleading and deceptive conduct.

65. Plaintiff will send out written notice complying with Cal. Civ. Code § 1782(a). If Defendants do not respond, Plaintiff will file an amended complaint seeking damages under the CLRA.

66. Plaintiff has complied with Cal. Civ. Code § 1780(d) by submitting a declaration attached hereto as Exhibit A.

67. Plaintiff and Class members have been injured and seek an injunctive relief in the form of an order prohibiting Defendants from engaging in the alleged misconduct described herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and members of the Class, pray for relief as follows:

A. For an order that this action may be maintained as a class action under Fed. R. Civ. P. 23, that Plaintiff be appointed as Class representative, and that Plaintiff's counsel be appointed as counsel for the Class.

B. Restitution in such amount that Plaintiff and members of the Class paid to purchase items Defendants sold through their deceptive advertising scheme, or the profits Defendants obtained from those transactions.

C. An order enjoining Defendants from engaging in the misconduct described herein and requiring them to perform a corrective advertising campaign.

D. An order awarding Plaintiff his costs of suit incurred herein, including expert witness fees, reasonable attorneys' fees, and pre and post-judgment interest, at the legal rate.

1 E. An order requiring an accounting for and imposition of a constructive trust upon all
2 monies received by Defendants as a result of the unfair, misleading, fraudulent, and unlawful conduct
3 alleged herein.

4 F. Such other and further relief as may be deemed necessary or appropriate.
5

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff hereby demands a trial by jury of all claims so triable.
8

9 DATED: March 14, 2016

Respectfully submitted,

10 **FINKELSTEIN THOMPSON LLP**

11 By: 

12 Rosemary M. Rivas

13 Rosemary Rivas
14 One California Street, Suite 900
15 San Francisco, California 94111
16 Telephone: (415) 398-8700
17 Facsimile: (415) 398-8704

18 *Attorneys for Individual and Representative*
19 *Plaintiff Todd Benson*
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**DECLARATION OF ROSEMARY M. RIVAS
PURSUANT TO CALIFORNIA CIVIL CODE § 1780(d)**

I, Rosemary M. Rivas, declare as follows:

1. I am an attorney with the law firm Finkelstein Thompson LLP, counsel for Plaintiff Todd Benson and the Proposed Class in this action. I am admitted to practice law in California and before this Court, and am a member in good standing of the State Bar of California. This declaration is made pursuant to California Civil Code section 1780(d). I make this declaration based on my research of public records and also upon personal knowledge, and if called upon to do so, could and would testify competently thereto.

2. Based on my research of publicly available records Defendants Macy's, Inc., Macy's West Stores, Inc. and Bloomingdale's, Inc. conduct business within this judicial district.

I declare under penalty of perjury under the laws of the United States and the State of California this 14th day of March 2016 in San Francisco, California that the foregoing is true and correct.


Rosemary M. Rivas

JS 44 (Rev. 12/12) cand rev (1/15/13)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

TODD BENSON, on behalf of himself and all others similarly situated.

(b) County of Residence of First Listed Plaintiff San Diego County

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Rosemary M. Rivas (State Bar No. 209147), FINKELSTEIN THOMPSON LLP, 1 California Street, Suite 900, San Francisco, CA, 94111, (415) 398-8700

DEFENDANTS

MACY'S, INC., MACY'S WEST STORES, INC., and BLOOMINGDALE'S, INC.,

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 U.S.C. § 1332(d); Cal. Civ. Code § 1750; Cal. Bus. Prof. Code § 17500; Cal. Bus. Prof. Code § 17200
 Brief description of cause:
 Violations of state consumer protection laws due to deceptive advertising scheme.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Haywood S. GilliamDOCKET NUMBER 3:15-cv-06033-HSGDATE 3-15-16

SIGNATURE OF ATTORNEY OF RECORD

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)



SAN FRANCISCO/OAKLAND



SAN JOSE



EUREKA

for the

Northern District of California

Plaintiff(s)

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MACY'S, INC., MACY'S WEST STORES, INC., and
BLOOMINGDALE'S, INC.,

Defendant(s)

Civil Action No.

To: (Defendant's name and address)

MACY'S, INC.
7 West 7th Street
Cincinnati, OH 45202

MACY'S WEST STORES, INC.
7 West 7th Street
Cincinnati, OH 45202

BLOOMINGDALE'S, INC.
7 West 7th Street
Cincinnati, OH 45202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Rosemary M. Rivas (State Bar No. 209147)

Rosemary M. Rivas (State Bar No. 209147)
FINKELSTEIN THOMPSON LLP
1 California Street, Suite 900
San Francisco, California, 94111
Telephone: (415) 398-8700/Facsimile: (415) 398-8704

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk