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14 **UNITED STATES DISTRICT COURT**

15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

16 **DEVIN ROSE, On Behalf of Himself and**
17 **All Others Similarly Situated;**

18 **Plaintiff,**

19 **vs.**

20 **ZARA USA, INC., a New York**
21 **Corporation, and DOES 1-10;**

22 **Defendants.**

23 **Case No. 2:16-cv-6229**

24 **CLASS COMPLAINT**
25 **FOR DAMAGES**

- 26 **1. Negligence**
- 27 **2. Negligence Per Se**
- 28 **3. Unfair Business Practices**
- 4. Unjust Enrichment**
- 5. Fraud**

DEMAND FOR JURY TRIAL

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COMPLAINT

1. Plaintiff Devin Rose brings this putative class action, on behalf of himself and the putative class comprised of potentially millions of similarly situated consumers, against Zara USA, Inc. (“Zara”), based on Zara’s deceptive pricing practices.

2. Zara develops, markets, advertises, brands, promotes, distributes, and sells—through retail and online—fashion apparel designed to reflect consumer trends and provide buyers with high-fashion looks for affordable prices. Zara is the flagship brand of Inditex, the world’s largest clothing retailer.¹

3. Zara began in 1975 with a single modest store in northwest Spain, but quickly achieved tremendous success through the use of revolutionary design, manufacturing, and distribution systems.² Today, Zara is a leading international fashion company with more than 2,100 stores in 88 countries.³

4. Zara is notable for its massive celebrity following. Multiple fashion and entertainment websites have featured stories discussing famous personalities who have been spotted sporting Zara fashions.⁴ These articles emphasize the fact that while Zara clothing appeals to wealthy, influential, and highly fashion-conscious individuals, it remains affordable, and within reach of the average consumer.⁵

5. However, behind its façade of attainable elegance, Zara is engaged in a widespread practice of deceiving American consumers through a classic bait and switch.

¹ See Thomas Mulier & Rodrigo Orihuela, *Inditex Profit Beats Estimates on Online Expansion*, *Bloomberg* (June 14, 2016, 10:06 PM), <http://www.bloomberg.com/news/articles/2016-06-15/inditex-first-quarter-profit-beats-estimates-on-online-expansion>; Susan Berfield & Manuel Baigorri, *Zara’s Fast-Fashion Edge*, *Bloomberg* (Nov. 14, 2013, 8:31 PM), <http://www.bloomberg.com/news/articles/2013-11-14/2014-outlook-zaras-fashion-supply-chain-edge>.

² See Berfield & Baigorri, *supra* note 1; *Zara*, *Inditex*, <http://www.inditex.com/en/brands/zara> (last visited Aug. 15, 2016).

³ See *Zara*, *supra* note 2.

⁴ See, e.g., Marisa Tom, *7 Star-Studded Reasons You Should Be Shopping at Zara Right Now*, *POPSUGAR* (June 26, 2012), <http://www.popsugar.com/fashion/Celebrities-Wearing-Zara-23729153#photo-23729153>.

⁵ *Id.*

1 6. Millions of consumers who have purchased clothing at Zara stores have
2 been gulled into paying prices well in excess of the tag prices. Specifically, Zara’s
3 practice of assuring consumers that the discrepancy between the tag price in euros
4 (€), and the dollar (\$) price at the register is merely the result of an appropriate
5 application of the conversion rate from euros to dollars. In fact, the conversion rate
6 is entirely misapplied—to the extent it is even applied at all—such that U.S.
7 consumers are paying far more than the true prices of the products.

8 7. An investigation into Zara’s unlawful pricing practices demonstrates
9 that Zara perpetrates its deception in two ways.

10 a. ***Clothing Tagged Only in Euros (“Bait-and-Switch Pricing”)***: Many
11 of Zara’s products are tagged only with a euro price. This alone is
12 confusing to many consumers and lures them to the register.
13 Compounding matters, not only is the same product sold for a
14 substantially higher amount in dollars, but the product is always sold
15 well in excess of the true converted amount if the euro price on the tag
16 were properly converted to dollars.

17 b. ***Euro Price Covered with Dollar Sticker (“Cover-Up Pricing”)***: In
18 those instances where Zara includes a price in dollars, the dollar amount
19 is almost always applied in the form a pricing label affixed over the
20 euro price actually printed on the tag. In this context, the dollar amount
21 similarly is far in excess of the true converted amount if the euro price
22 printed on the tag were properly converted to dollars.

23 8. In both cases, and as further discussed below, Zara violates State and
24 Federal law by luring consumers to the register with perceived lower prices using a
25 foreign currency and surreptitiously imposing an arbitrary markup without making
26 an appropriate, or any, disclosure to the consumer.

27 9. Worse yet, Zara has perpetuated a corporate policy of misinforming
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1 consumers who do inquire into why the cost of clothing they purchased was in
2 excess of the tag price by telling these consumers that the markup is based on an
3 appropriate conversion rate tied apparently to some date in the remote past.

4 10. As discussed below, the putative class representative in this action was
5 informed by store representatives, and observed store representatives informing
6 others, that the ultimate price for clothing in dollars reflected the conversion rate that
7 existed at the time the apparel was manufactured. This was false.

8 11. Putative Class Representative Devin Rose purchased three shirts from a
9 Zara retail store in Sherman Oaks, California on Tuesday, May 17, 2016.

10 12. Mr. Rose was drawn in by the low cost of these garments, each having
11 displayed a price of just “€9.95” on its tag.

12 13. It was not until Mr. Rose paid for his purchases at the register that he
13 discovered, to his dismay, that he had actually been charged \$17.90 for each shirt.
14 When Mr. Rose questioned the cashier about this discrepancy, he was told that the
15 price difference was due to the conversion rate between euros and dollars. Just as
16 Mr. Rose was being told this, another customer called in to the store to inquire about
17 the very same kind of price issue. This customer was given the same explanation.

18 14. Upon further questioning of the Zara employee, Mr. Rose was told that
19 the store used a device to calculate the conversion rate applicable to each item, but
20 that this device had been lost.

21 15. When Mr. Rose confronted a purported supervisor at the Zara store
22 about the price increase and the supposed loss of the store’s exchange rate
23 calculation device, he was told that no such device existed, but that the conversion
24 rate that had been applied to his purchases was nevertheless accurate. This purported
25 supervisor also refused to provide contact information for a manager.

26 16. The following day, Mr. Rose called a Zara customer service hotline to
27 inquire about the pricing issue. The customer service representative with whom he
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1 spoke claimed that the conversion rate applied to each item that Mr. Rose had
2 purchased was the one that had prevailed at the time that item was manufactured.
3 When Mr. Rose pressed this issue, the customer service representative asked him
4 what price he felt he should have paid for each item, almost as if the representative
5 was attempting to negotiate with him.

6 17. At the time that Mr. Rose made his purchases, the actual euro-dollar
7 exchange rate would have resulted in his €9.95 shirts costing approximately \$11.26
8 each. Instead, however, Zara charged Mr. Rose \$17.90 per garment, a markup of
9 nearly 60%.

10 18. Upon further investigation, Zara has been engaged in such fraudulent
11 pricing practices across the United States. On average, consumers are being charged
12 \$5 to \$50 more than the lowest tag price in euros. In the aggregate, the shopping
13 experiences of ordinary consumers like Mr. Rose, have resulted in Defendant Zara
14 being unjustly enriched to the tune of billions of dollars.

15 19. California, like many states, has moved away from anachronistic legal
16 doctrines that provide that the price quoted on a tagged product or commodity is
17 merely an invitation to deal or treat. While it is true that at common law, price
18 markings were held merely to demonstrate a merchant's willingness to bargain, and
19 that they therefore did not obligate retailers to sell goods as marked, contemporary
20 law has harshly rebuked this ancient notion. Specifically, section 12024.2 of the
21 California Business and Professions Code makes it a criminal offense to “[c]harge an
22 amount greater than the lowest price posted on [a product] itself or on a shelf tag that
23 corresponds to the [product]” This statute was enacted specifically to displace
24 the antiquated “invitation to treat” doctrine, which California and many other
25 jurisdictions feel is harmful and deceptive to consumers.⁶

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27 ⁶ See, e.g., 720 Ill. Comp. Stat. Ann. § 5/17-5.7(b) (West 2016) (“Any person . . . who, with intent to sell . . .
28 merchandise . . . to the public . . . places before the public . . . in this State, in a . . . card, label . . . or in any other way
similar . . . to the foregoing, [a] . . . statement of any sort regarding merchandise . . . which . . . contains any assertion . .
. which is untrue, misleading or deceptive, shall be guilty of a Class A misdemeanor.”); Kan. Stat. Ann. § 83-219(a)
(West 2016) (“It shall be unlawful for any person: . . . to misrepresent, or represent in a manner calculated or tending to

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20. Federal law similarly rejects the “invitation to treat” policy with statutes designed to protect consumers from being misled.⁷

21. Mr. Rose brings this putative class action to compel Zara to be a transparent and responsible corporate citizen by ceasing its practice of defrauding customers and making whole those consumers who have been victims of its deceptive practices.

JURISDICTION AND VENUE

21. This Court has diversity jurisdiction over this class action pursuant to 28 U.S.C. § 1332(d)(2) because the matter in controversy, exclusive of interest and costs, exceeds \$5,000,000 and is a class action in which some members of the class are citizens of states different from the States where Defendants are citizens.

22. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because many of the acts and transactions giving rise to this action occurred in this District as Defendants: (a) are authorized to conduct business in this District and have intentionally availed themselves of the laws and markets within this District through the promotion, marketing, distribution and sale of Zara products in this District; (b) currently do substantial business in this District; and (c) are subject to personal jurisdiction in this District.

PARTIES

23. At all times relevant to this matter, Plaintiff Devin Rose was a resident of Los Angeles County, California and a citizen of California. Plaintiff purchased Zara clothing from a Zara retail store located in Los Angeles County.

24. Plaintiff, on behalf of himself and the putative national class and

mislead or deceive an actual or prospective purchaser, the price of an item offered, exposed or advertised for sale at retail”); Mich. Comp. Laws Ann. § 445.315(4) (West 2016) (“A person shall not make . . . an advertisement with the intent . . . not to sell . . . goods . . . at the price stated in the advertisement”); Va. Code Ann. § 18.2-217(a) (West 2016) (“Any person . . . who . . . advertises . . . to the public any . . . goods . . . with intent not to sell at the price . . . advertised . . . shall be guilty of a Class 1 misdemeanor.”).

⁷ See, e.g., 16 C.F.R. § 238.2(a) (2016) (“No statement . . . should be used in any advertisement which creates a false impression of the . . . value . . . of the product offered”).

1 putative California subclass, who purchased Zara clothing products (the “Putative
2 Class”) during the Class Period, as further defined below, brings this class action
3 against Defendants Zara USA, Inc. and Does 1-10.

4 25. Plaintiff’s allegations are based in part on the investigation of counsel,
5 including but not limited to reviews of advertising and marketing material, public
6 filings, articles, journal actions, and other publicly available information, and thus on
7 information and belief, except as to the individual actions of Plaintiff, as to which
8 Plaintiff has personal knowledge.

9 26. Plaintiff has been damaged in that Zara’s deceptive pricing practices
10 caused him to overpay for the garments he purchased. Plaintiff, and members of the
11 Putative Class, would have paid less for Zara’s products had they been appropriately
12 priced.

13 27. Defendant Zara, Inc. is a New York corporation. Zara manufactures
14 and sells clothing. It offers a wide variety of clothing products for men, women, and
15 children of all ages. Zara advertises and sells its products both online and through
16 retail stores around the world.

17 28. Each of the DOES 1-10 is the agent, servant, partner, joint-venturer, co-
18 venturer, principal, director, officer, manager, employee, or shareholder of one or
19 more of its co-defendant(s) who aided, abetted, controlled, and directed or conspired
20 with and acted in furtherance of said conspiracy with one or more of its co-
21 defendant(s) in said co-defendant(s)’ performance of the acts and omissions
22 described below. Plaintiff sues each of these Doe Defendants by these fictitious
23 names because Plaintiff does not know these Defendants’ true names and capacities.
24 Despite reasonable efforts, Plaintiff has not been able to ascertain the identities of
25 DOES 1-10.

26 29. Plaintiff, on behalf of himself and the putative class, alleges negligence,
27 negligence per se, unfair business practices, unjust enrichment, and fraud through
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1 Defendants' pricing and labeling.

2 30. At all times relevant, Plaintiff was attracted to Zara products because of
3 the prices featured on their price tags.

4 **FACTUAL ALLEGATIONS**

5 31. Zara was founded in 1975 by Amancio Ortega.⁸ Ortega served as
6 chairman of Zara's parent company, Inditex until recently, having stepped down in
7 2011.⁹ He is now the second richest person in the world.¹⁰

8 32. Zara manufactures and markets fashion clothing for men, women, and
9 children of all ages.

10 33. Zara's garments are purchased and worn by numerous high profile
11 celebrities.

12 34. For example, the following are images of Duchess of Cambridge Kate
13 Middleton and reality television personality Kim Kardashian prominently carrying
14 Zara shopping bags:



22 Kate Middleton with Zara shopping bag¹¹



26 Kim Kardashian and Brittny Gastineau with Zara shopping bags¹²

27 ⁸ Berfield & Baigorri, *supra* note 1.

28 ⁹ #2 Amancio Ortega, *Forbes* (Aug. 16, 2016), <http://www.forbes.com/profile/amancio-ortega/>.

¹⁰ *See id.*

¹¹ Allie Merriam, *Kate Middleton Stops to Shop at Zara!*, *POPSUGAR* (Nov. 18, 2011), <http://www.popsugar.com/celebrity/Kate-Middleton-Shopping-Zara-Pictures-20469726#photo-20469726>.

1 35. A major part of Zara’s appeal is that despite its popularity with wealthy
2 and highly fashion-conscious celebrities like those pictured above, its products
3 remain affordable, and within reach of the average consumer. As one source put it,
4 “Not only do these A-list wardrobes look cool, they’ve also got a price tag that won’t
5 wipe out your bank account.”¹³

6 36. While enjoying a reputation for making high fashion available to
7 average consumers and basking in the glow of the many celebrities that publicize its
8 wares, Zara surreptitiously engages in deceptive pricing practices that defraud
9 consumers across America with every purchase.

10 37. Zara marks the price tags on many of its products with only a euro
11 price. Since the euro is a larger unit of currency than the American dollar, these euro
12 prices lead shoppers in the United States to believe that Zara’s products are less
13 expensive than they actually are. Thus, Zara customers are lured in by the brand’s
14 seemingly low prices, and it is only upon bringing the items they intend to purchase
15 to the register that these customers discover their true costs. To make matters worse,
16 however, the prices that consumers are ultimately quoted—prices that are only
17 revealed when the items have been already been scanned and the consumer is asked
18 for payment—are not accurate American dollar equivalents to the euro prices on the
19 tags, but rather arbitrarily inflated amounts that are substantially higher.

20 38. Even on those products that Zara does take the time to reprice, the
21 deceptive marking practices persist. Rather than converting an original euro price to
22 an equivalent American dollar price, Zara simply chooses a higher dollar amount that
23 bears no relation to the relevant conversion rate, prints it on a label, and affixes that
24 label over the original euro price actually printed on the garment tag.

25 39. Plaintiff, and Putative Class representative, Devin Rose, purchased three
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27 ¹² *Kim Kardashian and Zara Paper Shopping Bag*, *coolspotters*, [http://coolspotters.com/public-figures/kim-](http://coolspotters.com/public-figures/kim-kardashian/and/handbags/zara-paper-shopping-bag#medium-2022343)
28 *kardashian/and/handbags/zara-paper-shopping-bag#medium-2022343* (last visited Aug. 16, 2016).

¹³ Tom, *supra* note 4.

1 Zara shirts from a Sherman Oaks, California Zara retail store on May 17, 2016. He
2 was initially attracted to their tag price of “€9.95.” Mr. Rose had his purchases rung
3 up at the checkout register, and only after having tendered payment for them did he
4 realize, to his dismay, that he had actually been charged \$17.90 for each shirt.

5 40. When Mr. Rose inquired into the price discrepancy, he was told by a
6 Zara employee that the price difference resulted from the euro-to-dollar conversion
7 rate. The employee stated the store used a device to calculate the correct conversion
8 rate for each item, but that that device had been lost. Mr. Rose then asked to speak
9 with the employee’s supervisor. As Mr. Rose waited for the supervisor, he
10 witnessed a Zara employee address a price discrepancy question similar to his own
11 over the telephone. The employee told the customer who had called in the same
12 story that Mr. Rose had been told, that the discrepancy between the price on the tag
13 and the price actually charged reflected the euro-to-dollar conversion rate, and that
14 the store had lost its conversion rate calculation device. When the purported
15 supervisor arrived, Mr. Rose brought up the conversion device and asked why the
16 price discrepancy did not reflect the then-current euro to dollar exchange rate. The
17 purported supervisor said that the store did not use any sort of conversion device, but
18 she assured Mr. Rose that the conversion rate that had been applied to his purchases
19 was correct. Mr. Rose persisted with his concerns, but Zara employees refused to
20 provide him with contact information for a manager. It was at that point that Mr.
21 Rose realized he was being sold a bill of good.

22 41. The following day, Mr. Rose called a Zara customer service line to
23 inquire about the price discrepancy issue. The customer service operator with whom
24 he spoke told him that the conversion rate that was applied to his purchases was that
25 which had prevailed at the time that each item was manufactured. When Mr. Rose
26 expressed dissatisfaction with this answer, the operator asked him questions like
27 “what do you think you should pay for this item?,” almost as if the operator was
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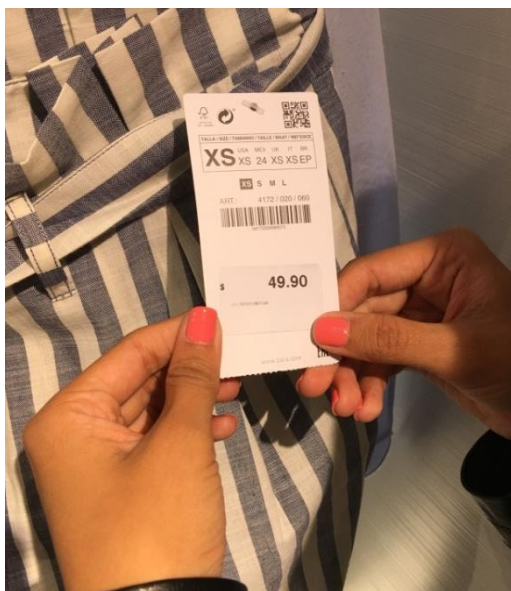
1 attempting to negotiate with him.

2 42. Below are photographs of the three shirts that Mr. Rose purchased from
 3 Zara on May 17, 2016, as well as a photo of his receipt. As can be seen clearly in the
 4 photographs, the shirts each bear a tag price of €9.95, but the amount ultimately
 5 charged for each was \$17.90.



1 43. Applying the correct conversion rate as of the date of purchase, Mr.
2 Rose's shirts should have cost approximately \$11.26 each. Instead, these items cost
3 more than one and a half times that.

4 44. Further examples of Zara's deception can be seen in the images below,
5 which depict its practice of affixing inflated U.S. dollar prices directly over original
6 euro prices. These photographs demonstrate the vast price discrepancy that becomes
7 apparent when the stuck-on dollar label is juxtaposed with the original euro price
8 actually printed on each tag.



1 45. While it is obvious that prices for goods will differ when expressed in
2 different international currencies, companies that make a legitimate conversion can
3 do so at the time that the original price is assigned, and then place the differing
4 international prices side by side as shown below. This is not Zara's practice.
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17 46. The fact that in just the one instance during which Mr. Rose visited a
18 Zara store he witnessed a customer other than himself calling in to complain about
19 the very same price discrepancy issue that he had encountered demonstrates just how
20 widespread and harmful this practice is.

21 47. But for Defendant Zara's practice of deceptive pricing, Plaintiff and the
22 Putative Class would either have paid substantially less for Defendant Zara's
23 products, or else would not have purchased them at all.

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CLASS ACTION ALLEGATIONS

48. Plaintiff brings this class action on behalf of himself and all others similarly situated as Class Members pursuant to Rule 23 of the Federal Rules of Civil Procedure.

49. Plaintiff seeks to represent a “National Class” defined as follows:
All United States residents who purchased Zara products, excluding Defendants, Defendants’ officers, directors, and employees, Defendants’ subsidiaries, those who purchased the products for the purpose of resale, the Judge to which this case is assigned and the immediate family of the Judge to which this case is assigned.

50. Plaintiff seeks to represent a “California Subclass” defined as follows:
All California residents who purchased Zara products excluding Defendants, Defendants’ officers, directors, and employees, Defendants’ subsidiaries, those who purchased the products for the purpose of resale, the Judge to which this case is assigned and the immediate family of the Judge to which this case is assigned.

51. Plaintiff is a member of the Class that he seeks to represent. Plaintiff is a United States resident who purchased Zara products.

52. Plaintiff is a member of the Class that he seeks to represent. Plaintiff is a California resident who purchased Zara products.

53. The definition of the Class is narrowly tailored so as to include only identifiable Class Members who can be identified through Defendant’s wholesale sale information. The Class has no time limit because, as discussed below, the statute of limitations has been tolled by the Defendants’ fraudulent concealment of the true nature of Zara’s pricing.

1 54. The proposed Class is so numerous that the individual joinder of all its
2 members, in this or any action, is impracticable. The exact number or identification
3 of the members of the Class is presently unknown to Plaintiff, but it is believed to
4 comprise thousands of California residents, and millions of United States residents,
5 thereby making joinder impractical.

6 55. Common questions of fact and law exist as to all Class Members and
7 predominate over questions affecting only individual members. These include, but
8 are not limited to, the following:

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10 (a) Whether, in the course of business, Defendants represented
11 Zara's products as having characteristics, uses, benefits or
12 qualities that they do not have when used in a customary
13 manner by consumers;

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15 (b) Whether the claims Defendants made and are making
16 regarding Zara's garments are unfair or deceptive, specifically,
17 whether consumers are deceived by (1) Defendants' practice
18 of "bait and switch pricing" (drawing in consumers with tag
19 prices in euros, only to inform them at the register that the true
20 dollar prices are much higher), and (2) Defendants' practice of
21 "cover-up pricing" (affixing labels bearing inflated dollar
22 prices over the euro prices actually printed on the products'
23 tags);

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26 (c) Whether Defendants knew at the time the consumer transactions
27 took place that the consumers were falsely being told that the price
28 increases they encountered were solely a reflection of the euro-to-

1 dollar exchange rate;

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3 (d) Whether Defendants knowingly made misleading statements in
4 connection with consumer transactions that consumers were likely
5 to rely upon to their detriment;

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7 (e) Whether Defendants have been unjustly enriched by the sale
8 of Zara clothing to the Plaintiff and Class;

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10 (f) Whether the Plaintiff and the Class members suffered monetary,
11 general, consequential, and special damages and, if so, what is the
12 measure of those damages; and

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14 (g) Whether Plaintiff and the Class members are entitled to an
15 injunction, damages, restitution, equitable relief and other
16 relief deemed appropriate and the amount and nature of such
17 relief.

18 56. Plaintiff's claims are typical of the claims of the Class Members.
19 Plaintiff and all Class Members purchased Zara clothing that was designed, tested,
20 manufactured, marketed, advertised, warranted and/or sold, and placed in the stream
21 of commerce by Defendant Zara. Plaintiffs and all other Class Members purchased
22 Zara clothing for either a price different and substantially higher than that which was
23 advertised, or for a price different and substantially higher than that which was
24 originally assigned. The nature of the misrepresentation is the same for the Plaintiff
25 and all Class Members, even if they purchased different types of Zara clothing.

26 57. The factual bases of Defendants' misconduct are common to the Class
27 Members and represent a common thread of deceptive advertising resulting in injury
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1 to all Class Members. Plaintiff is asserting the same rights, making the same claims,
2 and seeking the same relief for himself and all other Class Members. The central
3 question of whether Defendants' representations are accurate and truthful is common
4 to all Class Members and predominates over all other questions, legal and factual in
5 this litigation.

6 58. Plaintiff is an adequate representative of the proposed Class because he
7 is a Class Member and does not have interests that conflict with those of the other
8 Class members he seeks to represent. Plaintiff is represented by experienced and
9 able counsel, who has litigated numerous class-action lawsuits, and Plaintiff's
10 Counsel intends to prosecute this action vigorously for the benefit of the proposed
11 Class. Plaintiff and his Counsel will fairly and adequately protect the interests of the
12 Class Members.

13 59. A class action is the superior available method for the efficient
14 adjudication of this litigation because:

- 15 a. The prosecution of separate actions by individual members of the
16 Class would create a foreseeable risk of inconsistent or varying
17 adjudications which would establish incompatible results and
18 standards for Defendant;
- 19 b. Adjudications with respect to individual members of the Class
20 would, as a practical matter, be dispositive of the interests of the
21 other members not parties to the individual adjudications or
22 would substantially impair or impede their ability to protect their
23 own separate interests;
- 24 c. Class action treatment avoids the waste and duplication inherent
25 in potentially thousands of individual actions, and conserves the
26 resources of the courts; and
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3 d. The claims of the individual class members are relatively small
4 compared to the burden and expense that would be required to
5 individually litigate their claims against Defendants, so it would
6 be impracticable for the members of the Class to individually
7 seek redress for Defendants' wrongful conduct. Even if the
8 members of the Class could afford individual litigation, the court
9 system could not. Individualized litigation creates a potential for
10 inconsistent or contradictory judgments, and increases the delay
11 and expense to all parties and the court system. By contrast, the
12 class action device presents far fewer management difficulties,
13 and provides the benefits of single adjudication, economy of
14 scale, and comprehensive supervision by a single court.

15
16 60. A class action for injunctive and equitable relief pursuant to Rule
17 23(b)(2) of the Federal Rules of Civil Procedure is also appropriate. Defendants
18 acted or refused to act on grounds generally applicable to the Class thereby making
19 appropriate final injunctive and equitable relief with respect to the Class as a whole.
20 Defendants' actions are generally applicable to the Class as a whole, and Plaintiff, on
21 behalf of the Class, seeks damages and injunctive relief described herein. Moreover,
22 Defendants' systemic policy and practices make declaratory relief with respect to the
23 Class as a whole appropriate.

24 **FRAUDULENT CONCEALMENT**

25 61. Defendant Zara was and remains under a duty to Plaintiff and the
26 Putative Class to disclose the facts, as alleged herein. The duty to disclose the true
27 facts arises because, as the manufacturer, Defendant Zara is in a superior position to
28 know the true character and quality of its products and the true facts are not

1 something that Plaintiff and Putative Class members could, in the exercise of
2 reasonable diligence, have discovered independently prior to coming within a close
3 proximity of purchasing Zara clothing.

4 62. Defendants intentionally concealed and/or failed to disclose the true
5 pricing of Zara garments for the purpose of inducing Plaintiff and Putative Class
6 members to act without knowledge of the true value of these products.

7 63. Plaintiff and the Putative Class members justifiably acted upon, or
8 relied upon to their detriment, the concealed and/or nondisclosed material facts as
9 evidenced by their purchase of Zara products for inflated prices. Had they known of
10 the true nature of Defendant Zara's pricing, Plaintiff and the Putative Class members
11 would not have purchased (or would have paid less for) Zara's wares.

12 64. As a direct and proximate cause of Defendants' misconduct, Plaintiff
13 and the Putative Class members have suffered actual damages. Defendants' conduct
14 has been and is malicious, wanton and/or reckless and/or shows a reckless
15 indifference to the interests and rights of others.

16 **FIRST CAUSE OF ACTION**

17 **Negligence**

18 **(On Behalf of the National Class, or, alternatively, the Putative**
19 **California Subclass)**

20 65. Plaintiff restates each and every paragraph of this Complaint as if fully
21 rewritten herein.

22 66. Defendants owed a duty to Plaintiff and the Putative Class to exercise
23 due care in the operation of their business so as to avoid deceiving Plaintiff and the
24 Putative Class and causing Plaintiff and the Putative Class to rely on representations
25 of fact that were untrue.

26 67. Defendants breached that duty when they allowed garments to be made
27 available for sale to Plaintiff and the Putative Class that bore expressions of their
28

1 prices only in euros, or that featured dollar prices merely affixed over their actually-
2 printed euro prices.

3 68. In conducting themselves in the manner set forth herein above,
4 Defendants have caused Plaintiff and the Putative Class to suffer economic damages
5 in an amount to be proven at trial.

6 **SECOND CAUSE OF ACTION**

7 **Negligence Per Se**

8 **(On Behalf of the National Class or, alternatively, the Putative California**
9 **Subclass)**

10 69. Plaintiff restates each and every paragraph of this Complaint as if fully
11 rewritten herein.

12 70. Plaintiff Devin Rose, and the Putative National Class and California
13 Subclass were injured by the failure of Defendant Zara to comply with 16 C.F.R.
14 Section 238.0 *et seq.* and California Business and Professions Code section 12024.2.

15 71. 16 C.F.R. § 238.2(a) provides: “No statement . . . should be used in any
16 advertisement which creates a false impression of the . . . value . . . of the product
17 offered”

18 72. Cal. Bus. & Prof. Code Section 12024.2(a) states: “It is unlawful for any
19 person, at the time of sale of a commodity, to . . . [c]harge an amount greater than the
20 lowest price posted on the commodity itself or on a shelf tag that corresponds to the
21 commodity”

22 73. Legislative history of the statutes cited herein as well as other similar
23 laws clearly demonstrates that these provisions are designed to do away with the
24 common law “invitation to treat” doctrine and to protect consumers from deception
25 created by misrepresentations regarding the prices of goods for sale, the very type of
26 injury that Plaintiff and the Putative Class in this case have suffered.

27 74. Defendants, through their practices of bait and switch pricing and cover-
28

1 up pricing are therefore liable for creating false impressions of the value of their
2 products and for charging prices greater than the lowest price posted on each
3 product.

4 75. As a direct and proximate result of Defendants' violations of Federal
5 and State law, Plaintiff and the Putative Class have suffered damages in an amount to
6 be proven at trial.

7 **THIRD CAUSE OF ACTION**
8 **UFAIR BUSINESS PRACTICES**
9 **(On Behalf of the California Subclass)**

10 76. Plaintiff restates each and every paragraph of this Complaint as if fully
11 rewritten herein.

12 77. For the reasons discussed above, Defendants have engaged in unfair
13 competition and prohibited activities.

14 78. Unfair competition includes any unlawful, unfair, or fraudulent business
15 act or practice, as well as unfair, deceptive, untrue, or misleading advertising and any
16 act prohibited by Cal. Bus. & Prof. Code § 17200.

17 79. Plaintiff and the putative class seek equitable relief and to enjoin
18 Defendants from engaging in their current practice and scheme of using bait and
19 switch pricing and cover-up pricing to deceive consumers as to the true value of
20 Defendant Zara's products and to dupe them into paying far more for these products
21 than their true and fair value.

22 80. Pursuant to Cal. Bus. & Prof. Code § 17200 *et seq.*, Plaintiff and the
23 Putative Class seek an order enjoining the above-described wrongful acts and
24 practices of the Defendants and for restitution and disgorgement.

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1 **FOURTH CAUSE OF ACTION**

2 **UNJUST ENRICHMENT**

3 **(On Behalf of the National Putative Class or, alternatively,**
4 **the California Subclass)**

5 81. Plaintiff restates each and every paragraph of this Complaint as if fully
6 rewritten herein.

7 82. Plaintiff conferred a tangible economic benefit upon Defendants by
8 purchasing Zara clothing products. Plaintiff and members of the Putative Class
9 would have paid less to Defendants at the time this benefit was conferred had they
10 known that Defendant Zara's products were inaccurately and deceptively priced.

11 83. As a result of Defendants' deceptive, fraudulent, and misleading
12 pricing, Defendant was enriched, at the expense of the Plaintiff and each member of
13 the Putative Class, through the payment of the ultimate dollar purchase price for Zara
14 clothing products.

15 84. Under the circumstances, it would be against equity and good conscious
16 to permit Defendants to retain the ill-gotten benefits that they received from Plaintiff
17 and members of the Putative Class in light of the fact that the articles of clothing
18 purchased by Plaintiff and members of the Putative Class were not sold for their
19 advertised prices or were sold for prices other than those actually and originally
20 printed on their tags.

21 85. It would thus be unjust and inequitable for Defendants to retain the
22 benefit conferred by Plaintiff and the Putative Class without restitution or
23 disgorgement of monies paid to Defendants for Zara clothing products, or such other
24 appropriate equitable remedies as appropriate, to the Plaintiff and other members of
25 the Putative Class.

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1 **FIFTH CAUSE OF ACTION**
2 **FRAUD – INTENTIONAL MISREPRESENTATION AND**
3 **CONCEALMENT OF FACT**

4 **(On Behalf of the National Putative Class or, alternatively,**
5 **the California Subclass)**

6 86. Plaintiff restates each and every paragraph of this Complaint as if fully
7 rewritten herein.

8 87. Defendants intentionally, willfully, falsely, and knowingly uniformly
9 misrepresented material facts in writing that relate to the value of Zara clothing
10 products. Specifically, Defendants intentionally and willfully represented that Zara
11 products could be bought for particular prices expressed in euros when in fact they
12 could not be. Defendants also represented tag prices in dollars as being accurate
13 conversions of original euro prices of garments when they in fact were not.

14 88. Defendants' uniform written misrepresentations were made with the
15 intent that the general public, including Plaintiff and the Putative Class, would rely
16 upon them. Defendant's representations were made with knowledge of the falsity of
17 such statements, or in reckless disregard of the truth thereof, and gave Defendant an
18 unjust advantage and caused a loss to Plaintiff and the Putative Class members.
19 Defendants' misrepresentations of low prices were so central to consumers' selection
20 of Zara products that Defendants knew and intended that consumers would rely on
21 those misrepresentations in determining whether to purchase Zara apparel as
22 opposed to other available alternatives.

23 89. In actual and reasonable reliance upon Defendants' misrepresentations,
24 Plaintiff and the Putative Class members purchased Zara products believing that they
25 were paying the tag prices. Plaintiff and the Putative Class members were unaware
26 of the true facts concerning Defendants' pricing scheme, which were concealed from
27 the Plaintiff and the Putative Class members. If Plaintiff and the Putative Class
28

1 members had been aware of the concealed facts, Plaintiff and the Putative Class
2 members would not have purchased Zara apparel at all or for the price paid.
3 Plaintiff's and the Putative Class members' reliance on the representations of the
4 Defendants was reasonable.

5 90. Defendants misrepresented material facts with the intent to defraud
6 Plaintiff and the Putative Class members. Plaintiff and the Putative Class members
7 were unaware of the intent of Defendants and relied upon these representations in
8 agreeing to purchase Zara clothing.

9 91. In actual and reasonable reliance upon Defendants' misrepresentations,
10 Plaintiff and the Putative Class members purchased Zara apparel items and paid
11 more than they believed was the value of these products. The direct and proximate
12 result of this was injury and harm to Plaintiff and the Putative Class members
13 because:

- 14 (a) they would not have purchased Zara clothing if the true
15 facts concerning its pricing had been known; or
16 (b) they paid price premiums for Zara products due to the
17 deceptive labeling of these products.
18

19 **PRAYER FOR RELIEF**

20 WHEREFORE, the representative Plaintiff, on behalf of himself and the
21 Members of the Class defined herein, prays for judgment against the Defendants as
22 follows:

- 23 A. For an order certifying this action and/or common issues raised
24 herein as a "Class Action" under the appropriate provision of
25 Federal Rule of Civil Procedure 23(a), 23(b) and 23(c);
26 designating Class Representatives; and appointing the
27 undersigned to serve as class counsel;
28

- 1 B. For notice of class certification and of any relief to be
2 disseminated to all Class Members and for such other further
3 notices as this Court deems appropriate under Fed. R. Civ. P.
4 23(d)(2);
- 5 C. For an award of compensatory damages in an amount to be
6 determined for all injuries and damages described herein;
- 7 D. For an award of punitive damages to the extent allowable by law,
8 in an amount to be proven at trial;
- 9 E. For an award of restitution and disgorgement of Defendants’
10 revenues to the Plaintiff and the proposed Class members;
- 11 F. For an award of declaratory and injunctive relief as permitted by
12 law or equity, including: enjoining Defendants from continuing
13 the unlawful practices as set forth herein and directing
14 Defendants to identify, with Court supervision, victims of their
15 conduct and to pay them restitution and disgorgement of all
16 monies acquired by Defendants by means of any act or practice
17 declared by the Court to be wrongful;
- 18 G. For an order compelling Defendants to engage in a corrective
19 advertising campaign;
- 20 H. For an award of costs; and
- 21 I. For provision of such other relief as may be just and proper.
22

23 Dated: August 19, 2016

GERAGOS & GERAGOS, APC

24 /s/ Mark J. Geragos

25 MARK J. GERAGOS

26 BEN J. MEISELAS

27 Attorneys For Plaintiff Devin Rose

28 On Behalf Of Himself And All Others

Similarly Situated

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: August 19, 2016

GERAGOS & GERAGOS, APC

/s/ Mark J. Geragos

MARK J. GERAGOS

BEN J. MEISELAS

Attorneys For Plaintiff Devin Rose
On Behalf Of Himself And All Others
Similarly Situated