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Proposed Class Counsel*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

MATTHEW JOHN, on Behalf of Himself  
and All Others Similarly Situated,

Plaintiff,

vs.

AM RETAIL GROUP, INC., a Delaware Corporation, dba WILSONS LEATHER, and Does 1-100, inclusive.

## Defendants.

Case No. 3:17-CV-0727-JAH-BGS

**SECOND AMENDED CLASS ACTION  
COMPLAINT**

1. **Violation of California's Unfair Competition Laws ("UCL"); California Business and Professions Code Sections 17200, *et seq.***
2. **Violation of California's False Advertising Laws ("FAL"); California Business & Professions Code Sections 17500, *et seq.***
3. **Violations of California Consumer Legal Remedies Act ("CLRA"); Civ. Code Sections 1750, *et seq.***
4. **Unjust Enrichment**

**[DEMAND FOR JURY TRIAL]**

1 Plaintiff MATTHEW JOHN brings this action on behalf of himself and all others  
2 similarly situated against Defendant AM Retail Group, Inc., dba Wilsons Leather  
3 (“Defendant”), and states:

4 **I. NATURE OF THE ACTION**

5 1. This is a class action regarding Defendant’s false and misleading  
6 advertisement of deep discounts on its Wilsons Leather branded men’s and women’s  
7 outerwear and accessories sold in its retail outlet stores. The discounts offered by  
8 defendant on its Wilsons Leather branded products are fake sales – the advertised  
9 discounts are not real.

10 2. Wilsons Leather advertises all of its Wilsons Leather branded products<sup>1</sup> for  
11 sale by listing the merchandise with a “Ticket” price and its corresponding “Sale” price.  
12 See, e.g. Exhibit “A.” The “Ticket” price represents to consumers the merchandise’s  
13 regular price and the “Sale” price represents to consumers a significant discount or  
14 savings from the regular, “Ticket” price.

15 3. The Wilsons Leather merchandise is never offered for sale, nor sold at the  
16 “Ticket” price. The Ticket price is used exclusively as a benchmark from which the false  
17 discount and corresponding “Sale” price is derived. Wilsons Leather scheme has the effect  
18 of tricking consumers into believing they are getting a significant deal by purchasing  
19 merchandise at a steep discount, when in reality, consumers are paying for merchandise at  
20 its regular retail price.

21 4. As recognized by the Ninth Circuit, this practice is prohibited in California:  
22 “Most consumers have, at some point, purchased merchandise that was  
23 marketed as being “on sale” because the proffered discount seemed too good  
24 to pass up. Retailers, well aware of consumers’ susceptibility to a bargain,  
25 therefore have an incentive to lie to their customers by falsely claiming that  
their products have previously sold at a far higher “original” price in order to  
induce customers to purchase merchandise at a purportedly marked-down  
“sale” price. Because such practices are misleading — and effective — the

27  
28 <sup>1</sup> Wilsons Leather brand products include all products sold exclusively in Wilson’s  
Leather retail outlet stores.

1 California legislature has prohibited them”.

2 *See Hinojos v. Kohl's Corp.* 718, F.3d 1098 (2013)

3 5. During the Class Period, Defendant continually mislead consumers by  
4 advertising its Wilsons Leather branded, men’s and women’s accessories, outerwear, and  
5 other items at discounted, “Sale” prices. However, the “Sale” prices were actually the  
6 regular prices of the Wilsons Leather products.

7 6. The advertised discounts overstated and did not represent a *bona fide* price at  
8 which Defendant formerly sold the merchandise and were nothing more than mere  
9 phantom markdowns because the represented “Ticket” prices were artificially inflated and  
10 were never the original prices for merchandise sold at Defendant’s outlet stores. In  
11 addition, the represented “Ticket” prices were not the prevailing market retail prices  
12 within three months next immediately preceding the publication of the advertised former  
13 prices, as required by California law.

14 7. Defendant conveys its deceptive pricing scheme to consumers through the  
15 use of in-store displays and print advertisements. For example, in Defendant’s outlet  
16 stores, the pricing scheme is prominently displayed, in black and white, 8” to 12” signs;  
17 advertising deep discounts on various items throughout the store by representing both the  
18 “Ticket” price and the corresponding “Sale” price on the same placard, side by side for  
19 the consumer to make the comparison.

20 8. The “Ticket” price never existed and/or did not constitute the prevailing  
21 market retail prices for such products within the three months next immediately preceding  
22 the publication of the sales tag. The difference between the “Sale” and “Ticket” price is a  
23 false savings percentage used to lure consumers into purchasing products they believe are  
24 significantly discounted.

25 9. Through its false and misleading marketing, advertising, and pricing scheme,  
26 Defendant violated and continues to violate California and federal law prohibiting  
27 advertising goods for sale as discounted from former prices which are false, and  
28 prohibiting misleading statements about the existence and amount of price reductions.

1 Specifically, Defendant violated and continues to violate California Business and  
2 Professions Code §§ 17200, *et seq.* (the “UCL”), California Business and Professions  
3 Code §§ 17500, *et seq.* (the “FAL”), the California Consumer Legal Remedies Act,  
4 California Civil Code §§ 1750, *et seq.* (the “CLRA”), and the Federal Trade Commission  
5 Act (“FTCA”), which prohibits “unfair or deceptive acts or practices in or affecting  
6 commerce” (15 U.S.C. § 45(a)(1)) and false advertisements (15 U.S.C. § 52(a)).

7 10. Plaintiff brings this action on behalf of himself and other similarly situated  
8 consumers who have purchased one or more Wilsons Leather branded items at  
9 Defendant’s outlet stores that were deceptively represented as discounted from false  
10 former, “Ticket” prices in order to halt the dissemination of this false, misleading, and  
11 deceptive pricing scheme, to correct the false and misleading perception it has created in  
12 the minds of consumers, and to obtain redress for those who have purchased merchandise  
13 tainted by this scheme. Plaintiff seeks to obtain damages, restitution, and other  
14 appropriate relief in the amount by which Defendant was unjustly enriched as a result of  
15 their sales of merchandise offered at a false discount.

16 11. Finally, Plaintiff seeks reasonable attorneys’ fees pursuant to California Code  
17 of Civil Procedure § 1021.5, as this lawsuit seeks the enforcement of an important right  
18 affecting the public interest and satisfies the statutory requirements for an award of  
19 attorneys’ fees.

## 20 **II. JURISDICTION AND VENUE**

21 12. This Court has original jurisdiction of this action pursuant to the Class Action  
22 Fairness Act, 28 U.S.C. § 1332 (d)(2). The matter in controversy, exclusive of interest  
23 and costs, exceeds the sum or value of \$5,000,000 and at least some members of the  
24 proposed Class have a different citizenship from Defendant.

25 13. The Southern District of California has personal jurisdiction over Defendant  
26 because Defendant is a corporation authorized to conduct and which does conduct  
27 business in the State of California. Defendant is registered with the California Secretary  
28 of State to do sufficient business with sufficient minimum contacts in California, and/or

1 otherwise intentionally avails itself to the California market through the ownership and  
2 operation of 20 outlet stores within the State of California.

3 14. Venue is proper under 18 U.S.C. § 1965(a) because Defendant transacts  
4 substantial business in this District. A substantial part of the events giving rise to  
5 Plaintiff's claims arose here.

6 **III. PARTIES**

7 **A. Plaintiff**

8 15. Plaintiff MATTHEW JOHN resides in San Diego County, California.

9 **B. Plaintiff's Statement of Facts:**

10 16. Plaintiff, in reliance on Defendant's false and deceptive advertising,  
11 marketing, and "Sale" pricing schemes, purchased a Wilsons Leather branded wallet for  
12 \$25.91 on April 16, 2016 at a Wilsons Leather outlet store located at 5620 Paseo del  
13 Norte, Suite 117, Carlsbad, California 92008. Mr. John entered Defendant's store and  
14 immediately noticed that all of the merchandise, jackets, purses, and wallets in the store  
15 were on sale. He observed the approximately 8" sale signs that hung above each rack of  
16 merchandise advertised both a "Ticket" price and "Sale" price. Mr. John reasonably  
17 concluded that the "Sale" price was a discount that was being offered from the regular  
18 "Ticket" price of the items offered for sale. Mr. John sought out the leather wallets. Mr.  
19 John observed the Wilsons Leather branded wallets situated on a chest-high kiosk in the  
20 middle of the store. Mr. John observed the price sign that advertised the Wilson's Leather  
21 branded wallets as follows:

Ticket	Sale
50.00.....	19.99
60.00.....	23.99

22  
23  
24  
25  
26  
27  
28 *See, e.g.* Exhibit B-10, Wilsons Leather brand wallets. Mr. John examined the  
wallets and chose a Wilsons Leather branded, all black leather, trifold wallet. The  
"Ticket" price of the item was listed at \$60.00. The "Sale" price of the item was listed at  
\$23.99. Mr. John believed that he was getting a good deal on the leather wallet and he

1 selected to purchase it based upon Defendant's representation that the wallet was  
2 significantly discounted from \$60.00 down to \$23.99. Mr. John took the wallet to the  
3 register, and paid \$25.91 for it.

4       17. The "Sale" price of \$23.99 was discounted and represented to Plaintiff at a  
5 significant savings (approximately 60%) according to the price tag and related signage.  
6 However, this product was never offered for sale at approximately \$60.00 at Defendant's  
7 outlet store, nor was it offered at that price at *any store* in California within the 90-day  
8 time period immediately preceding Plaintiff's purchase. Therefore, Plaintiff was damaged  
9 by his purchase of the product. Plaintiff would not have purchased the wallet without the  
10 misrepresentation made by Defendant. As a result, Plaintiff has been personally  
11 victimized by and suffered economic injury as a direct result of Defendant's unlawful,  
12 unfair, and fraudulent conduct.

13       18. The wallet Plaintiff purchased is a Wilsons Leather brand, black, all leather,  
14 trifold wallet with "WILSONS LEATHER" stamped into the leather on the outside  
15 middle panel at the bottom.

16       **Defendant**

17       19. Plaintiff alleges upon information and belief that Defendant AM Retail  
18 Group, Inc. is a Delaware corporation, doing business as Wilsons Leather, with its  
19 principal executive offices in Brooklyn Park, Minnesota. It is a subsidiary of the publicly  
20 traded Delaware corporation, G-III Apparel Group, Ltd. (NASDAQ: GIII). Defendant  
21 advertises, markets, distributes, and/or sells men and women's accessories, outerwear, and  
22 other items to hundreds of thousands of consumers in California and throughout the  
23 United States.

24       20. Plaintiff does not know the true names and capacities of the persons or  
25 entities sued herein as DOES 1-100, inclusive, and therefore sues such Defendants by  
26 such fictitious names. Plaintiff is informed and believes, and upon such information and  
27 belief alleges, that each of the DOE Defendants is in some manner legally responsible for  
28 the damages suffered by Plaintiff and the Class members as alleged herein. Plaintiff will

1 amend this Complaint to set forth the true names and capacities of these Defendants when  
2 they have been ascertained, along with appropriate charging allegations, as may be  
3 necessary.

4 **IV. FACTUAL BACKGROUND**

5 **A. The Fraudulent Sale Discounting Scheme**

6 21. Wilsons Leather is a leather retailer, selling products such as leather jackets,  
7 belts, shoes, wallets, handbags and gloves. Wilsons Leather operates over 175+ stores in  
8 the United States, including 19 outlet stores in California. Wilsons Leather sells a variety  
9 of leather products from various manufacturers as well as its own, Wilsons Leather brand  
10 of leather products. This case involves only the Wilsons Leather branded products sold by  
11 Defendant.

12 22. The Wilsons Leather brand of leather products are sold exclusively in its  
13 retail outlet stores. There is no other market for the Wilsons Leather branded products  
14 other than at Defendant's retail outlet stores.

15 23. Wilsons Leather engages in a scheme to defraud its customers by perpetually  
16 discounting its Wilsons Leather merchandise in its retail outlet stores. The scheme is  
17 effectuated as follows: Every single piece of Wilsons Leather brand merchandise sold in  
18 Wilsons Leather retail outlet stores is advertised with two prices; the "Ticket" price and  
19 the corresponding "Sale" price. The "Ticket" Price conveys to the consumer the  
20 purported regular price of the item. The "Sale" price conveys to the customer a deeply  
21 discounted price at which the item presently being offered for sale. The two prices  
22 ("Ticket" and "Sale") are conveyed to consumers on eight to twelve inch, black and  
23 white, rectangular signs, which are placed on every rack of products in every Wilsons  
24 Leather retail outlet store. *See Exhibit, "B".*

25 24. However, at no time are the Wilsons Leather branded products ever offered  
26 for sale at the "Ticket" price. The "Ticket" price is merely a false reference price from  
27 which Defendant utilizes to reference a deeply discounted "Sale" price on every piece of  
28 Wilsons Leather branded merchandise sold in its stores during the class period.

1       25. This practice is not accidental; it is a fraudulent scheme intended to deceive  
2 consumers into: 1) making purchases they otherwise would not have made; or 2) into  
3 paying substantially more for merchandise consumers believed was heavily discounted;  
4 and thereby believed was worth more than its actual value.

5       26. Retailers, including Defendant understand that consumers are susceptible to a  
6 good bargain and therefore Defendant has substantial interest in lying in order to generate  
7 sales. A product's "regular" price or "original" price matters to consumers. In this case,  
8 Defendant has marked its merchandise with a "Ticket" price; intended to be the equivalent  
9 of a "regular" or "original" price. The regular price and/or the original price conveys to  
10 consumers, including Mr. John, the product's worth and the prestige that ownership of the  
11 product conveys. *See Dhruv Grewal & Larry D. Compeau, Comparative Price*  
12 *Advertising: Informative or Deceptive?*, 11 J. of Pub. Pol'y & Mktg. 52, 55 (Spring 1992)  
13 ("By creating an impression of savings, the presence of a higher reference price enhances  
14 subjects' perceived value and willingness to buy the product."); id. at 56 ("[E]mpirical  
15 studies indicate that as discount size increases, consumers' perceptions of value and their  
16 willingness to buy the product increase, while their intention to search for a lower price  
17 decreases.").

18       27. Defendant's pricing advertisements uniformly include both the false regular  
19 price ("Ticket"), and right next to, or above it the purported "Sale" price. This uniform  
20 scheme is intended to and does provide misinformation to the customer. This  
21 misinformation communicates to consumers, including Mr. John, that the Wilsons Leather  
22 branded products have a greater value than the advertised "Sale" Price. As the Ninth  
23 Circuit recognizes, "[m]isinformation about a product's "normal" price is...significant to  
24 many consumers in the same way as a false product label would be." *See Hinojos v.*  
25 *Kohl's Inc.* 718 F.3d at 1106.

26       **B. Plaintiff's Investigation**

27       28. Plaintiff's counsel has investigated dozens of retailers to determine whether  
28 they are engaged in fraudulent sale discounting. Plaintiff's investigation of Wilsons

1 Leather included the 90-day period immediately preceding Plaintiff's purchase. To be  
2 clear, Plaintiff's counsel was investigating Wilsons Leather retail sale discounting  
3 practices long before Plaintiff made a purchase at Wilsons Leather and long before  
4 Plaintiff contacted Plaintiff's counsel seeking representation.

5 29. Plaintiff's investigation cataloged the pricing practices of Wilsons Leather  
6 outlet stores in San Diego County, including at the Carlsbad Premium Outlets at 5620  
7 Paseo Del Norte, Suite 117, Carlsbad, CA 92008; the Las Americas Premium Outlets  
8 4265 Camino De La Plaza, Space 210, San Diego, CA 92173 and at the Viejas Outlet  
9 Center at 5005 Willows Road Suite H109, Alpine, CA 91901. The false "Ticket" price  
10 and corresponding purported "Sale" price pricing scheme was both uniform and identical  
11 at all stores investigated. For example, in the ninety days prior to Plaintiff's purchase, the  
12 following items were continuously discounted at the stores indicated:

Item:	Ticket Price:	Sale Price:	Continuously Discounted from (at least):	Through April 16, 2016	Stores Observed:	Exhibit:
Red Women's zip-up collar-less	\$180.00	\$39.99	January 8, 2016	Yes	Carlsbad; San Ysidro	A
Black leather zip up jacket collar-less	\$250.00	\$59.99	January 8, 2016	Yes	Carlsbad; San Ysidro; Alpine	B-1
Black Leather Collar	\$600.00	\$149.99	January 8, 2016	Yes	Carlsbad; San Ysidro	B-2
Beige/Grey Suede Collar less Zip up	\$650.00	\$179.99	January 8, 2016	Yes	Carlsbad; San Ysidro	B-3
Black Collar Leather Zip up (Mens)	\$650.00	\$159.99	January 8, 2016	Yes	Carlsbad; San Ysidro; Alpine	B-3
Women's Studded	\$700.00	\$229.00	January 8, 2016	Yes	Carlsbad; San Ysidro	B-4

1	<b>Collared zip up leather</b>					
2	<b>Shoulder Patterned Leather Collared zip up (Mens)</b>	\$180.00	\$59.99	January 8, 2016	Yes	Carlsbad; San Ysidro
3	<b>Women's Brown Suede Collar-less</b>	\$250.00	\$69.99	January 8, 2016	Yes	Carlsbad; San Ysidro
4	<b>Women's Grey Collar-less Zip up</b>	\$550.00	\$149.99	January 8, 2016	Yes	Carlsbad; San Ysidro
5	<b>Black Leather zip up collar with hoodie</b>	\$250.00	\$49.99	January 8, 2016	Yes	Carlsbad; San Ysidro
6	<b>Pink Women's Peacoat</b>	\$300.00	\$79.99	January 8, 2016	Yes	Carlsbad; San Ysidro
7	<b>Bottom of B-8</b>					
8	<b>Men's Brown zip up leather collarless</b>	\$300.00	\$79.99	January 8, 2016	Yes	Carlsbad; San Ysidro
9	<b>B-9</b>					
10	<b>Wilson's Leather Wallets</b>	\$40.00; \$50.00; \$60.00' \$70.00	\$15.99; \$19.99; \$23.99; \$27.99	January 8, 2016	Yes	Carlsbad; San Ysidro; Alpine
11	<b>B-10</b>					

20        30. The fraudulent pricing scheme applies to all Wilsons Leather branded  
 21 products sold in every Wilsons Leather retail outlet store, and included the Wilsons  
 22 Leather Wallet purchased by Mr. John on April 16, 2016. By way of example, all items in  
 23 the above referenced chart were offered at a "Sale" price substantially less than their  
 24 "Ticket" price for at least the 90 days preceding Plaintiff's purchase.

25        31. Plaintiff's counsel initially investigated Wilsons Leather in the summer of  
 26 2015. On every occasion that Plaintiff's counsel catalogued Defendant's pricing; the  
 27 Wilsons Leather branded wallets were discounted; meaning: they were offered at the  
 28

1 “Sale” price, not the listed “Ticket” price. In fact, as of the date of this filing the Wilsons  
2 Leather branded wallets remain on “Sale”. *See Exhibit “C” – Wilsons Leather brand*  
3 *wallets.*

4 32. The “Ticket” prices listed and advertised on Defendant’s products are fake  
5 reference prices; utilized only to perpetuate Defendant’s fake-discount scheme.

6 33. Defendant knows that its comparative price advertising is false, deceptive,  
7 mislead, and unlawful under California and federal law.

8 34. Defendant fraudulently concealed from and intentionally failed to disclose to  
9 Plaintiff and other members of the Class the truth about its advertised price and former  
10 prices.

11 35. At all relevant times, Defendant has been under a duty to Plaintiff and the  
12 Class to disclose the truth about its false discounts.

13 36. Plaintiff relied upon Defendant’s artificially inflated “Ticket” prices and false  
14 discounts when purchasing the Wilsons Leather branded wallet from Defendant. Plaintiff  
15 would not have made such purchase but for Defendant’s representations of fabricated  
16 “Ticket” prices and false discounts. Plaintiff may in the future shop at Defendant’s retail  
17 outlet store.

18 37. Plaintiff and the Class reasonably and justifiably acted and relied on the  
19 substantial price differences that Defendant advertised, and made purchases believing that  
20 they were receiving a substantial discount on an item of greater value than it actually was.  
21 Plaintiff, like other Class members, was lured in, relied on, and was damaged by these  
22 pricing schemes that Defendant carried out.

23 38. Defendant intentionally concealed and failed to disclose material facts  
24 regarding the truth about false former price advertising in order to provoke Plaintiff and  
25 the Class to purchase merchandise in its outlet stores.

26 39. In approximately May of 2016, Defendant changed its practice and stopped  
27 utilizing the description, “Ticket” price to describe the reference price on the in-store  
28 signage for all merchandise items. In its place, Defendant started describing the reference

1 price as the “Comparable Value” price. The “Comparable Value” description of the  
2 reference price is equally misleading because the Wilsons Leather branded items are not  
3 sold at any other stores, except Wilsons Leather. In short, it is a false comparison.

4 **V. CLASS ALLEGATIONS**

5 40. Plaintiff brings this action individually and as a Class action pursuant to  
6 Federal Rules of Civil Procedure Rule 23 on behalf of:

7 All persons located within the state of California (the “California Class”) who  
8 purchased one or more Wilsons Leather brand items from one of Defendant’s retail  
9 outlet stores which were offered at a purported discount from a “Ticket” price any  
10 time between the date of the applicable statute of limitations began to run through  
the date of certification.

11 41. Excluded from the Class is Defendant, as well as its officers, employees,  
12 agents, or affiliates, and any judge who presides over this action, as well as all past and  
13 present employees, officers, and directors of Wilsons Leather.

14 42. Plaintiff reserves the right to expand, limit, modify, or amend this class  
15 definition, including the addition of one or more subclasses, in connection with his motion  
16 for class certification, or at any other time, based upon, *inter alia*, changing circumstances  
17 and/or new facts obtained during discovery.

18 43. This action is brought and may properly be maintained as a class action  
19 pursuant to Federal Rule of Civil Procedure 23. This action satisfies the numerosity,  
20 typicality, adequacy, predominance, and superiority requirements of those provisions.

21 44. ***Numerosity:*** The Class members are so numerous that joinder of all  
22 members is impracticable. Plaintiff is informed and believes that the proposed Class  
23 contain hundreds of thousands of individuals who have been damaged by Defendant’s  
24 conduct as alleged herein. The precise number of Class members is unknown to Plaintiff.

25 45. ***Existence and Predominance of Common Questions of Law and Fact:***  
26 This action involves common questions of law and fact, which predominant over any  
27 questions affecting individual Class members. These common legal and factual questions

1 include, but are not limited to, the following:

- 2 a. whether, during the Class Period, Defendant used false “regular,” “original,”  
3 “Ticket” or “market” price labels and falsely advertised price discounts on  
4 merchandise it sold in outlet stores;
- 5 b. whether, during the Class Period, the “regular,” “original,” “Ticket” or  
6 “market” prices advertised by Defendant were the prevailing market prices  
7 for the respective merchandise during the three-month period preceding the  
8 dissemination and/or publication of the advertised former prices;
- 9 c. whether Defendant’s alleged conduct constitutes violations of the laws  
10 asserted;
- 11 d. whether Defendant engaged in unfair and/or unlawful business practices  
12 under the laws asserted;
- 13 e. whether Defendant engaged in false or misleading advertising; and
- 14 f. whether Plaintiff and the Class are entitled to damages and/or restitution and  
15 the proper measure of that loss.

16 46. **Typicality:** Plaintiff’s claims are typical of the claims of the members of the  
17 Class because, *inter alia*, all Class members have been deceived (or were likely to be  
18 deceived) by Defendant’s false and deceptive price advertising scheme, as alleged herein.  
19 Plaintiff is advancing the same claims and legal theories on behalf of himself and all  
20 members of the Class.

21 47. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the  
22 members of the Class. Plaintiff has retained counsel experienced in complex consumer  
23 class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff  
24 has no antagonistic or adverse interest to those of the Class.

25 48. **Superiority:** The nature of this action and the nature of laws available to  
26 Plaintiff and the Class make the use of the class action format a particularly efficient and  
27 appropriate procedure to afford relief to him and the Class for the wrongs alleged. The  
28 damages or other financial detriment suffered by individual Class members is relatively

1 modest compared to the burden and expense that would be entailed by individual  
2 litigation of their claims against Defendant. Thus, it would be virtually impossible for  
3 Plaintiff and Class members, on an individual basis, to obtain effective redress for the  
4 wrongs done to them. Absent the class action, Class members and the general public  
5 would not likely recover, or would not likely have the chance to recover, damages or  
6 restitution, and Defendant will be permitted to retain the proceeds of its unfair and  
7 unlawful misdeeds.

8 49. All Class members, including Plaintiff, were exposed to one or more of  
9 Defendant's misrepresentations or omissions of material fact claiming that former  
10 "Ticket," prices represented former market prices and those "Ticket" prices advertised  
11 prices were in existence. Due to the scope and extent of Defendant's consistent false  
12 "discount" price advertising scheme that has been disseminated in a continuous campaign  
13 to consumers via a number of different platforms—in-store displays, media  
14 advertisements, print advertisements, etc.—it can be reasonably inferred that such  
15 misrepresentations or omissions of material fact were uniformly made to all members of  
16 the Class. In addition, it can be reasonably presumed that all Class members, including  
17 Plaintiff, affirmatively acted in response to the representations contained in Defendant's  
18 false advertising scheme when purchasing merchandise from Defendant.

19 50. Defendant keeps extensive computerized records of its customers through,  
20 *inter alia*, customer loyalty programs and general marketing programs. Defendant has  
21 one or more databases through which a significant majority of Class members may be  
22 identified and ascertained, and it maintains contact information, including email and home  
23 addresses, through which notice of this action could be disseminated in accordance with  
24 due process requirements.

25 **CAUSES OF ACTION**

26 **FIRST CAUSE OF ACTION**

27 **Violation of Unfair Competition Law**

28 **Business and Professions Code § 17200, *et seq.***

1       51. Plaintiff repeats and re-alleges the allegations contained in every preceding  
2 paragraph as if fully set forth herein.

3       52. The UCL defines unfair business competition to include any “unlawful,  
4 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or  
5 misleading” advertising. Cal. Bus. & Prof. Code § 17200.

6       53. The UCL imposes strict liability. Plaintiff need not prove that Defendant  
7 intentionally or negligently engaged in unlawful or unfair business practices – only that  
8 such practices occurred.

9       54. A business act or practice is “unfair” under the UCL if it offends an  
10 established public policy or is immoral, unethical, oppressive, unscrupulous or  
11 substantially injurious to consumers, and that unfairness is determined by weighing the  
12 reasons, justifications, and motives of the practice against the gravity of the harm to the  
13 alleged victims.

14       55. Defendant’s actions constitute “unfair” business acts of practices because, as  
15 alleged above, Defendant engaged in misleading and deceptive price comparison  
16 advertising that represented false “Ticket” prices and discount “Sale” prices that were  
17 nothing more than fabricated “regular” prices leading to phantom markdowns.  
18 Defendant’s acts and practices offended an established public policy, and engaged in  
19 immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious  
20 to consumers.

21       56. The harm to Plaintiff and California Class members outweighs the utility of  
22 Defendant’s practices. There were reasonably available alternatives to further  
23 Defendant’s legitimate business interests, other than the misleading and deceptive conduct  
24 described herein.

25       57. A business act or practice is “fraudulent” under the UCL if it is likely to  
26 deceive members of the consuming public.

27       58. A business act or practice is “unlawful” under the UCL if it violates any  
28 other law or regulation.

1       59. Defendant's acts and practices alleged above have deceived Plaintiff and are  
2 highly likely to deceive members of the consuming public. Plaintiff relied on Defendant's  
3 fraudulent and deceptive representations regarding its "market" prices and the  
4 corresponding discounts for Defendant's merchandise, which Defendant sells at its outlet  
5 stores. These misrepresentations played a substantial role in Plaintiff's decision and that  
6 of the proposed California Class to purchase the products at steep discounts, and Plaintiff  
7 would not have purchased the Wilsons Leather brand wallet without Defendant's  
8 misrepresentations.

9       60. The FTCA prohibits "unfair or deceptive acts or practices in or affecting  
10 commerce" (15 U.S.C. § 45(a)(1)) and prohibits the dissemination of any false  
11 advertisements. (15 U.S.C. § 52(a)). Under the FTCA, false former pricing schemes  
12 similar to the ones implemented by Defendant are described as deceptive practices that  
13 would violate the FTCA:

- 14       (a) One of the most commonly used forms of bargain advertising is to  
15           offer a reduction from the advertiser's own former price for an article. If  
16           the former price is the actual, bona fide price at which the article was  
17           offered to the public on a regular basis for a reasonably substantial period  
18           of time, it provides a legitimate basis for the advertising of a price  
19           comparison. Where the former price is genuine, the bargain being  
20           advertised is a true one. If, on the other hand, the former price being  
21           advertised is not bona fide but fictitious—for example, where an artificial,  
22           inflated price was established for the purpose of enabling the subsequent  
23           offer of a large reduction—the "bargain" being advertised is a false one;  
24           the purchaser is not receiving the unusual value he expects.
- 25       (b) A former price is not necessarily fictitious merely because no sales at  
26           the advertised price were made. The advertiser should be especially  
27           careful, however, in such a case, that the price is one at which the product  
28           was openly and actively offered for sale, for a reasonably substantial  
          period of time, in the recent, regular course of his business, honestly, and  
          in good faith—and, of course, not for the purpose of establishing a  
          fictitious higher price on which a deceptive comparison might be based.

29       16 C.F.R. § 233.1.

1       61. California law also expressly prohibits false former pricing schemes. Cal.  
2 Bus. & Prof. Code § 17501, entitled “*Worth or value; statements as to former price*,”  
3 states:

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

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

11       [Emphasis added.]

12       62. As detailed in Plaintiff’s Third Cause of Action below, Cal. Civil Code §  
13 1770(a)(9) prohibits a business from “[a]dvertising goods or services with intent not to  
14 sell them as advertised,” and subsection (a)(13) prohibits a business from “[m]aking false  
15 or misleading statements of fact concerning reasons for, existence of, or amounts of price  
16 reductions.”

17       63. Defendant’s practices, as set forth above, have violated the FTCA and  
18 California law. Consequently, Defendant’s practices constitute an unlawful and unfair  
19 practice within the meaning of the UCL.

20       64. Defendant’s violation of the UCL through its unlawful, unfair, and fraudulent  
21 business practices are ongoing and present a continuing threat that members of the public  
22 will be deceived into purchasing products based on price comparisons of arbitrary and  
23 inflated “Ticket” prices to discounted “Sale” prices that created phantom markdowns and  
24 led to financial damage for consumers like Plaintiff and the California Class.

25       65. Pursuant to the UCL, Plaintiff is entitled to disgorgement and restitution of  
26 all Defendant’s revenues associated with its unfair competition, or such portion of those  
27 revenues as the Court may find equitable.

**SECOND CAUSE OF ACTION**

**Violation of the California False Advertising Law,  
Business and Professions Code § 17500, *et seq.***

66. Plaintiff repeats and re-alleges the allegations contained in every preceding paragraph as if fully set forth herein.

67. Cal. Bus. & Prof. Code § 17500 provides that:

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

[Emphasis added.]

68. The “intent” required by Cal. Bus. & Prof. Code § 17500 is the intent to dispose of property, and not the intent to mislead the public in the disposition of such property.

69. Similarly, Cal. Bus. & Prof. Code § 17501 provides, “no price shall be advertised as a former price of any advertised thing, unless the alleged former price was the prevailing market price . . . within three months next immediately preceding the publication of the advertisement or unless the date when the alleged former price did prevail is clearly, exactly, and conspicuously stated in the advertisement.”

70. Defendant's routine of advertising and publishing "Ticket" prices on all of its merchandise, which were never the true prevailing prices, was an unfair, untrue, and misleading practice. This deceptive marketing practice gave consumers the false impression that the products were regularly sold on the market for a substantially higher price than they actually were. Therefore, leading to the false impression that the merchandise was worth more than it actually was.

71. Defendant misled consumers by making untrue and misleading statements

and failing to disclose what is required as stated in the Code, as alleged above.

72. As a direct and proximate result of Defendant's misleading and false advertisements, Plaintiff and California Class members have suffered injury in fact and have lost money. As such, Plaintiff requests that this Court order Defendant to restore this money to Plaintiff and all California Class members.. Otherwise, Plaintiff, California Class members, and the broader general public will be irreparably harmed and/or denied an effective and complete remedy.

**THIRD CAUSE OF ACTION**  
**Violation of the Consumer Legal Remedies Act (“CLRA”),**  
**California Civil Code § 1750, *et seq.***

73. Plaintiff repeats and re-alleges the allegations contained in every preceding paragraph as if fully set forth herein.

74. This cause of action is brought pursuant to the Consumer Legal Remedies Act (“CLRA”), California Civil Code § 1750, *et seq.* Plaintiff and each member of the proposed class are “consumers” as defined by California Civil Code § 1761(d). Defendant’s sale of merchandise to Plaintiff and the California Class were “transactions” within the meaning of California Civil Code § 1761(e). The products purchased by Plaintiff and the California Class are “goods” within the meaning of California Civil Code § 1761(a).

75. Defendant violated, and continues to violate, the CLRA by engaging in the following practices proscribed by California Civil Code § 1770(a) in transactions with Plaintiff and the California Class which were intended to result in, and did result in, the sale of merchandise:

- a. representing that its merchandise has characteristics, uses, and/or benefits, which it does not;
- b. advertising goods or services with intent not to sell them as advertised;
- c. making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.

76. Pursuant to §1782(a) of the CLRA, on June 15, 2017, Plaintiff's counsel notified Defendant in writing by certified mail of the particular violations of § 1770 of the CLRA and demanded that it rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendant's intent to act.

77. Defendant failed to appropriately respond to Plaintiff's letter or agree to rectify the problems associated with the actions detailed above and given notice to all affected consumers within 30 days of the date of written notice pursuant to § 1782 of the Act. Therefore, Plaintiff seeks claims for actual or punitive damages, as appropriate against Defendant.

## **FOURTH CAUSE OF ACTION**

### **Unjust Enrichment**

78. Plaintiff repeats and re-alleges the allegations contained in every preceding paragraph as if fully set forth herein.

79. Plaintiff brings this claim individually as well as on behalf of the California Class.

80. At all times relevant hereto, Defendant deceptively priced, marketed, advertised, and sold merchandise to Plaintiff and the Class.

81. Plaintiff and members of the Class conferred upon Defendant non-gratuitous payments for merchandise that they would not have if not for Defendant's deceptive pricing, advertising, and marketing. Defendant accepted or retained the non-gratuitous benefits conferred by Plaintiff and members of the Class, with full knowledge and awareness that, as a result of Defendant's deception, Plaintiff and members of the Class were not receiving a product of the quality, nature, fitness, or value that had been represented by Defendant and reasonable consumers would have expected.

82. Defendant has been unjustly enriched in retaining the revenues derived from purchases of merchandise by Plaintiff and members of the Class, which retention under these circumstances is unjust and inequitable because Defendant misrepresented, among other things, that its merchandise was being offered at a significant discount, which

1 caused injuries to Plaintiff and members of the Class because they paid for, and/or paid a  
2 price premium due to the misleading pricing and advertising.

3       83. Retaining the non-gratuitous benefits conferred upon Defendant by Plaintiff  
4 and members of the Class under these circumstances made Defendant's retention of the  
5 non-gratuitous benefits unjust and inequitable. Thus, Defendant must pay restitution to  
6 Plaintiff and members of the Class for unjust enrichment, as ordered by the Court.

7 **VI. PRAYER FOR RELIEF**

8       Wherefore, Plaintiff, on behalf of himself and on behalf of the other members of the  
9 Class, requests that this Court award relief against Defendant as follows:

- 10       A. An order certifying the Class and designating Plaintiff as the Class  
11                   Representative and his counsel as Class Counsel;
- 12       B. Awarding Plaintiff and the proposed Class members' damages;
- 13       C. Awarding restitution and disgorgement of all profits and unjust  
14                   enrichment that Defendant obtained from Plaintiff and the Class  
15                   members as a result of its unlawful, unfair, and fraudulent business  
16                   practices described herein;
- 17       D. Awarding declaratory relief as permitted by law or equity;
- 18       E. Order Defendant to engage in a corrective advertising campaign;
- 19       F. Awarding attorneys' fees and costs; and
- 20       G. For such other and further relief as the Court may deem necessary or  
21                   appropriate.

22 **VII. DEMAND FOR JURY TRIAL**

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

25       Dated: April 10, 2018

**CARLSON LYNCH SWEET  
KILPELA & CARPENTER, LLP**

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