

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ANN CAVLOVIC,)	
individually and on behalf of)	
those similarly situated,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:17-cv-2042
)	
J.C. Penney Corporation, Inc.)	
)	
)	
Defendant.)	

DEFENDANT’S NOTICE OF REMOVAL
[28 U.S.C. §§ 1331, 1332(d), 1441, 1446, and 1453]

Pursuant to 28 U.S.C. §§ 1331, 1332, 1441, 1446, and 1453, Defendant J.C. Penney Corporation, Inc. (“JCP”), hereby gives notice that it removes the above-captioned case from the District Court of Wyandotte County, Kansas, (“State Court”) to the United States District Court for the District of Kansas. Defendant’s short and plain statement of the grounds for removal is as follows:

JURISDICTION AND ASSIGNMENT TO COURT

1. This is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1332(d)(2), in that it is a putative class action involving at least 100 members with minimal diversity and the amount in controversy exceeds \$5 million, exclusive of interests and costs. This action is removable by the Class Action Fairness Act of 2005 (“CAFA”), codified in 28 U.S.C. §§ 1332(d), 1441(a), 1446, and 1453(b), because U.S. District Courts have original jurisdiction over class actions meeting the above-listed requirements.

Alternatively, the Court has jurisdiction under § 1331 and the case is removable under § 1441, in that Plaintiff's Class Action Petition (the "Petition") necessarily raises a substantial federal issue and, in light of CAFA, would not disturb the balance of federal and state judicial responsibilities.

2. Assignment to this Court is proper because the civil action is being removed from the District Court of Wyandotte County, Kansas.

STATE COURT ACTION

3. On December 16, 2016, Plaintiff Ann Cavlovic filed the Petition in the State Court, Case No. 2016-CV-000938, which brings causes of action for: (1) Violations of the Kansas Consumer Protection Act, (2) Injunctive/Declaratory Relief Pursuant to the Kansas Consumer Protection Act, and (3) Unjust Enrichment. The Petition alleges these claims against one defendant, JCP.

4. On December 22, 2016, the Summons and Petition were served on JCP's registered agent by certified mail. As required by 28 U.S.C. § 1446(a), copies of all processes, pleadings, and orders served upon JCP are attached as Exhibit 1. No further proceedings have occurred in the action.

CITIZENSHIP OF PARTIES

5. As alleged in the Petition, Plaintiff Ann Cavlovic is a citizen of Kansas and an individual residing in Wyandotte County, Kansas. Petition ¶ 4.

6. Defendant JCP was at the time of filing and currently is a Delaware corporation having its principal place of business in Texas, *id.* ¶ 5, and hence is a citizen of Delaware and Texas for purposes of diversity.

7. As alleged in the Petition, Plaintiff seeks to represent a class of persons defined as: “All persons who, during the Class Period, purchase [sic] from JCP in Kansas one or more private and/or exclusive branded items at a discount of at least 30% off of the state [sic] ‘original’ or ‘regular’ price, and who have not received a refund or credit for their purchase(s).” *Id.* ¶ 66. Plaintiff proposes that the Class Period be defined as December 16, 2013, through December 16, 2016, inclusive. *Id.* ¶ 67.

8. Plaintiff alleges that “[u]pon information and belief, JCP’s database(s) maintain contact information, including emails and home mailing addresses, through which notice of this action could be disseminated in accordance with due process requirements.” *Id.* ¶ 69. The number of putative class members exceeds 100 because there are far in excess of 100 persons who, between December 16, 2013, and December 16, 2016, purchased from JCP in Kansas one or more private and/or exclusive branded items at a discount of at least 30 percent off the original or regular price and who have not received a refund or credit for their purchase(s).

9. To establish “minimal diversity” pursuant to CAFA, “any member of a class of plaintiffs” must be the citizen of a different state than any defendant.” 28 U.S.C. § 1332(d)(2)(A). As alleged in the Petition, the Plaintiff is a citizen of Kansas and Defendant is a citizen of Delaware and Texas. Petition ¶¶ 4-5. Accordingly, minimal diversity pursuant to CAFA exists because the putative class members are citizens of a state different than that of Defendant. *See* 28 U.S.C. § 1332(d)(2).

AMOUNT IN CONTROVERSY

10. To establish subject matter jurisdiction under CAFA, the amount in controversy must exceed \$5 million, exclusive of interest and costs. 28 U.S.C. § 1332(d). Although Defendant disputes Plaintiff's entitlement to any remedy or damages in any amount, JCP's sales at its Kansas stores during the Class Period exceeded \$5 million. Further, Plaintiff alleges that "JCP made millions—perhaps billions—off of [its] False Former Price Advertising Scheme in Kansas and across the United States." Petition ¶ 25. Thus, the amount in controversy for jurisdictional purposes exceeds the aggregated sum or value of \$5 million, exclusive of interest and costs.

11. Plaintiff seeks injunctive relief, *see id.*, Prayer for Relief, p. 20, the value of which must be included in calculating the amount in controversy under CAFA. 28 U.S.C. § 1332(d)(2); *see also Nieberding v. Barrette Outdoor Living, Inc.*, 129 F. Supp. 3d 1236, 1243 (D. Kan. 2015). Plaintiff also prays for statutory attorneys' fees pursuant to the Kansas Consumer Protection Act. *See* Petition, Prayers for Relief, pp. 17, 20; K.S.A. 50-634(e). Again, although Defendant disputes that Plaintiff is entitled to recover attorneys' fees, Plaintiff's request for attorneys' fees should be included in calculating the amount in controversy.

FEDERAL QUESTION JURISDICTION

12. Alternatively, the Petition alleges a violation of 16 C.F.R. § 233.1(a), Petition ¶ 2, thus necessarily raising a substantial federal question

within the meaning of *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005).

13. Removal based on this substantial federal question will not upset the congressional balance of federal and state judicial responsibilities, in that CAFA allows JCP to remove the case.

COMPLIANCE WITH 28 U.S.C. SECTION 1446

14. Pursuant to 28 U.S.C. § 1446(a), copies of all documents received by Defendant in the State Court action are being filed with this Notice of Removal.

15. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is filed within 30 days of the service on Defendant of the pleadings setting forth the claim for relief upon which the State Court action is based.

16. Pursuant to 28 U.S.C. § 1446(d), Defendant will promptly provide written notice of the removal of the State Court action to Plaintiff, through her attorneys of record and to the District Court of Wyandotte County, Kansas.

17. Defendant reserves the right to amend or supplement this Notice of Removal.

18. By filing this Notice of Removal, Defendant does not waive any defenses that may be available to it.

WHEREFORE, Defendant JCP respectfully removes this case from the District Court of Wyandotte County, Kansas, to this Court.

Respectfully submitted,

HUSCH BLACKWELL LLP

/s/ Michael S. Hargens

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Attorneys for Defendant J.C. Penney
Corporation, Inc.

Certificate of Service

The undersigned hereby certifies that a true and accurate copy of the foregoing instrument was served on the following individuals on this 20th day of January, 2017, via the Court's CM/ECF system and via first class U.S. Mail:

Bryce B. Bell
Bell Law, LLC
2600 Grand Blvd., Suite 580
Kansas City, MO 64108
Bryce@BellLawKC.com

A. Scott Waddell
Waddell Law Firm LLC
2600 Grand Blvd., Suite 580
Kansas City, MO 64108
Scott@ASWLawFirm.com

Attorneys for Plaintiff

/s/ Michael S. Hargens
Attorney for Defendant

Exhibit 1



**Service of Process
Transmittal**

12/22/2016

CT Log Number 530386714

TO: Catina Lorenzo
J. C. Penney Corporation, Inc.
6501 Legacy Dr MS 1106
Plano, TX 75024-3612

RE: Process Served in Kansas

FOR: J. C. Penney Corporation, Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: ANN CAVLOVIC, individually and on behalf of those similarly situated, Pltf. vs. J. C. Penney Corporation, Inc., Dft.

DOCUMENT(S) SERVED: Summons, Complaint

COURT/AGENCY: Wyandotte County District Court, KS
Case # 2016CV000938

NATURE OF ACTION: Class Action - Plaintiff suffered losses due to the violations of the Kansas Consumer Protection Act, unjust enrichment by defendants

ON WHOM PROCESS WAS SERVED: The Corporation Company, Inc., Topeka, KS

DATE AND HOUR OF SERVICE: By Certified Mail on 12/22/2016 postmarked on 12/19/2016

JURISDICTION SERVED : Kansas

APPEARANCE OR ANSWER DUE: Within 30 days after service of summ6ns on you

ATTORNEY(S) / SENDER(S): Bryce B. Bell
Bell Law, LLC
2600 Grand Blvd., Suite 580
Kansas City, MO 64108
816-886-8206

ACTION ITEMS: CT has retained the current log, Retain Date: 12/22/2016, Expected Purge Date: 12/27/2016

Image SOP

Email Notification, Angie Jensen ajens1@jcp.com

Email Notification, Catina Lorenzo clorenz2@jcp.com

Email Notification, Elizabeth Myers emyers10@jcp.com

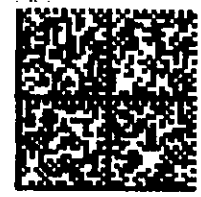
Email Notification, Glenn Morris cgmorri1@jcp.com

SIGNED: The Corporation Company, Inc.
ADDRESS: 112 S.W. 7th Street
Suite 3C
Topeka, KS 66603
TELEPHONE: 855-483-2021.

CERTIFIED MAIL



7009 0820 0001 4308 8176



FP US POSTAGE
\$ 007.78

First-Class
ZIP 64108

12/19/2016
033A 0071802385



**BRYCE B BELL
LAW, LLC**
2600 Grand Blvd., Ste. 580
Kansas City, MO 64108

www.Bell-Law-KC.com

FIRST CLASS MAIL

J.C. Penney Corporation, Inc.
Serve RA:
The Corporation Company, Inc.
112 SW 7th Street, Suite 3C
Topeka, KS 66603



ELECTRONICALLY FILED

2016 Dec 16 PM 6:03

CLERK OF THE WYANDOTTE COUNTY DISTRICT COURT
CASE NUMBER: 2016-CV-000938

Ann Cavlovic

vs.

J. C. Penney Corporation, Inc.

SUMMONS

To the above-named Defendant/Respondent:

JC Penney Corporation Inc
Serve Registered Agent:
The Corporation Company, Inc.
112 SW 7th Street, Suite 3C
Topeka, KS 66603

You are hereby notified that an action has been commenced against you in this court. You are required to file your answer or motion under K.S.A. 60-212, and amendments thereto, to the petition with the court and to serve a copy upon:

Bryce B Bell
Bell Law, LLC
2600 Grand Blvd., Ste. 580
Kansas City, MO 64108

within 30 days after service of summons on you.



Clerk of the District Court

Electronically signed on 12/19/2016 10:16:31 AM

Documents to be served with the Summons:

PLE: Petition PLAINTIFF'S CLASS ACTION PETITION FOR DAMAGES

ELECTRONICALLY FILED
2016 Dec 16 PM 6:03
CLERK OF THE WYANDOTTE COUNTY DISTRICT COURT
CASE NUMBER: 2016-CV-000938

IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS
CIVIL DIVISION

ANN CAVLOVIC,)	
individually and on behalf of)	
those similarly situated)	
)	
Plaintiff,)	
)	Case No.
v.)	
)	Division
J. C. PENNEY CORPORATION, INC.)	
SERVE:)	Chapter 60
The Corporation Company, Inc.)	
112 SW 7th Street)	
Suite 3C)	
Topeka, Kansas 66603)	
)	
Defendant.)	

PLAINTIFF'S CLASS ACTION PETITION FOR DAMAGES

COMES NOW, Plaintiff Ann Cavlovic, individually and on behalf of those similarly situated, by and through her counsel Bryce B. Bell of Bell Law, LLC and A. Scott Waddell of Waddell Law Firm LLC, and for her Class Action Petition for Damages against Defendant J. C. Penney Corporation, Inc., states and alleges as follows:

NATURE OF THE ACTION

1. This is a class action against Defendant J. C. Penney Corporation, Inc. ("Defendant" or "JCP") for falsely advertising "original", "regular", "former", and "sale" prices and their corresponding price discounts for the products it sold. During the Proposed Class Period, JCP falsely advertised former prices and discounts. In essence, JCP marked up its products so that its subsequent "discounts" would appear to be a good deal and would induce Kansas' consumers to purchase the products it was selling.

2. The Federal Trade Commission (“FTC”) proscribes this conduct at 16 C.F.R. §

233.1(a):

One of the most commonly used forms of bargain advertising is to offer a reduction from the advertiser’s own former price for an article. If the former price is the actual, bona fide price at which the article was offered to the public on a regular basis for a reasonably substantial period of time, it provides a legitimate basis for the advertising of a price comparison. Where a former price is genuine, the bargain being advertised is a true one. If, on the other hand, the former price being advertised is not bona fide but fictitious—for example, where an artificial price, inflated price was established for the purpose of enabling the subsequent offer of a large reduction – the “bargain” being advertised is a false one; the purchaser is not receiving the unusual value he expects.

3. Such schemes are also expressly forbidden by Kansas Law at K.S.A. § 50-

626(b)(7):

“(b) Deceptive acts and practices include ... the following, each of which is hereby declared to be a violation of this act, whether or not any consumer has in fact been misled:

[...]

(7) making false or misleading representations, knowingly or with reason to know, of fact concerning the reason for, existence of or amounts of price reductions, or the price in comparison to prices of competitors or one’s own price at a past or future time;”

PARTIES

4. Plaintiff Ann Cavlovic (“Plaintiff”) is an individual Kansas resident and consumer. Plaintiff is also known as “Ani Cavlovic.” Plaintiff resides in Wyandotte County, Kansas.

5. Defendant J. C. Penney Corporation, Inc. is a Delaware for-profit corporation with its principal place of business in Texas. JCP can be served by serving its registered agent, The Corporation Company, Inc., at 112 SW 7th Street, Suite 3C, Topeka, Kansas 66603.

FACTS COMMON TO ALL COUNTS

An Overview of J. C. Penney's False Former Price Advertising Scheme

6. JCP's pricing scheme creates the illusion of savings by falsely representing the former price of an item.

7. Beginning in 2011—and upon information and belief much earlier—, Defendant JCP instituted a company-wide, nation-wide advertising scheme in which JCP would mark up its private-branded and exclusive-branded apparel and accessories by a significant margin and then immediately offer those products at what it represented to be steep discounts.

8. On information and belief, JCP's False Former Price Advertising Scheme, which was disseminated to Kansas consumers by way of in-store, print, web, and/or television advertising, was a part of a years-long campaign in Kansas by JCP, and was consistent across all, or almost all, of JCP's products until, at least, September 2014.

9. However, in February 2012, and upon information and belief, JCP temporarily halted its False Former Price Advertising Scheme and switched to a new price advertising strategy known as "fair and square." Under this new advertising strategy, JCP purportedly offered its products at everyday low prices.¹

10. On information and belief, JCP halted the False Former Price Advertising Scheme and instituted the "fair and square" price advertising strategy on or about February 1, 2012.

11. The "fair and square" advertising strategy ultimately failed, however, causing JCP to suffer significant losses to its revenues and profits. This demonstrates that JCP's False Former

¹ Specifically, this strategy was based on three concepts: (1) Everyday prices were attached to the products that would be sold at "great prices" every day; (2) Clearance Items; and, (3) Month-long values, where prices were discounted for a month (or more) at a time. *See J.C. Penney's Ron Johnson Had An Epiphany, Let's See If It Works*, Walter Loeb, FORBES.COM, April 26, 2012 at 10:49 A.M., available at <http://www.forbes.com/sites/walterloeb/2012/04/26/j-c-penneys-ron-johnson-had-an-epiphany/#3d0e146b3cef> (last visited December 12, 2016).

Price Advertising Scheme was highly effective and enabled JCP to receive profits and revenues from consumers in Kansas and throughout the United States whose business JCP would otherwise not have been able to receive.

12. The results of the “fair and square” advertising strategy on JCP’s earnings and revenues have been widely reported. Upon information and belief, the failure of the “fair and square” advertising strategy was largely blamed on Ron Johnson, culminating in his removal from the CEO position.

13. On information and belief, JCP abandoned the “fair and square” advertising strategy in early 2013, at which point it re-instituted its False Former Price Advertising Scheme.²

14. Specifically, JCP has—and on information and belief continues to—mark up the prices of many of its products far above the former “fair and square” prices and far above the prevailing market price for those items. Upon information and belief, JCP had no intention of selling those items at those artificially high prices. Instead, the markups were and are made with the sole intention of allowing JCP to immediately (or almost immediately) sell those products after the markup at a “sale” price that is, in fact, illusory, in that the products were never sold in any meaningful quantities at the artificially higher “original” price.

15. Ultimately, JCP intended and intends for customers to believe that its false former prices are actually the price at which JCP regularly charged for the good(s).

16. Ultimately, as described in more detail below, Plaintiff and the members of the Proposed Class purchased private-branded and exclusive-branded apparel and accessories from JCP as a result of JCP’s False Former Price Advertising Scheme. Additionally, Plaintiff and the

² See *J.C. Penney’s Pricing Is Faker Than Ever*, Brad Tuttle, TIME (January 31, 2014), available at <http://business.time.com/2014/01/31/j-c-penneys-pricing-is-faker-than-ever/> (last visited December 12, 2016).

members of the Proposed Class' purchases were the exact result JCP intended by instituting this scheme.³

17. Indeed, even JCP's (now-former) CEO Ron Johnson admitted that it had, for years, abused this pattern in consumer psychology and behavior by systematically advertising false price comparisons.⁴

18. Upon information and belief, many of the purportedly "discounted" and "sale" prices are actually *higher* than the "regular" prices for the exact same items during the "fair and square" advertising period.

19. Upon information and belief, most, if not all, of JCP's private-branded and exclusive-branded apparel and accessories are advertised at a "regular" price and, in fact, never

³ Empirical studies have shown the existence of a significant incentive for retailers to engage in this type of price comparison advertising scheme: "[b]y creating an impression of savings, the presence of a higher reference price enhances subjects' perceived value and willingness to buy the product.... Thus, if the reference price is not truthful, a consumer may be encouraged to purchase as a result of a false sense of value." *Comparative Price Advertising: Informative or Deceptive?*, Dhruv Grewal and Larry D. Compeau, *Journal of Pub. Policy & Marketing*, volume 11:1, at 55-56 (Spring 1992).

"We see a \$14 shirt, and conclude based on its price that it must be a low-quality garment made in a sweatshop somewhere by overworked, underpaid workers. On the other hand, seeing a red line through the \$50 price tag on a shirt that's marked down to \$14 indicates to us that the shirt is of a high quality and that for \$14, it is a steal." *The psychology of J.C. Penney: Why shoppers like it when retailers play games with prices*, Rachel Ehrenberg, *SCIENCE NEWS* (April 22, 2013), available at <https://www.sciencenews.org/article/psychology-jc-penney-why-shoppers-it-when-retailers-play-games-prices> (last visited December 12, 2016).

⁴ "So you'll see here nothing was bought at regular price, fewer than one out of 500 units.... In fact, if you look at the total, ... three-quarters of everything sold in the store was at a 50% off or greater discount." Ron Johnson at the January 25, 2012 jcpenny Analyst Meeting Day 1.

sold at that price because at all times that “regular” price is advertised, that item is and was on “sale.”⁵

20. In one case, a “rack of \$7 shorts became \$14, and then they were 50 percent off.”⁶

21. In another case, “an Arizona crewneck T-shirt that had an ‘everyday’ price of \$5 now has a \$6 pricetag to allow Penney more room to offer a markdown and arrive at the same price, the [JCP] spokeswoman added.”⁷

22. In yet another case, “an A.n.a. pushup halter tankini that previously cost \$25 was listed on sale [March 10, 2013] for \$26.60 and an original price of \$38...”⁸

23. This False Former Price Advertising Scheme also extended beyond apparel and into the kitchen, where “a 13-piece Cuisinart cookware set was previously advertised for \$200, but as of [March 10, 2013] was listed with a *sale* price of \$200 with the “original” price listed as \$250.”⁹

⁵ “Less than 1% of J.C. Penney’s revenues come from items bought at full price. By contrast, nearly three-quarters of merchandise sold by the department store chain is discounted by at least 50% off.” *In Major Shakeup, J.C. Penney Promises No More ‘Fake Prices’*, Brad Tuttle, TIME (January 26, 2012), available at <http://business.time.com/2012/01/26/in-major-shakeup-j-c-penney-promises-no-more-fake-prices/> (last visited December 12, 2016).

⁶ *This J.C. Penney Worker Was Fired for Telling the Truth About Its ‘Fake’ Prices*, Kim Bhasin, HUFFINGTON POST (updated March 21, 2014), available at http://www.huffingtonpost.com/2014/03/19/jcpenney-prices_n_4986649.html (last visited December 12, 2016).

⁷ *J.C. Penney revives ‘mark-up to mark-down’ tactic to boost sales*, Phil Wahba, REUTERS (March 27, 2013), available at <http://www.reuters.com/article/us-jcpenney-idUSBRE92Q03G20130327> (last visited December 12, 2016) (emphasis added).

⁸ *‘Fake sales’ are back at J.C. Penney, consumer groups say*, Gitte Laasby, MILWAUKEE JOURNAL SENTINEL (May 14, 2013), available at <http://archive.jsonline.com/blogs/news/207256571.html> (last visited December 12, 2016).

⁹ *Id.* (emphasis in original).

24. A Michael Graves Design Bells and Whistles Stainless Steel Tea Kettle was priced at \$40 during the “fair and square” strategy and then marked up to \$58 while immediately being placed on sale for \$39.99 after the reversion to the old False Former Price Advertising Scheme.¹⁰

25. Upon information and belief, JCP made millions—perhaps billions—off of this False Former Price Advertising Scheme in Kansas and across the United States.

26. JCP’s current False Former Price Advertising Scheme is identical to (or materially indistinguishable from) the False Former Price Advertising Scheme that was in place prior to February 1, 2012.

27. Additionally, this conduct is identical to (or materially indistinguishable from) the example of prohibited conduct that the FTC laid out at 16 C.F.R. § 233.1(c):

John Doe is a retailer of Brand X fountain pens, which cost him \$5 each. His usual markup is 50 percent over cost; that is, his regular retail price is \$7.50. In order to subsequently offer an unusual “bargain”, Doe begins offering Brand X at \$10 per pen. He realizes that he will be able to sell no, or very few, pens at this inflated price. But he doesn’t care, for he maintains that price for only a few days. Then he “cuts” the price to its usual level—\$7.50—and advertises: “Terrific Bargain: X Pens, Were \$10, Now Only \$7.50!” This is obviously a false claim. The advertised “bargain” is not genuine.

28. In November 2015, JCP entered into a Settlement Agreement in the case captioned *Spann v. J. C. Penney Corp., Inc.*, Case No. 8:12-cv-00215-FMO-KES (C.D. Cal. Nov. 10, 2015) (Dkt. 246-3, at pp.14-15), wherein JCP agreed to cease its False Former Price Advertising Scheme:

Specifically, [JCP] agrees that any former price to which [JCP] refers in its price comparison advertising will be the actual, bona fide price at which the item was

¹⁰ *This J.C. Penney Worker Was Fired For Telling The Truth About Its ‘Fake’ Prices*, Kim Bhasin, HUFFINGTON POST (updated March 21, 2014), available at http://www.huffingtonpost.com/2014/03/19/jcpenney-prices_n_4986649.html (last visited December 12, 2016). Upon information and belief, this item is no longer sold by JCP.

openly and actively offered for sale, for a reasonably substantial period of time, in the recent, regular course of business, honestly and in good faith. [...] [JCP] shall implement a compliance program, which will consist of periodic (no less than once a year) monitoring, training, and auditing to ensure compliance [...].

29. However, and contrary to JCP's agreement in that settlement and subsequent Court filings, JCP has returned to its False Former Price Advertising Scheme.

Plaintiff Ann Cavlovic's Experiences

30. On September 23, 2014, Plaintiff visited a JCP retail store in Kansas.

31. While at the JCP retail store, Plaintiff decided to purchase a pair of 14 carat (14K) gold hoop earrings.

32. The purported price of these earrings, as listed on the sticker, was \$524.98.

33. However, that JCP retail store had an advertisement that these earrings were on sale for 60% off.

34. That day, JCP also had an extra promotion going, whereby Plaintiff was able to receive an additional 25% off her purchase of the earrings.

35. Therefore, when Plaintiff purchased the earrings, she was given a discount of \$314.99 for the 60% off sale and of \$52.50 for the extra 25% off promotional discount.

36. Because of the way the 25% promotional discount was applied, the effective discount was only approximately 10%.

37. Plaintiff's receipt itemized these discounts separately as "Total Item Discounts" and "Total Coupon Discounts".

38. Additionally, in large, bold font, Plaintiff's receipt stated "**Your Total Discounts Today: 367.49.**"

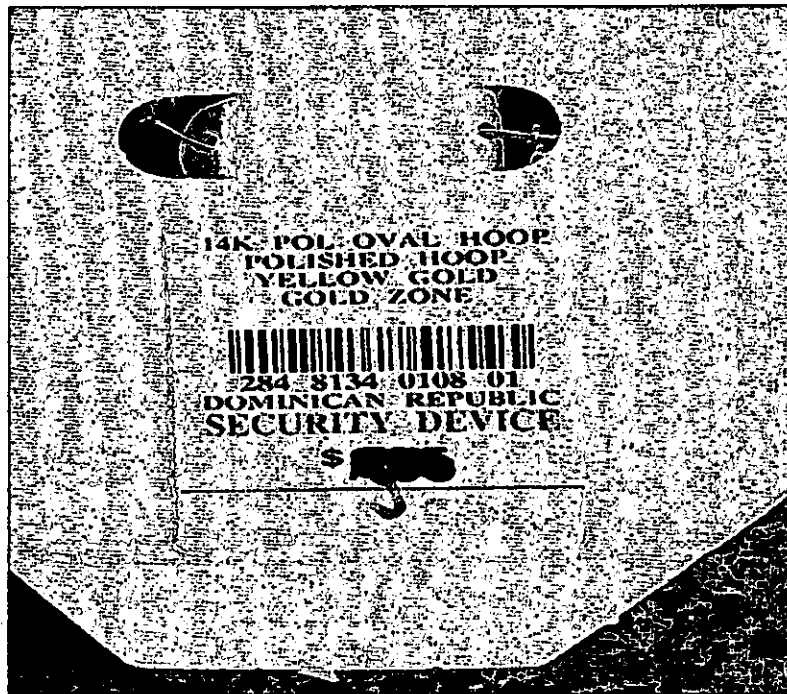
39. Therefore, the total purchase price, after sales tax, was \$171.66.

40. Plaintiff purchased the earrings with her J.C. Penney-branded Credit Card.

41. However, when Plaintiff arrived at her home and opened the box the earrings came in, she discovered a price insert which listed price of the earrings as \$225.00:



42. This price insert was partially marked out with a sharpie. However, upon close examination and/or by holding the insert up to the light, the former ("original" or "regular") price of \$225.00 is discernible:



43. Therefore, Plaintiff was led to believe that she was receiving discounts far in excess of what the item's former ("original" or "regular") price was.

44. Upon information and belief, JCP and/or its agent(s) and/or employee(s) blacked out the former price as a part of the False Former Price Advertising Scheme, described above.

45. Had Plaintiff been charged the \$225.00 price—after the 60% discount, promotional 25% discount, and taxes were applied—Plaintiff would have paid approximately \$73.58 for the earrings.

46. Therefore, and as a result of JCP's False Former Price Advertising Scheme, Plaintiff was induced to pay approximately 233.3% the actual advertised price for the earrings.

47. Upon information and belief, thousands of Kansas consumers have purchased JCP private branded and/or exclusive branded items under similar circumstances.

48. Upon information and belief, most, if not all, of the thousands of Kansas consumers would not have purchased those products had they known the "discounts" were false and/or fraudulent.

49. In October 2016, JCP's website displayed the earrings Plaintiff had previously purchased. In October 2016, however, JCP's website advertised those earrings at an "original" price of \$624.98, but with a "sale" price of \$249.99.

50. In December 2016, JCP's website continued to list those earrings with an "original" price of \$624.98, but with a "sale" price of \$249.99.

51. Upon information and belief, JCP did not alter the "original" price of the earrings between October 2016 and December 2016.

52. As a result of the events described herein, Plaintiff suffered emotional distress.

53. Plaintiff's emotional distress included, but is not limited to, negative emotions associated with the earrings and a feeling that she had been taken advantage of.

The Kansas Attorney General is not Intervening

54. On November 24, 2014, Plaintiff filed a Complaint (CP-14-004013) with the Kansas Attorney General.

55. On December 2, 2014, Plaintiff received a letter from Devin Tatrn, an investigator with the Kansas Attorney General Consumer Protection/Antitrust Division. This letter acknowledged receipt of Plaintiff's Complaint, provided her with the file number, and informed Plaintiff that the Mr. Tatrn would be contacting JCP for a response.

56. On January 23, 2015, JCP sent, via U.S. Regular Mail and email, its response to Plaintiff's complaint.

57. In this January 23, 2015 letter, JCP acknowledged the conduct, claiming, *inter alia*, that this False Former Price Advertising Scheme is "commonly used in the industry."

58. Additionally, JCP claimed that it had offered Plaintiff a refund of the difference between what she paid and what she would have paid at the \$225.00 "regular" price. JCP went on to assert that Plaintiff had denied this offer.

59. However, as of January 23, 2015, Plaintiff had received no such offer, and, therefore, had not denied such an offer.

60. JCP's January 23, 2015 letter was forwarded to Plaintiff by Mr. Tatrn on January 26, 2015. Mr. Tatrn provided Plaintiff until February 16, 2015 to respond or it would close her complaint file.

61. Plaintiff responded by way of letter on February 12, 2015. In this letter, Plaintiff refuted many of JCP's allegations and explained her interactions with JCP further.

62. On March 6, 2015, JCP sent the Kansas Attorney General another letter responding to Plaintiff's Complaint.

63. On March 12, 2015, the Kansas Attorney General closed Plaintiff's Complaint file without affording her the opportunity to respond to JCP's March 6 letter or present any further evidence.

64. Upon information and belief, the Kansas Attorney General has not, is not, and does not intend to investigate Plaintiff's case—or any other complaints against JCP for similar conduct—further.

65. Therefore, Plaintiff is forced to bring this suit as a class action to vindicate her rights and the rights of all members of the Proposed Class.

CLASS ACTION ALLEGATIONS

66. Plaintiff brings this action individually and on behalf of all other persons similarly situated. To this end, Plaintiff proposes to represent a class of persons defined as:

All persons who, during the Class Period, purchase from JCP in Kansas one or more private and/or exclusive branded items at a discount of at least 30% off of the state "original" or "regular" price, and who have not received a refund or credit for their purchase(s).

67. Plaintiff proposes that the Class Period be defined as December 16, 2013 through December 16, 2016, inclusive.

68. Plaintiff proposes that the following persons be excluded from the Class: (1) Defendant and all of its subsidiaries and affiliates; (2) governmental entities; (3) the judge(s) to whom this case is assigned and any immediate family members thereof; (4) Plaintiff's counsel; and (5) all persons who have previously settled these claims against JCP.

69. Numerosity. On information and belief, the members of the Proposed Class are so numerous that individual joinder of all members is impracticable. The disposition of their

claims through this class action will benefit all members of the Proposed Class, the parties, and the Courts. Upon information and belief, JCP keeps extensive computerized records of its customers through customer loyalty programs, co-branded credit cards, and general marketing programs. Upon information and belief, JCP has at least one database through which most, if not all, members of the Proposed Class may be identified and ascertained. Upon information and belief, JCP's database(s) maintain contact information, including emails and home mailing addresses, through which notice of this action could be disseminated in accordance with due process requirements.

70. Commonality and Predominance. This action involves a number of common questions of law and/or fact which predominate over any questions affecting individual members of the Proposed Class. These common questions include, but are not limited to the following:

- a. Whether, during the Class Period, JCP used false "regular" and/or "original" price labels and/or falsely advertised price discounts on its private branded and/or exclusive branded apparel and/or accessories;
- b. Whether, during the Class Period, the "original" prices advertised by JCP were the prevailing market prices for the respective private branded or exclusive branded apparel or accessories sold by JCP during the three month periods preceding the dissemination and/or publication of the advertised former prices;
- c. Whether JCP's use of false and/or deceptive price advertising constitutes false advertising under Kansas law;
- d. Whether JCP utilized deceptive acts and/or practices under Kansas law;
- e. Whether JCP utilized unconscionable acts and/or practices under Kansas law;
- f. Whether JCP has made false and/or misleading representations concerning the reason(s) for, existence of, and/or amounts of price reductions;
- g. Whether JCP has made false and/or misleading representations concerning the price of a good in comparison to its own prices at a past or future time;
- h. Whether JCP's conduct, as alleged herein, was knowing or with reason to know;

- i. Whether the members of the Proposed Class are entitled to injunctive relief;
- j. Whether the members of the Proposed Class are entitled to damages and/or restitution; and, if so, what is the amount of revenues and/or profits JCP received and/or was lost by the members of the Proposed Class as a result of the conduct alleged herein; and,
- k. Whether Plaintiff and the members of the Proposed Class are entitled to an award of their reasonable attorneys' fees, pre-judgment interest, post-judgment interests, and the costs of this suit.

71. **Typicality.** Plaintiff's claims are typical of the claims of the Proposed Class because, among other things, Plaintiff purchased a private and/or exclusive-branded product at discount of at least 60% off the stated "original" or "regular" price. Additionally, Plaintiff and all members of the Class she seeks to represent have been deceived (or were likely to be deceived) by JCP's False Former Price Advertising Scheme, as alleged herein.

72. **Adequacy of Representation and Counsel.** Plaintiff is an adequate representative of the Proposed Class because her interests in this action do not conflict with the interests of any member(s) of the Proposed Class she seeks to represent. Additionally, Plaintiff has retained counsel competent and experienced in complex class action litigation. Plaintiff intends to prosecute this action vigorously. The interests of the members of the Proposed Class will be fairly and adequately protected by Plaintiff and her counsel.

73. This case can properly be maintained as a class action pursuant to K.S.A. § 60-223(b)(2) because JCP has acted and/or refused to act on grounds that apply generally to the class such that final injunctive relief and/or corresponding declaratory relief is appropriate respecting the class as whole.

74. This case can properly be maintained as a class action pursuant to K.S.A. § 60-223(b)(3) because the common questions of law and/or fact predominate over the individual

questions and because a class action is superior to all other available means for the fair and efficient adjudication of the claims.

75. Superiority. A class action is superior to all other available means for the fair and efficient adjudication of Plaintiff's and Class members' claims. Because of the relatively modest size of individual Class members' claims, few, if any, Class members could afford to seek legal redress of the wrongs complained of herein on an individual basis. Absent a Class Action, the members of the Proposed Class would not be likely to recover, or would not likely have the chance to recover, damages and/or restitution, such that JCP would be permitted to retain the proceeds of its unlawful conduct.

COUNT ONE:
VIOLATIONS OF THE KANSAS CONSUMER PROTECTION ACT
Plaintiff and All Class Members
Defendant J. C. Penney Corporation, Inc.

76. Plaintiff incorporates by reference all facts and allegations contained in the foregoing paragraphs as though fully laid out herein.

77. The Kansas Consumer Protection Act ("KCPA"), K.S.A. § 50-623 et seq., prohibits the use of deceptive and unconscionable acts and practices in connection with consumer transactions in Kansas.

78. Plaintiff and all members of the Proposed Class are "consumer[(s)]," for the purposes of the KCPA,

79. JCP is a "supplier," for the purposes of the KCPA.

80. Plaintiff and all members of the Proposed Class engaged in a "consumer transaction" with JCP.

81. As a result of JCP's conduct described herein, Plaintiff and all members of the Proposed Class have been damaged and are "aggrieved," for the purposes of the KCPA.

82. The KCPA should be liberally construed to promote its policies of protecting consumers against suppliers that commit deceptive and unconscionable practices. K.S.A. § 50-623; *Williamson v. Amrani*, 283 Kan. 227, 234, 152 P.3d 60, 67 (2007).

83. JCP's violations of K.S.A. § 50-626, Deceptive Acts and Practices, include, but are not limited to, the following:

- a. Falsely representing, knowingly or with reason to know, that the property was of a particular standard, quality, grade, style, or model when it was another which differed materially from the representation, in violation of K.S.A. § 50-626(b)(1)(D);
- b. Willfully using, in oral and/or written representations, an exaggeration, falsehood, innuendo, and/or ambiguity as to a material fact, in violation of K.S.A. § 50-626(b)(2);
- c. Willfully failing to state a material fact and/or willfully concealing, suppressing, and/or omitting a material fact, in violation of K.S.A. § 50-626(b)(3);
- d. Offering property at an artificially inflated price without the intent to sell that property at that price, in violation of K.S.A. § 50-626(b)(5); and,
- e. Making false and/or misleading representations, knowingly or with reason to know, of fact concerning the reason for, existence of, and/or amounts of price reductions and/or the price in comparison to prices of competitors or one's own price at a past or future time, in violation of K.S.A. § 50-626(b)(7).

84. JCP's violations of K.S.A. § 50-627, Unconscionable Acts and Practices, include, but are not limited to, the following:

- a. Taking advantage of the inability of the consumers to reasonably protect their interests because of their ignorance of the law, in violation of K.S.A. § 50-627(b)(1);
- b. Holding out products for sale at an artificially and unreasonably inflated price which grossly exceeded the price at which similar goods could be readily obtainable in similar transactions by similar consumers, in violation of K.S.A. § 50-627(b)(2);
- c. Entering into consumer transaction(s) wherein the consumer was unable to receive a material benefit from the subject of the transaction, in violation of K.S.A. § 50-627(b)(3);

- d. Entering into consumer transaction(s) which were excessively onesided in favor of JCP, in violation of K.S.A. § 50-627(b)(5); and,
- e. Making misleading statement(s) of opinion on which the consumer(s) were likely to rely to the consumers' detriment, in violation of K.S.A. § 50-627(b)(6).

85. Each of these violations is one which has been "specifically proscribed" by K.S.A. § 50-626 and/or K.S.A. § 50-627.

86. Plaintiff is authorized to bring this action on a class basis by K.S.A. § 50-634(d).

87. Plaintiff and all members of the Proposed Class are entitled to the recovery of their actual damages by K.S.A. § 50-634(d)(1).

88. Plaintiff and the members of the Proposed Class are also entitled to the recovery of their reasonable attorneys' fees by K.S.A. § 50-634(e).

89. JCP is vicariously liable for the act(s) and/or omission(s) of its agent(s) and/or employee(s).

WHEREFORE, Plaintiff, individually and on behalf of the members of the Proposed Class, prays for judgment against Defendant in such amount as is allowable by law and to be determined at trial, for their actual damages, pre- and post-judgment interest at the greatest rate allowed by statute, for their reasonable attorneys' fees, and for such other and further relief as may be just and proper under the circumstances.

COUNT TWO:
INJUNCTIVE/DECLARATORY RELIEF PURSUANT TO THE
KANSAS CONSUMER PROTECTION ACT

Plaintiff and All Class Members
Defendant J. C. Penney Corporation, Inc.

90. Plaintiff incorporates by reference all facts and allegations contained in the foregoing paragraphs as though fully laid out herein.

91. The Kansas Consumer Protection Act (“KCPA”), K.S.A. § 50-623 et seq., prohibits the use of deceptive and unconscionable acts and practices in connection with consumer transactions in Kansas.

92. Plaintiff and all members of the Proposed Class are “consumer[(s)],” for the purposes of the KCPA.

93. JCP is a “supplier,” for the purposes of the KCPA.

94. Plaintiff and all members of the Proposed Class engaged in a “consumer transaction” with JCP.

95. As a result of JCP’s conduct described herein, Plaintiff and all members of the Proposed Class have been damaged and are “aggrieved,” for the purposes of the KCPA.

96. The KCPA should be liberally construed to promote its policies of protecting consumers against suppliers that commit deceptive and unconscionable practices. K.S.A. § 50-623; *Williamson v. Amrani*, 283 Kan. 227, 234, 152 P.3d 60, 67 (2007).

97. JCP’s violations of K.S.A. § 50-626, Deceptive Acts and Practices, include, but are not limited to, the following:

- a. Falsely representing, knowingly or with reason to know, that the property was of a particular standard, quality, grade, style, or model when it was another which differed materially from the representation, in violation of K.S.A. § 50-626(b)(1)(D);
- b. Willfully using, in oral and/or written representations, an exaggeration, falsehood, innuendo, and/or ambiguity as to a material fact, in violation of K.S.A. § 50-626(b)(2);
- c. Willfully failing to state a material fact and/or willfully concealing, suppressing, and/or omitting a material fact, in violation of K.S.A. § 50-626(b)(3);
- d. Offering property at an artificially inflated price without the intent to sell that property at that price, in violation of K.S.A. § 50-626(b)(5); and,

- c. Making false and/or misleading representations, knowingly or with reason to know, of fact concerning the reason for, existence of, and/or amounts of price reductions and/or the price in comparison to prices of competitors or one's own price at a past or future time, in violation of K.S.A. § 50-626(b)(7).

98. JCP's violations of K.S.A. § 50-627, Unconscionable Acts and Practices, include, but are not limited to, the following:

- a. Taking advantage of the inability of the consumers to reasonably protect their interests because of their ignorance of the law, in violation of K.S.A. § 50-627(b)(1);
- b. Holding out products for sale at an artificially and unreasonably inflated price which grossly exceeded the price at which similar goods could be readily obtainable in similar transactions by similar consumers, in violation of K.S.A. § 50-627(b)(2);
- c. Entering into consumer transaction(s) wherein the consumer was unable to receive a material benefit from the subject of the transaction, in violation of K.S.A. § 50-627(b)(3);
- d. Entering into consumer transaction(s) which were excessively onesided in favor of JCP, in violation of K.S.A. § 50-627(b)(5); and,
- e. Making misleading statement(s) of opinion on which the consumer(s) were likely to rely to the consumers' detriment, in violation of K.S.A. § 50-627(b)(6).

99. Each of these violations is one which has been "specifically proscribed" by K.S.A. § 50-626 and/or K.S.A. § 50-627.

100. Plaintiff is authorized to bring this action on a class basis by K.S.A. § 50-634(c).

101. Plaintiff and the members of the Proposed Class are entitled to receive equitable, declaratory, and/or injunctive relief by K.S.A. § 50-634(c).

102. Plaintiff and the members of the Proposed Class are also entitled to the recovery of their reasonable attorneys' fees by K.S.A. § 50-634(e).

103. JCP is vicariously liable for the act(s) and/or omission(s) of its agent(s) and/or employee(s).

WHEREFORE, Plaintiff, individually and on behalf of the members of the Proposed Class, prays for judgment against Defendant in the form of declaratory relief as described in K.S.A. § 50-634(d)(2), for an injunction reasonably calculated to prevent future instances of the conduct described in this Petition, for their reasonable attorneys' fees, and for such other and further relief as may be just and proper under the circumstances.

COUNT THREE:
UNJUST ENRICHMENT
Plaintiff and All Class Members
Defendant J. C. Penney Corporation, Inc.

104. Plaintiff incorporates by reference all facts and allegations contained in the foregoing paragraphs as though fully laid out herein.

105. Plaintiff and each member of the Proposed Class have conferred a benefit upon Defendant.

106. To date, Defendant has not returned that benefit to Plaintiff and the members of the Proposed Class.

107. Under the circumstances, Defendant's retention of that benefit is unjust.

108. As a direct and proximate result of Defendant's unjust retention, Plaintiff and the members of the Proposed Class have sustained damages.

WHEREFORE, Plaintiff, individually and on behalf of the members of the Proposed Class, prays for judgment against Defendant in such amounts as may be allowable by law and to be determined at trial, for their actual damages, pre- and post-judgment interest, and for such other and further relief as may be just and proper under the circumstances.

DEMAND FOR JURY TRIAL

109. Plaintiff hereby demands a jury trial on all counts so triable.

Respectfully Submitted,

/s/ Bryce B. Bell

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