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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

THOMAS BELCASTRO, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

BURBERRY LIMITED,

Defendant.

Case No. 16-CV-1080 (VEC)

**AMENDED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

Plaintiff, Thomas Belcastro (“Plaintiff”), on behalf of himself and all others similarly situated, alleges the following based upon personal knowledge as to allegations regarding himself and on information and belief as to other allegations:

INTRODUCTION

1. This is a civil class action seeking monetary damages, restitution, injunctive and declaratory relief from Defendant Burberry Limited (“Burberry” or “Defendant”) arising from its deceptive and misleading labeling and marketing of merchandise it sells through its company-owned Burberry Factory Outlet stores (“Burberry Outlets”).

2. During the Class Period¹ (defined below), Burberry intentionally portrayed false price information by misrepresenting the existence, nature, and amount of price discounts on products manufactured by Burberry for sale exclusively at Burberry Outlets (“Burberry Outlet Products”).

3. On the price tags of its Burberry Outlet Products, Burberry advertised the Manufacturer’s Suggested Retail Price (“MSRP”) and/or a “Was” price (collectively “Deceptive Reference Price”) and then on the same price tags advertised a price termed “Now,” which supposedly represented a deep discount off of the Deceptive Reference Price and induces consumers to purchase the Burberry Outlet Products believing they are getting a significant discount off of the regular retail price.

4. However, the Deceptive Reference Prices used by Burberry did not convey accurate price information about the Burberry Outlet Products and were instead a sham designed to mislead and deceive consumers.

¹ The Class Period shall encompass all sales from February 11, 2012 through the date of entry of class certification (the “Class Period”).

5. Burberry led consumers to believe its Deceptive Reference Prices represented authentic price information about the products they purchased. In reality, Burberry manufactures the Burberry Outlet Products for *exclusive sale* at its Burberry Outlets and always sells these goods for the advertised “Now” price. As a result, such items were never sold, never suggested to be sold, or even intended to be sold at the Deceptive Reference Price listed on its price tags. Burberry Outlet Products are only sold in its outlets.

6. Through its false and deceptive marketing, advertising and pricing scheme, Burberry violated (and continues to violate) Florida law. Specifically, Burberry violated (and continues to violate) Florida’s Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, *et seq.* (the “FDUTPA”), which makes “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce” unlawful. Fla. Stat. § 501.204(2); *see* Fla. Stat. § 501.204(2) (“due consideration and great weight are given to the interpretation of the Federal Trade Commission”); 15 U.S.C. § 45(a)(1) (“Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful”).

7. Plaintiff, individually and on behalf of all others similarly situated, seeks restitution and other equitable remedies, including an injunction under the FDUTPA, as well as fraud under New York common law.

PARTIES

8. Plaintiff, Thomas Belcastro is a resident of Orlando, Florida. In reliance on Burberry’s false and deceptive advertising, marketing and pricing schemes, Mr. Belcastro purchased five Burberry Outlet Products from the Burberry Factory Outlet located at 8200

Vineland Avenue, Orlando, Florida in July 2014 and again in July 2015, and as detailed herein, he was damaged as a result thereof.

9. Defendant Burberry Limited is a corporation duly organized and existing under the laws of the State of New York, with its principal place at 444 Madison Avenue, New York, NY, 10022.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction under the Class Action Fairness Act, 28 U.S.C. section 1332(d) in that: (1) this is a class action involving more than 100 class members; (2) Plaintiff is a citizen of the State of Florida, and Defendant is a citizen of the State of New York; and (3) the amount in controversy exceeds the sum of \$5,000,000, exclusive of interest and costs

11. The Southern District of New York has personal jurisdiction over Burberry because Burberry resides in this District.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391, because Burberry's principal place of business is found within this District, and a substantial part of the events giving rise to Plaintiff's claims arose here, including the creation of the scheme alleged in this Complaint.

FACTUAL ALLEGATIONS

13. Burberry markets itself as "a British luxury brand with a heritage of design, innovation and craftsmanship."² In fact, Burberry touts itself as being "among the top five luxury brands globally for unaided awareness."³

² Burberry Grp., *Annual Report 2015/16* (2016) 19, available at http://www.burberryplc.com/documents/ar-15-16/burberry_annual_report_2015-16.pdf.

³ *Id.* at 34.

14. For consumers of luxury goods, such as Burberry's, the price of a product plays an important role in creating their perception of the good's higher quality.⁴ "Often used as evidence for judging quality, status-conscious consumers tend to use a price cue also as a surrogate indicator of prestige."⁵ "Thus, prestige pricing—setting a rather high price to suggest high quality and/or high status—may even make certain products or services more desirable."⁶

15. At the same time, perceptions of savings also impact consumers' willingness to purchase an item. For consumers, both the dollar and percentage amount of the deal positively influence their perception of their savings.⁷ Likewise, the presence of a "regular price" as an external reference price increases perceptions of objective value, thereby raising the consumer's desire to purchase the product.⁸

16. Empirical marketing studies demonstrate that reference pricing actually creates an impression of higher value:

Comparative price advertising offers consumers a basis for comparing the relative value of the product offering by suggesting a monetary worth of the product and any potential savings... [A] comparative price advertisement can be construed as deceptive if it makes any representation, ... or involves any practice that may materially mislead a reasonable consumer.

⁴ Kalus=Peter Weidmann, Nadine Hennigs, Astrid Siebels, *Measuring Consumers' Luxury Value Perception: A Cross-Cultural Framework*, ACADEMY OF MARKING SCIENCE (2007) at 6, available at https://www.researchgate.net/profile/KlausPeter_Wiedmann/publication/228344191_Measuring_consumers'_luxury_value_perception_A_cross-cultural_framework/links/0c960524146a1d3e28000000.pdf.

⁵ *Id.*

⁶ *Id.*

⁷ Joseph W. Alba (editor), Aradhana Krishna (contributor), *Perceptions of Price Deals*, Consumer Insights: Finding from Behavioral Research (2011) at 2, available at <http://www.msi.org/uploads/files/ConsumerInsights-Chap7.pdf>.

⁸ *Id.*

Comparative Price Advertising: Informative or Deceptive?, Dhruv Grewal and Larry D. Compeau, Journal of Public Policy & Marketing, Vol. 11, No. 1, at 52 (Spring 1992). Furthermore,

[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, the reference price is not truthful, a consumer may be encouraged to purchase as a result of a false sense of value.

Id. at 55–56.

17. Taken together, in the luxury product market, setting a high Deceptive Reference Price gives the consumer the perception that the luxury item is more valuable, thereby making it more desirable. Simultaneously, if the high Deceptive Reference Price is juxtaposed against a lower sales price, consumers are given a perception of savings, thus making the item more desirable. As such, the consumer is hit with the double whammy of a perception of quality along with a perception of savings.

18. Traditionally, retail outlet stores were located in remote areas and typically maintained an inventory of defective and excess merchandise. Customers often flocked to these outlets in hopes of finding steep discounts and bargains.⁹

19. However, in an effort to increase profits, major retailers such as Burberry have, without notice to consumers, begun using company-owned “outlet” stores to sell made-for-outlet goods that are never intended to be sold at non-outlet stores.

20. In Florida, such “outlet” stores are located in purpose-built malls touted as “outlets,” or “premium outlets.” The very term “outlet” conveys to reasonable consumers that at least some products are comprised of merchandise formerly offered for sale at full-price retail

⁹ See 7 Tips for Outlet Mall Shopping, FORBES (Dec. 29, 2012), <http://www.forbes.com/sites/investopedia/2012/12/29/7-tips-for-outlet-mall-shopping/>

locations. The location of Burberry Outlets in “outlet” malls deceives reasonable consumers into believing they are receiving true “outlet” merchandise, when they are not.

21. Instead, retailers like Burberry create the illusion of traditional outlet discounts and bargains by offering the made-for-outlet goods at prices reduced from fabricated, arbitrary, and false Deceptive Reference Prices.

22. On information and belief, Burberry manufactures Burberry Outlet Products exclusively for outlet stores.

23. Media reports indicate that outlet stores such as Burberry Outlets are using false and fraudulent price comparison tactics.¹⁰

24. The intentional use of false and fraudulent price comparison tactics is increasingly deceiving consumers in the market. To illustrate, on January 30, 2014, four Members of Congress demanded an FTC investigation of misleading marketing practices by outlet stores across the United States. The four Members of Congress described a pricing scheme similar to the one implemented at Burberry Outlets and stated, “[i]t is a common practice at outlet stores to advertise a retail price alongside the outlet store price—even on made-for-outlet merchandise that does not sell at regular retail locations. Since the item was never sold in the regular retail store or at the retail price, the retail price is impossible to substantiate. We believe this practice may be a violation of the FTC’s Guides Against Deceptive Pricing (16 CFR 233).”¹¹

25. Empirical marketing studies provide an incentive for retailers to engage in this false and fraudulent behavior:

¹⁰ Sapna Maheshwari, Consumers May Not Know They’re Getting Lower-Quality Clothes at Outlet Stores (May 14, 2014), *available at* <http://www.buzzfeed.com/sapna/customers-finally-aware-that-most-outlet-merchandise-is-now>.

¹¹ Press Release, White House, Sens. & Rep. to FTC: Outlet Stores May Be Misleading Consumers (Jan. 30, 2014), *available at* <http://www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-stores-may-be-misleading-consumers>.

Comparative price advertising offers consumers a basis for comparing the relative value of the product offering by suggesting a monetary worth of the product and any potential savings...[A] comparative price advertisement can be construed as deceptive if it makes any representation,... or involves any practice that may materially mislead a reasonable consumer.

Dhruv Grewal and Larry D. Compeau, *Comparative Price Advertising: Informative or Deceptive?*, 11 J. PUB. POL'Y & MKTG 52, (1992). In short:

[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.

Id. at 55, 56.

26. This is precisely the practice used by Burberry in its Burberry Outlets.

27. Accordingly, the Deceptive Reference Prices listed on Burberry Outlet Products are fictional creations designed by Burberry to portray false price information, enable phantom markdowns, and increase sales.

28. Burberry knows consumers are bargain-hunters and excited by the prospect of a bargain. The juxtaposition of an artificial Deceptive Reference Price and a “Now” price on Burberry Outlet Product price tags is intentionally designed to convey to consumers that they are receiving a bargain or a “deal” on the product. However, there is no bargain to be had. The Deceptive Reference Price on Burberry Outlet Products exists only to create the illusion of a bargain.

29. The Federal Trade Commission (“FTC”) explicitly describes this fictitious pricing scheme employed at Burberry Outlets as deceptive:

- (a) Many members of the purchasing public believe that a manufacturer's list price, or suggested retail price, is the price at which an article is generally sold. Therefore, if a reduction from this price is advertised, many people will believe that they are being offered a genuine bargain. To the extent that list or suggested retail prices do not in fact correspond to prices at which a substantial number of sales of the article in question are made, the

advertisement of a reduction may mislead the consumer. A former price is not necessarily fictitious merely because no sales at the advertised price were made. The advertiser should be especially careful, however, in such a case, that the price is one at which the product was openly and actively offered for sale, for a reasonably substantial period of time, in the recent, regular course of her 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.

* * *

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

16 C.F.R. § 233.3.

30. The Burberry Outlet pricing scheme was prominently advertised on the price tags of all Burberry Outlet Products in Florida.

31. Upon information and belief, thousands of Florida consumers were victims of Burberry's deceptive, misleading and unlawful false pricing scheme and thousands more, including Plaintiff, will be deceived if the practices continue.

32. Burberry fraudulently concealed from, and intentionally failed to disclose to, Plaintiff and others similarly situated, the truth about its Deceptive Reference Prices and advertised price discounts from those supposed prices.

33. Burberry's false representations of the Deceptive Reference Prices and false representations of savings, discounts and bargains are objectively material to a reasonable consumer.

34. Plaintiff relied upon such false representations of the Deceptive Reference Prices and discounts when purchasing apparel from a Burberry Outlet in Florida. Plaintiff would not have

made such purchases, or would not have paid the amount he did, but for Burberry's false representations of the Deceptive Reference Price of the items he purchased.

35. As a result of Defendant's Deceptive Reference Prices, Plaintiff and the Class Members paid more for the Outlet Products than they were worth.

Plaintiff and the Class Members did not receive Products with the quality and prestige the Deceptive Reference Price indicated

36. First, Plaintiff did not receive the products he believed he was getting: products which were designed and manufactured for "real," mainline Burberry stores or for sale at mainline retailers. Plaintiff reasonably understood the Deceptive Reference Prices to indicate just that. But in fact, the Outlet Products were designed and sold exclusively for sale at Burberry Outlets. Because Burberry is a "prestige" brand, and because consumers seek "prestige" brands for their exclusivity, made-for-outlet products are intrinsically less valuable than mainline products—in the same way counterfeit Burberry products are intrinsically less valuable than mainline Burberry products.

37. Because reference prices signal a quality and prestige level, Plaintiff did not receive the products for which he bargained for in other ways as well: *viz.*, he did not receive a product that was discounted by a particular percentage over the retail price; he did not receive a product that regularly sold for the Deceptive Reference Price; and he did not receive a product whose prestige and quality was accurately conveyed by its Deceptive Reference Price. Each of these characteristics were representations about the product itself, *i.e.*, that the product was truly and accurately valued by the marketplace at the higher reference price. But the market did not value the outlet products at those higher prices.

38. A product which truly did sell regularly for the Deceptive Reference Price is worth more than a product that does not, both in the mind of purchasers and according to the objective verdict of the marketplace.

39. Indeed, this is precisely why Burberry affixes Deceptive Reference Prices to its outlet products—when it could just as easily have affixed only the “Now” price.

40. As discussed *supra*, in the luxury product market, setting a high Deceptive Reference Price gives the consumer the perception that the luxury item is more valuable than it actually is. Simultaneously, if the high Deceptive Reference Price is juxtaposed against a lower sales price, consumers are given a perception of a bargain that does not actually exist. These impressions cause consumers to pay more for products than they otherwise would.

41. When Plaintiff paid the “Now” price for Burberry Outlet Products, he therefore got less than he bargained for. He would not have paid the “Now” price had he known the truth about the Deceptive Reference Prices.

Plaintiff the Class Members overvalued and thus overpaid for the Products

42. Second, Plaintiff would not have made such purchases, or would not have paid the amount he did, but for Burberry’s false representations of the Deceptive Reference Price of the items he purchased, especially when juxtaposed with the supposedly discounted “Now” price at which Burberry offered the items for sale. Defendant’s Deceptive Reference Prices induced Plaintiff and the Class Members to overvalue, and thus overpay for, the Outlet Products absent the Deceptive Reference Prices.

43. Specifically, by shopping at Defendant’s outlet stores, Plaintiff and the Class Members valued Defendants Outlet Products at a percentage value lesser than the retail price of the Products. Thus, whatever the retail price of the Outlet Products were, Plaintiff and the Class

Members required a percentage discount off of that price before they were willing to part with their money.

44. By listing a Deceptive Reference Price, Defendant provided Plaintiff and the Class Members' with a false retail price causing them to over inflate the value at which they were comfortable parting with their money.

45. By way of example, on information and belief, Defendant placed a Deceptive Reference Price of \$150 on the tag of the Navy Polo Shirt (item number 3872648), for which it. Defendant charged Plaintiff \$119 for the shirt. Thus, Plaintiff valued the Navy Polo Shirt at 21% below retail.

46. Had Defendant correctly priced the shirt at \$119 (i.e. at its true retail price), Plaintiff would value the shirt at \$94.01—21% below the retail price. This is the value Plaintiff assigned to Defendant's outlet Navy Polo Shirt absent the Deceptive Reference Price. The Deceptive Reference Price caused Plaintiff to over value, and thus over pay for, the Navy Polo Shirt by \$24.99.

A. Plaintiff's Purchases

47. In approximately July 2015, Plaintiff Belcastro entered the Burberry Outlet located in Orlando, Florida. He observed some merchandise was advertised with price tags which represented a Deceptive Reference Price next to a significantly reduced "Now" price. He also observed that other items in the store did not make these price-reduction representations on their price tags.

48. Mr. Belcastro understood the items with the Deceptive Reference Prices represented that he was receiving a bargain or a "deal" on the product—on sales terms more

preferential or more optimal to the consumer than those offered outside the context of the outlet store.

49. Enticed by this prospect, Plaintiff was induced to purchase:

- (a) A navy polo shirt bearing Article Number 3872648 with a “Now” price of \$119. On information and belief, the tag contained a Deceptive Reference Price of \$150. (Exhibit 1); and
- (b) A navy plaid shirt bearing Article Number 3718263 with a “Now” price of \$179. On information and belief, the tag contained a Deceptive Reference Price of \$325 (Exhibit 2).

50. A year prior, in approximately July 2014, Plaintiff purchased:

- (a) A gray plaid shirt bearing Article Number 3830894 with a “Now” price of \$99. On information and belief, the tag contained a Deceptive Reference Price of \$325 (Exhibit 3);
- (b) A tan plaid shirt bearing Article Number 3791930 with a “Now” price of \$179. On information and belief, the tag contained a Deceptive Reference Price of \$275 (Exhibit 4); and
- (c) A tan polo shirt bearing Article Number 3772852 with a “Now” price of \$119.99. On information and belief, the tag contained a Deceptive Reference Price of \$150 (Exhibit 5).

51. On information and belief, the price tags on all of the Burberry Outlet Products Plaintiff purchased listed Deceptive Reference Prices greater than the “Now” prices.

52. Plaintiff’s reliance on Burberry’s false price comparison advertising was reasonable. *See* Dhruv Grewal and Larry D. Compeau, 11 J. PUB. POL’Y & MKTG 52 (1992).

53. But Burberry never intended, nor did it ever, sell the items at the represented Deceptive Reference Prices. Thus, Plaintiff was deceived by the false price comparison into making a full retail purchase with no discount.

54. Plaintiff Belcastro would not have purchased the Burberry Outlet Products, or would not have paid the price he did, if he had known he was not truly receiving a bargain, or receiving a discount, as specified.

55. Despite the Deceptive Reference Price scheme used at Burberry Outlets, Plaintiff would purchase Burberry Outlet Products in the future from Burberry Outlet stores and/or other retail establishments, if product labels accurately reflect discounts and bargains. If the Court were to issue an injunction ordering Burberry to comply with Florida's comparative price advertising laws, and prohibiting Burberry's use of the deceptive practices discussed herein, Plaintiff would likely shop for Burberry Outlet Products again in the near future at Burberry Outlets.

B. Rule 9(b) Allegations

56. Federal Rule of Civil Procedure ("Rule") 9(b) provides that "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). As detailed in the paragraphs above, Plaintiff has satisfied the requirements of Rule 9(b) by establishing the following elements with sufficient particularity:

57. WHO: Burberry made material misrepresentations and failed to adequately disclose material facts as detailed herein. Except as identified herein, Plaintiff is unaware of, and therefore unable to identify, the true names and identities of those individuals at Burberry who are responsible for such material misrepresentations and/or omissions.

58. WHAT: Burberry led consumers to believe its Deceptive Reference Prices represented authentic price information about the Burberry Outlet Products they purchased. In

reality, Burberry manufactures the Burberry Outlet Products for *exclusive sale* at its Burberry Outlets and always sells these goods for the advertised “Now” price, never the Deceptive Reference Price. Accordingly, the Deceptive Reference Prices listed on Burberry Outlet Products are fictional creations designed by Burberry to portray false price reductions.

59. WHEN: Burberry made the material misrepresentations, omissions, and non-disclosures detailed herein continuously at every point of purchase throughout the Class Period.

60. WHERE: Burberry’s material misrepresentations, omissions, and non-disclosures detailed herein were made, *inter alia*, on the tag of the Burberry Outlet Products.

61. HOW: Burberry made numerous, written material misrepresentations on the tags of the Burberry Outlet Products which were designed to, and, in fact, did, mislead Plaintiff and Class members into purchasing the Burberry Outlet Products.

62. WHY: Burberry engaged in the material misrepresentations, omissions, and non-disclosures detailed herein for the express purpose of inducing Plaintiff and other reasonable consumers to purchase and/or pay more for the Burberry Outlet Products based on their belief they were receiving a reduced price. Burberry profited by selling the Burberry Outlet Products to unsuspecting consumers.

CLASS ALLEGATIONS

63. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23. Plaintiff seeks to represent the following classes:

- (a) The “Florida Class,” which consists of: All consumers within the State of Florida who purchased a Burberry Outlet Product from a Burberry Outlet during the applicable liability period for their personal use, rather than for resale or distribution. Excluded from the Florida Class are Burberry’s current or former officers, directors, employees, Burberry’s parents, any entity in which Burberry has a controlling interest; counsel for Plaintiff and Burberry; and the judicial officer to whom this lawsuit is assigned.

- (b) The “Nationwide Class,” which consists of: All consumers in the United States and its territories who purchased a Burberry Outlet Product from a Burberry Outlet during the applicable liability period for their personal use, rather than for resale or distribution. Excluded from the Nationwide Class are Burberry’s current or former officers, directors, employees, Burberry’s parents, any entity in which Burberry has a controlling interest; counsel for Plaintiff and Burberry; and the judicial officer to whom this lawsuit is assigned.

64. Plaintiff reserves the right to expand, limit, modify, or amend these class definitions, including the addition of more subclasses, in connection with his motion for class certification, or any other time, based upon, *inter alia*, changing circumstances and/or new facts obtained during discovery.

65. The members of the Class are so numerous that joinder is impractical. While the exact number of class members is presently unknown to Plaintiff, based on Burberry’s volume of sales, Plaintiff estimates each class numbers in the thousands.

66. There are numerous questions of law and fact common to the Class, which predominate over any questions affecting only individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) Whether, during the Class Period, Burberry used false price representations and falsely advertised price discounts on its merchandise sold at Burberry Outlets;
- (b) Whether Burberry engaged in unfair, unlawful and/or fraudulent business practices under Florida law;
- (c) Whether Burberry misrepresented and/or failed to disclose material facts about its product pricing and discounts;
- (d) Whether Burberry has made false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

- (e) Whether Burberry's conduct, as alleged herein, was intentional and knowing;
- (f) Whether Class members are entitled to damages and/or restitution, and in what amount;
- (g) Whether Burberry is likely to continue using false, misleading or illegal price comparisons such that an injunction is necessary; and
- (h) Whether Plaintiff and Class members are entitled to an award of reasonable attorneys' fees, pre-judgment interest and costs of suit.

67. Plaintiff's claims are typical of the claims of the members of the Class and, like all members of the Class, purchased goods from a Burberry Outlet that falsely conveyed a Deceptive Reference Price representation and a fictitious discount. Accordingly, Plaintiff has no interests antagonistic to the interests of any other member of the Class.

68. Plaintiff will fairly and adequately represent and protect the interests of the members of each Class. Plaintiff does not have any interests which are adverse to those of the class members. Plaintiff has retained competent counsel experienced in Class action litigation and intends to prosecute this action vigorously.

69. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all members of the Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are in the millions of dollars, the individual damages incurred by each member of the Class resulting from Burberry's wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual Class members prosecuting their own separate

claims is remote, and, even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

70. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Burberry. For example, one court might enjoin Burberry from performing the challenged acts, whereas another might not. Additionally, individual actions may be dispositive of the interests of the Class, although certain class members are not parties to such actions.

71. The conduct of Burberry is generally applicable to the Class as a whole and Plaintiff seeks, *inter alia*, equitable remedies with respect to the Class as a whole. As such, the systematic policies and practices of Burberry make declaratory relief appropriate.

FIRST CAUSE OF ACTION
(Violation of the Florida Deceptive and Unfair Trade Practices Act – Fla. Stat. § 501.201, *et seq.* – By the Florida Class)

72. Plaintiff incorporates by reference the allegations set forth above.

73. Plaintiff brings this claim individually and on behalf of the other members of the Florida Class.

74. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), Sections 501.201 to 501.213, *Florida Statutes*. The express purpose of the Act is to “protect the consuming public...from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce” Section 501.202(2).

75. The sale of each Product falls within the meaning of “trade or commerce” within the scope of the FDUTPA, Sections 501.201 to 501.213, *Florida Statutes*.

76. Plaintiff and the Florida Class members are “consumer[s]” as defined by Section 501.203, *Florida Statutes*. Each of the Burberry Outlet Products is a “good” within the meaning of the Act. Burberry is engaged in trade or commerce within the meaning of the Act.

77. Section 501.204(1), *Florida Statutes* declares as unlawful “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce”.

78. Burberry violated the Act by engaging in, and continuing to engage in, unfair and deceptive practices and false advertising by representing a false and misleading Deceptive Reference Price and corresponding “Now” price representation for goods exclusively manufactured for sale at Burberry Outlets. As a result, the inflated Deceptive Reference Price and corresponding “Now” price was nothing more than a false, misleading and deceptive illusion of a discount.

79. These acts and practices are unfair because they caused Plaintiff, and are likely to cause consumers, to falsely believe Burberry Outlets are offering values, discounts, or bargains from the prevailing market worth of the products sold that did not, in fact, exist. As a result, consumers—including Plaintiff—reasonably perceived they were receiving products which were regularly sold at substantially higher prices (and were, therefore, worth more) than what they paid. This perception induced reasonable consumers, including Plaintiff, to purchase Burberry Outlet Products and/or pay more for such Burberry Outlet Products, which they otherwise would not have purchased.

80. The reasonable consumer relies on clothing companies to honestly represent the price of the Burberry Outlet Products and any associated discounts.

81. The damages suffered by the Plaintiff and the Florida Class were directly and proximately caused by the deceptive, misleading and unfair practices of Burberry, as described above.

82. Pursuant to Section 501.211(1), Plaintiff and other Florida Class members seek to a declaratory judgment and court order enjoining the above described wrongful acts and practices of the Burberry and for restitution and disgorgement.

83. Additionally, pursuant to Sections 501.211(2) and 501.2105, *Florida Statutes*, Plaintiff and the Class make claims for damages, attorney's fees and costs.

84. THEREFORE, Plaintiff prays for relief as set forth below.

SECOND CAUSE OF ACTION
(Fraud under New York Common Law – By the Nationwide Class)

85. Plaintiff incorporates by reference the allegations set forth above.

86. As discussed above, Burberry provided Plaintiff and the Nationwide Class members with false or misleading material information and failed to disclose material facts about the Burberry Outlet Products, including, but not limited to the claims regarding the discount price of the Burberry Outlet Products. These misrepresentations and omissions were made with knowledge of their falsehood.

87. The misrepresentations and omissions made by Burberry, upon which Plaintiff and the Nationwide Class members reasonably and justifiably relied, were intended to induce and actually did induce Plaintiff and the Nationwide Class members to purchase the Burberry Outlet Products.

88. The gravamen, focus, and center of activity of Burberry's fraudulent actions occurred in New York.

89. The fraudulent actions of Burberry caused damage to Plaintiff and the Nationwide Class members, who are entitled to damages and other legal and equitable relief as a result.

90. THEREFORE, Plaintiff prays for relief as set forth below.

THIRD CAUSE OF ACTION
**(Unjust Enrichment on Behalf of the Nationwide Class,
or in the Alternative, on behalf of the Florida Class)**

91. Plaintiff incorporates by reference the allegations set forth above.

92. Plaintiff asserts this claim in the alternative to the above-listed claims.

93. Plaintiff brings this claim individually, as well as on behalf of members of the Nationwide Class, under New York law. Although there are numerous permutations of the elements of the unjust enrichment cause of action in the various states, there are few real differences. In all states, the focus of an unjust enrichment claim is whether the defendant was unjustly enriched. At the core of each state's law are two fundamental elements – the defendant received a benefit from the plaintiff and it would be inequitable for the defendant to retain that benefit without compensating the plaintiff. The focus of the inquiry is the same in each state. Since no true conflict exists—relating to the elements of unjust enrichment—between the different jurisdictions from which Class members will be drawn, New York law applies to the claims of the Nationwide Class.

94. In the alternative, Plaintiff brings this claim individually as well as on behalf of the Florida Class under Florida Law.

95. At all times relevant hereto, Burberry deceptively priced, marketed, advertised, and sold Burberry Outlet Products to Plaintiff and the Nationwide Class.

96. Plaintiff and members of the Nationwide Class conferred upon Burberry nongratuitous payments for merchandise they would not have paid for if not for Burberry's deceptive pricing, advertising, and marketing. Burberry accepted or retained the nongratuitous

benefits conferred by Plaintiff and members of the Nationwide Class, with full knowledge and awareness that, as a result of Burberry's deception, Plaintiff and members of the Nationwide Class were not receiving a product of the quality, prestige, or value that had been represented by Burberry and reasonable consumers would have expected.

97. Burberry has been unjustly enriched in retaining the revenues derived from purchases of merchandise by Plaintiff and members of the Nationwide Class, which retention under these circumstances is unjust and inequitable because Burberry misrepresented, among other things, its merchandise was being offered at a significant discount, which caused injuries to Plaintiff and members of the Nationwide Class because they paid for, paid a price premium, and/or did not receive goods of the prestige and quality they bargained for due to the misleading pricing and advertising.

98. Retaining the non-gratuitous benefits conferred upon Burberry by Plaintiff and members of the Nationwide Class under these circumstances made Burberry's retention of the non-gratuitous benefits unjust and inequitable. Thus, Burberry must pay restitution to Plaintiff and members of the Nationwide Class for unjust enrichment, as ordered by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the members of the Class demand a jury trial on all claims so triable and judgment against Burberry as follows:

A. An order certifying that this action may be maintained as a class action, that Plaintiff be appointed Class Representative and Plaintiff's counsel be appointed Class Counsel;

B. Restitution and/or disgorgement of amounts paid by Plaintiff and members of the Classes for the purchase of the Burberry Outlet Products, together with interest from the date of payment;

C. Actual damages;

- D. An order granting injunctive relief;
- E. Statutory prejudgment interest;
- F. Reasonable attorneys' fees and the costs of this action, including costs of administration and notice;
- G. Other legal and equitable relief under the causes of action state herein; a
- H. A trial by jury on all issues so triable; and
- I. Such other relief as this Court may deem just and proper.

Dated: March 15, 2017

Respectfully submitted,

BY: /s/ Charles J. LaDuca

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Exhibit 1



Exhibit 2



Exhibit 3



Exhibit 4

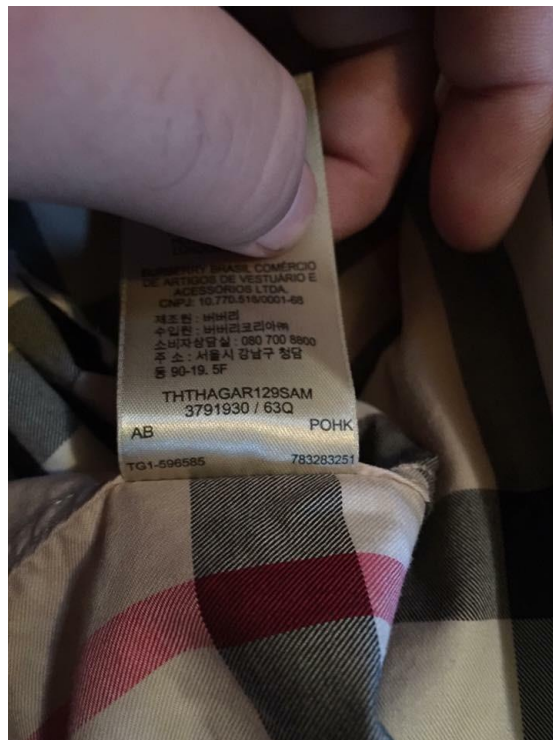


Exhibit 5

