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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BRITTANY COVELL, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

NINE WEST HOLDINGS, INC., a
Delaware corporation, and DOES 1
through 50, inclusive,

Defendant.

Case No: 17CV1371 H (JLB)

**FIRST AMENDED CLASS ACTION
COMPLAINT**

- 1. Violation of California’s Unfair Competition Laws (“UCL”); California Business & 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”); California Civil Code Sections 1750, et seq.**

[DEMAND FOR JURY TRIAL]

1 Plaintiff Brittany Covell (“Plaintiff”) brings this action on behalf of herself and all
2 others similarly situated against Defendant NINE WEST HOLDINGS, INC. (“Nine
3 West”), and states:

4 **I. NATURE OF ACTION**

5 1. “If everyone is getting a deal, is anyone really getting a deal?”¹ This class
6 action targets Nine West’s unlawful, unfair, and fraudulent business practice of advertising
7 fictitious reference prices and corresponding phantom discounts on their Nine West outlet
8 store merchandise. This practice of false reference pricing occurs where a retailer
9 fabricates a fake regular, original, and/or former reference price, and then offers an item
10 for sale at a deep “discounted” price. The result is a sham price disparity that misleads
11 consumers into believing they are receiving a good deal and induces them into making a
12 purchase. Retailers drastically benefit from employing a false reference-pricing scheme
13 and experience increased sales.

14 2. The California legislature prohibits this misleading practice. The law
15 recognizes the reality that consumers often purchase merchandise marketed as being “on
16 sale” purely because the proffered discount seemed too good to pass up. Accordingly,
17 retailers have an incentive to lie to customers and advertise false sales. The resulting harm
18 is tangible—the bargain hunter’s expectations about the product she purchased is that it
19 has a higher perceived value and she may not have purchased the product but for the false
20 savings.

21 3. Nine West utilizes false and misleading reference prices in the marketing and
22 selling of Nine West merchandise at its outlet stores. Nine West advertises its merchandise
23 for sale by attaching a price tag on the item that sets forth a regular “SUGG. RETAIL”
24

25
26 ¹ David Streitfeld, *It’s Discounted, but is it a Deal? How List Prices Lost Their Meaning*,
27 New York Times, <https://www.nytimes.com/2016/03/06/technology/its-discounted-but-is-it-a-deal-how-list-prices-lost-their-meaning.html>, (March 6, 2016), last accessed April
28 28, 2017.

1 price and a fictitious “OUR PRICE” discounted price.² See e.g. Exhibit A. The “SUGG.
2 RETAIL” price is substantially discounted to create the “OUR PRICE” sale price, which
3 is depicted, sometimes in red print, immediately below the “SUGG. RETAIL” price. See
4 *id.* The “OUR PRICE” price represents the savings the customer is purportedly saving off
5 the “SUGG. RETAIL” reference price by purchasing the product. Occasionally, Defendant
6 will offer a deeper discount off the “OUR PRICE” price, resulting in a greater misleading
7 price disparity.

8 4. However, the “SUGG. RETAIL” price is a total fiction. The merchandise
9 sold at Nine West outlet stores is created specifically for Nine West outlet stores. Thus,
10 the only market price for the Nine West outlet store merchandise is the price at which the
11 merchandise is sold in the Nine West outlet stores.

12 5. The Nine West outlet store merchandise is never offered for sale, nor actually
13 sold, at the represented “SUGG. RETAIL” price. Thus, the “SUGG. RETAIL” reference
14 price is false and is used exclusively to induce consumers into believing that the
15 merchandise was once sold at the “SUGG. RETAIL” price and from which the false and
16 discount and corresponding sale price is derived. Nine West’s deceptive pricing scheme
17 has the effect of tricking consumers into believing they are receiving a significant deal by
18 purchasing merchandise at a steep discount, when in reality, consumers are paying for
19 merchandise at its regular or original retail price.

20 6. The advertised discounts are fictitious because the regular reference price, or
21 the “SUGG. RETAIL” price, does not represent a *bona fide* price at which Nine West
22

23
24 ² In approximately late 2016, Defendant changed its practice and stopped utilizing the
25 descriptions “SUGG. RETAIL” to describe the reference price and “OUR PRICE” to
26 describe the sale price on the price tag for all merchandise items. In its place, Defendant
27 started describing the reference price as the “ORIGINAL” price and the sale price as the
28 “NOW” price. The “ORIGINAL” price description of the reference price is equally
misleading because the Nine West outlet merchandise remained perpetually on sale during
the course of Plaintiff’s Counsel’s investigation. In short, it is a false comparison.

1 previously sold a substantial quantity of the merchandise for a reasonable period of time as
2 required by the Federal Trade Commission (“FTC”). In addition, the represented “SUGG.
3 RETAIL” price was not the prevailing market retail price within the three months
4 immediately preceding the publication of the advertised former “SUGG. RETAIL” price,
5 as required by California law.

6 7. Through its false and misleading marketing, advertising, and pricing scheme,
7 Nine West violated and continues to violate, California and federal law prohibiting
8 advertising goods for sale as discounted from former prices that are false, and prohibiting
9 misleading statements about the existence and amount of price reductions. Specifically,
10 Nine West violated and continues to violate: California’s Unfair Competition Law,
11 Business and Professions Code §§ 17200, *et seq.* (the “UCL”); California’s False
12 Advertising Law, Business and Professions Code §§ 17500, *et seq.* (the “FAL”); the
13 California Consumer Legal Remedies Act, Civil Code §§ 1750, *et seq.* (the “CLRA”); and
14 the Federal Trade Commission Act (“FTCA”), which prohibits “unfair or deceptive acts or
15 practices in or affecting commerce” (15 U.S.C. § 45(a)(1)) and false advertisements (15
16 U.S.C. § 52(a)).

17 8. Plaintiff brings this action on behalf of herself and other similarly situated
18 consumers who have purchased one or more Nine West merchandise at Defendant’s Nine
19 West outlet stores that were deceptively represented as discounted from false former
20 “SUGG. RETAIL” prices. Plaintiff seeks to halt the dissemination of this false,
21 misleading, and deceptive pricing scheme, to correct the false and misleading perception it
22 has created in consumer’s minds, and to obtain redress for those who have purchased
23 merchandise tainted by this deceptive pricing scheme. Plaintiff also seeks to enjoin Nine
24 West from using false and misleading misrepresentations regarding retail price
25 comparisons in their labeling and advertising permanently. Further, Plaintiff seeks to
26 obtain damages, restitution, and other appropriate relief in the amount by which Nine West
27 was unjustly enriched as a result of its sales of merchandise offered at a false discount.
28

1 9. Finally, Plaintiff seeks reasonable attorneys' fees pursuant to California Code
2 of Civil Procedure § 1021.5, as this lawsuit seeks the enforcement of an important right
3 affecting the public interest and satisfies the statutory requirements for an award of
4 attorneys' fees.

5 **II. JURISDICTION AND VENUE**

6 10. This Court has original jurisdiction of this Action pursuant to the Class Action
7 Fairness Act, 28 U.S.C. § 1332(d)(2). The matter in controversy, exclusive of interests and
8 costs, exceeds the sum or value of \$5,000,000 and at least some members of the proposed
9 Class have a different citizenship from Nine West.

10 11. The Southern District of California has personal jurisdiction over the
11 defendant named in this action because Nine West is a corporation or other business entity
12 authorized to conduct and does conduct business in the State of California. Nine West is
13 registered with the California Secretary of State to do sufficient business with sufficient
14 minimum contacts in California, and/or otherwise intentionally avails itself of the
15 California market through the ownership and operation of approximately 15 outlet stores
16 in California.

17 12. Venue is proper under 28 U.S.C. § 1391(b)(2) because Nine West transacts
18 substantial business in this District. A substantial part of the events giving rise to Plaintiff's
19 claims arose here.

20 **III. PARTIES**

21 **Plaintiff**

22 13. Brittany Covell is a San Diego County resident. Plaintiff, in reliance on
23 Defendant's false and deceptive advertising, marketing, and "discount" pricing scheme,
24 purchased a pair of Nine West Stefao snakeskin printed, pointed-toe high heels (the
25 "heels") for approximately \$44.50, exclusive of tax, on or around April 16, 2016 at a Nine
26 West outlet store located at the Carlsbad Premium Outlets in San Diego, California 92008.
27 Plaintiff went shopping in order to buy a new pair of shoes for herself. When she entered
28 the Nine West store, she observed the heels and examined the price tag sticker on the

1 bottom of the heels. The price tag advertised that the heels had a “SUGG. RETAIL” price
2 of \$89.00 and an “OUR PRICE” price of \$44.50. The price tag that Plaintiff observed
3 looked similar to the price tag depicted in Exhibit A.

4 14. Plaintiff believed she was receiving a significant discount—specifically,
5 Plaintiff believed the heels she was purchasing were recently offered for sale at the Nine
6 West Outlet store and/or retail store for the advertised “SUGG. RETAIL” price of \$89.00.
7 However, Defendant never sold the heels in any Nine West outlet store at the “SUGG.
8 RETAIL” price of \$89.00 in the 90 days preceding Plaintiff’s purchase. The heels that
9 Plaintiff purchased had been continuously and substantially discounted for at least several
10 months, and possibly longer, according to Plaintiff’s Counsel’s investigation. Defendant
11 uses the false or severely outdated “SUGG. RETAIL” reference price as a means to deceive
12 Plaintiff into believing that she was getting a good deal and a steep discount on the heels
13 she purchased. Therefore, Plaintiff did not receive the benefit of the bargain and was
14 damaged by purchasing the heels.

15 15. Plaintiff would not have purchased the heels without the misrepresentations
16 made by Defendant. As a result, Plaintiff has been personally victimized by and suffered
17 economic injury as a direct result of Defendant’s unlawful, unfair, and fraudulent conduct.

18 16. Defendant knows that its comparative pricing advertising is false, deceptive,
19 misleading, and unlawful under California law.

20 17. Defendant fraudulently concealed from and intentionally failed to disclose to
21 Plaintiff and other members of the proposed class the truth about their advertised price and
22 reference prices.

23 18. At all relevant times, Defendant has been under a duty to Plaintiff and the
24 proposed class to disclose the truth about its false discounts.

25 19. Plaintiff relied upon Defendant’s artificially inflated market price and false
26 discount when purchasing the heels at Defendant’s outlet store. Plaintiff would not have
27 made such purchase but for Defendant’s representations of fabricated “SUGG. RETAIL”
28 prices and false discounted “OUR PRICE” prices.

1 20. Plaintiff and the Class reasonably and justifiably acted and relied on the
2 substantial price differences that Defendant advertised (*i.e.*, “SUGG. RETAIL” price vs.
3 “OUR PRICE” price), and made purchases believing that they were receiving a substantial
4 discount on an item of greater value than it actually was. Plaintiff, like other class
5 members, was lured in, relied on, and damaged by these pricing schemes that Defendant
6 carried out.

7 21. Defendant intentionally concealed and failed to disclose material facts
8 regarding the truth about its false former pricing in order to provoke Plaintiff and the
9 proposed class to purchase Nine West merchandise in its outlet stores.

10 **Defendant**

11 22. Plaintiff is informed and believes, and upon such information and belief
12 alleges, Defendant Nine West Holdings, Inc. is a privately held Delaware corporation with
13 its headquarters located at 180 Rittenhouse Circle, Bristol, Pennsylvania 19007. Defendant
14 maintains the Nine West brand, a fashion line of women’s clothing, shoes, handbags, and
15 other accessories. Defendant operates Nine West retail and outlet stores and the
16 ninewest.com website, and advertises, markets, and sells its merchandise in California and
17 throughout the United States.

18 23. Plaintiff does not know the true names or capacities of the persons or entities
19 sued herein as DOES 1-50 inclusive, and therefore sues such Defendants by such fictitious
20 names. Plaintiff is informed and believes, and upon such information and belief alleges,
21 that each of the DOE Defendants is in some manner legally responsible for the damages
22 suffered by Plaintiff and the Class members, as alleged herein. Plaintiff will amend this
23 Complaint to set forth the true names and capacities of these Defendants when they have
24 been ascertained, along with appropriate charging allegations, as may be necessary.

25 **IV. FACTUAL BACKGROUND**

26 **The Fraudulent Sale Discounting Scheme**

27 24. Nine West is a worldwide iconic fashion brand, specializing in the sale of
28 trendy footwear, clothing, and accessories for women. The Nine West brand is owned by

1 parent company Nine West Holdings, Inc., a privately owned corporation with a presence
2 in over 78 countries. Nine West directly markets its merchandise to consumers in the State
3 of California and throughout the United States via its in-store advertisements and its e-
4 commerce website (www.ninewest.com). Nine West sells its own branded merchandise at
5 its retail stores, outlet stores, and through its e-commerce website. This case involves only
6 the Nine West branded merchandise sold at Nine West's outlet stores.

7 25. The Nine West merchandise sold in the Nine West outlet stores is exclusively
8 sold at the Nine West outlet stores and it is not sold anywhere else. Thus, there is no other
9 market for the Nine West outlet store merchandise other than at Defendant's Nine West
10 outlet stores.

11 26. Nine West engages in a scheme to defraud its customers by perpetually
12 discounting its merchandise in its outlet stores. Nine West consistently advertises its
13 merchandise with a regular "SUGG. RETAIL" price and a corresponding "OUR PRICE"
14 sale price. The "SUGG. RETAIL" price conveys to the customer the purported regular
15 price of the item. The "OUR PRICE" sale price conveys to the customer a deeply
16 discounted price at which the item is presently being offered for sale. The two prices (the
17 "SUGG. RETAIL" price and the "OUR PRICE" price) are conveyed to consumers on the
18 price tags. The price tags are white stickers with black and red handwriting and
19 approximately 2" x 1 1/2" in size. *See e.g.* Exhibit A. Occasionally, Nine West runs a
20 promotion of "___% Off Entire Store," which is advertised on a red placard. *See e.g.*
21 Exhibit L.

22 27. However, at no time is the Nine West outlet store merchandise ever offered
23 for sale anywhere at the "SUGG. RETAIL" price. The "SUGG. RETAIL" price is merely
24 a false reference price, which Nine West utilizes to deceptively manufacture a deeply
25 discounted price referred to as the "OUR PRICE" price on the merchandise sold at the Nine
26 West outlet stores during the class period.

27 28. This practice is not accidental. Rather, this practice is a fraudulent scheme
28 intended to deceive consumers into: 1) making purchases they otherwise would not have

1 made; and/or 2) paying substantially more for merchandise consumers believed was
2 heavily discounted and thus, worth more than its actual value.

3 29. Retailers, including Nine West, understand that consumers are susceptible to
4 a good bargain, and therefore, Nine West has a substantial interest in lying in order to
5 generate sales. A product's "regular," "original," or "market" price matters to consumers
6 because it serves as a baseline upon which consumers perceive a product's value. In this
7 case, Nine West has marked its merchandise with a "SUGG. RETAIL" price, which it
8 intends to be the equivalent of a "regular," "original," or "market" price. The "SUGG.
9 RETAIL" price conveys to consumers, including Plaintiff, "the product's worth and the
10 prestige that ownership of the product conveys." *See Hinojos v. Kohl's Corp.*, 718 F.3d
11 1098, 1106 (9th Cir. 2013) (citing Dhruv Grewal & Larry D. Compeau, Comparative Price
12 Advertising: Informative or Deceptive?, 11 J. 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 30. Nine West's pricing advertisements uniformly include both the false reference
19 price (the "SUGG. RETAIL" price) with a corresponding discount price ("OUR PRICE"
20 price) displayed on the price tags on the merchandise. This uniform scheme intends to and
21 does provide misinformation to the customer. This misinformation communicates to
22 consumers, including Plaintiff, that the Nine West outlet store products have a greater value
23 than the advertised "OUR PRICE" sale price.

24 31. As the Ninth Circuit recognizes, "[m]isinformation about a product's 'normal'
25 price is . . . significant to many consumers in the same way as a false product label would
26 be." *See Hinojos*, 718 F.3d at 1106.

27 ///

28 ///

1 **Plaintiff’s Counsel’s Investigation**

2 32. Plaintiff’s Counsel’s investigation of Nine West revealed that Nine West’s
3 outlet store merchandise is priced uniformly. That is, Nine West merchandise sold at Nine
4 West outlet stores bears a price tag with a false “SUGG. RETAIL” price and a substantially
5 discounted “OUR PRICE” sale price. Plaintiff’s Counsel’s investigation confirmed that
6 Nine West’s heels were priced with false “SUGG. RETAIL” prices and corresponding
7 “OUR PRICE” prices in the 90-day period immediately preceding Plaintiff’s purchase of
8 her heels. Defendant’s deceptive comparative pricing practice remains uniform even after
9 Defendant changed the language on the price tag to advertise the “ORIGINAL” price and
10 “NOW” price.

11 33. Since 2016, Plaintiff’s Counsel’s investigation cataloged the pricing practices
12 at two Nine West outlet stores in San Diego County, including: Carlsbad Premium Outlets
13 5630 Paseo Del Norte, Carlsbad, California 92008 (“Carlsbad”) and Shops at Las
14 Americas, 4155 Camino De La Plaza, San Ysidro, California 92173 (“Las Americas”).
15 The false “SUGG. RETAIL” price and corresponding purported “OUR PRICE” pricing
16 scheme was both uniform and identical at all stores investigated. For example, Plaintiff’s
17 Counsel’s investigation revealed the following items were continuously discounted at the
18 stores indicated:

19 Item	20 “SUGG. RETAIL” Price	21 “OUR PRICE” Price	22 Continuously discounted from (at least)	23 Discounted through (at least)	24 Stores Observed	25 Photo Exhibit
26 Nine West Fireball Black Suede Heeled Ankle Bootie with Fringes	27 \$149.00	28 \$99.00, discounted to \$49.99	February 2016	Over 90 days	Las Americas Carlsbad	A

1	Nine West	\$99.00	\$69.99, discounted to \$49.99	February 2016	Over 90 days	Las Americas Carlsbad	B
2	Sasafras						
3	Cheetah						
4	Print High Heels						
5	Nine West	\$89.99	\$59.99	February 2016	Over 90 days	Las Americas Carlsbad	C
6	Chillax						
7	Gold Sandal Wedge						
8	Nine West	\$109.00	\$69.99, discounted to \$59.99	March 2016	Over 90 days	Las Americas Carlsbad	D
9	Briagd						
10	Sand Lace						
11	Up Heeled						
12	Ankle Bootie						
13	Item	“ORIGINAL” Price	“NOW” Price	Continuously discounted from (at least)	Discounted through (at least)	Stores Observed	Photo Exhibit
14							
15	Nine West	\$89.00	\$59.99	February 16, 2017	At least July 5, 2017	Las Americas	E
16	Adeline						
17	Bluesu						
18	Closed-Toe						
19	Block Pump						
20	Nine West	\$89.00	\$49.99	February 16, 2017	At least July 5, 2017	Carlsbad	F
21	Gigio						
22	Whitesy						
23	Open-Toe						
24	Heel w/ Ankle Strap						
25	Abee Wine	\$179.00	\$49.99	February 16, 2017	Over 90 days	Las Americas	G
26	Knee-High						
27	Heeled Boot						
28							

1	Axwell	\$89.00	\$19.99	February	At least	Carlsbad	H
2	Pewter			16, 2017	July 5,		
3	Open-Toe				2017		
4	Heel w/						
5	Ankle						
6	Strap						
7	Aniston	\$89.00	\$29.99	February	At least	Carlsbad	I
8	Ruby Red			16, 2017	July 5,		
9	St. Open-				2017		
10	Toe Heel						
11	w/ Ankle						
12	Strap						
13	Zahina Tan	\$119.00	\$79.99	February	At least	Carlsbad	J
14	FB			16, 2017	July 5,	Las	
15	Patterned				2017	Americas	
16	Ankle						
17	Bootie						
18	Somella	\$139.00	\$59.99	February	At least	Carlsbad	K
19	Taupe			16, 2017	July 5,		
20	Buckled				2017		
21	Ankle						
22	Bootie						

34. The fraudulent pricing scheme applies to all Nine West outlet store merchandise offered on sale at every Nine West outlet store, including the heels purchased by Plaintiff on or about April 16, 2016. By way of example, all items in the above referenced chart were offered at an “OUR PRICE” price substantially less than their “SUGG. RETAIL” price for every day Plaintiff’s Counsel’s investigation was conducted and for well over 90 days at a time. Similarly, all items in the above referenced chart were offered at a “NOW” price substantially less than their “ORIGINAL” price for every day Plaintiff’s Counsel’s investigation was conducted and for well over 90 days at a time.

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1 **Plaintiff and the Class Are Injured by Nine West’s Deceptive Pricing Scheme**

2 35. The “SUGG. RETAIL” price listed and advertised on Nine West’s outlet store
3 products are fake reference prices, utilized only to perpetuate Nine West’s fake discount
4 scheme.

5 36. Nine West knows that its comparative price advertising is false, deceptive,
6 misleading, and unlawful under California and federal law.

7 37. Nine West fraudulently concealed from and intentionally failed to disclose to
8 Plaintiff and other members of the Class the truth about its advertised discount prices and
9 former reference prices.

10 38. At all relevant times, Nine West has been under a duty to Plaintiff and the
11 Class to disclose the truth about its false discounts.

12 39. Plaintiff relied upon Nine West’s artificially inflated “SUGG. RETAIL” price
13 and false “OUR PRICE” discount price when purchasing the heels from Nine West.
14 Plaintiff would not have made such purchase but for Nine West’s representations regarding
15 the false “SUGG. RETAIL” price and the fictitious “OUR PRICE” price of the
16 merchandise. Plaintiff may in the future shop at Nine West’s outlet stores.

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

22 41. Nine West intentionally concealed and failed to disclose material facts
23 regarding the truth about false reference price advertising in order to provoke Plaintiff and
24 the Class to purchase merchandise in its Nine West outlet stores.

25 **V. CLASS ALLEGATIONS**

26 42. Plaintiff brings this action on behalf of herself and all other similarly situated
27 Class members pursuant to Rule 23 of the Federal Rules of Civil Procedure and seeks
28

1 certification of the following Class against Nine West for violations of California state
2 laws:

3 All persons who, within the State of California and during the applicable
4 statute of limitations period (the “Class Period”), purchased from a Nine West
5 outlet store one or more products at discounts from the advertised “SUGG.
6 RETAIL” price and who have not received a refund or credit for their
purchase(s).

7 Excluded from the Class are Nine West, as well as its officers, employees, agents,
8 or affiliates, and any judge who presides over this action, as well as all past and present
9 employees, officers, and directors of Nine West. Plaintiff reserves the right to expand,
10 limit, modify, or amend this class definition, including the addition of one or more
11 subclasses, in connection with her motion for class certification, or at any other time, based
12 upon, *inter alia*, changing circumstances and/or new facts obtained during discovery.

13 43. **Numerosity:** The class members are so numerous that joinder of all members
14 is impracticable. Plaintiff is informed and believes that the proposed Class contains
15 hundreds of thousands of individuals who have been damaged by Nine West’s conduct as
16 alleged herein. The precise number of Class members is unknown to Plaintiff.

17 44. **Existence and Predominance of Common Questions of Law and Fact:** This
18 action involves common questions of law and fact, which predominate over any questions
19 affecting individual Class members. These common legal and factual questions include,
20 but are not limited to, the following:

21 a. Whether, during the Class Period, Nine West used false “SUGG.
22 RETAIL” price tags and falsely advertised price discounts on its outlet
23 store products sold in its Nine West outlet stores;

24 b. Whether, during the Class Period, the “SUGG. RETAIL” prices
25 advertised by Nine West were the prevailing market prices for the
26 respective Nine West outlet store merchandise during the three months
27 preceding the dissemination and/or publication of the advertised former
28 prices;

- 1 c. Whether Nine West's alleged conduct constitutes violations of the laws
- 2 asserted;
- 3 d. Whether Nine West engaged in unfair, unlawful, and/or fraudulent
- 4 business practices under the laws asserted;
- 5 e. Whether Nine West engaged in false or misleading advertising;
- 6 f. Whether Plaintiff and Class members are entitled to damages and/or
- 7 restitution and the proper measure of that loss; and
- 8 g. Whether an injunction is necessary to prevent Nine West from
- 9 continuing to use false, misleading, or illegal price comparison.

10 45. **Typicality:** Plaintiff's claims are typical of the claims of the Class members
11 because, *inter alia*, all Class members have been deceived (or were likely to be deceived)
12 by Nine West's false and deceptive price advertising scheme, as alleged herein. Plaintiff
13 is advancing the same claims and legal theories on behalf of herself and all Class members.

14 46. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the Class
15 members. Plaintiff has retained counsel experienced in complex consumer class action
16 litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no
17 antagonistic or adverse interest to those of the Class.

18 47. **Superiority:** The nature of this action and the nature of the laws available to
19 Plaintiff and the Class make the use of the class action format a particularly efficient and
20 appropriate procedure to afford relief to her and the Class for the wrongs alleged. The
21 damages or other financial detriment suffered by individual Class members is relatively
22 modest compared to the burden and expense that would be entailed by individual litigation
23 of their claims against Nine West. It would thus be virtually impossible for Plaintiff and
24 Class members, on an individual basis, to obtain effective redress for the wrongs done to
25 them. Absent the class action, Class members and the general public would not likely
26 recover, or would not likely have the chance to recover, damages or restitution, and Nine
27 West will be permitted to retain the proceeds of its fraudulent and deceptive misdeeds.

28

1 48. All Class members, including Plaintiff, were exposed to one or more of Nine
2 West’s misrepresentations or omissions of material fact claiming that former “SUGG.
3 RETAIL” prices were in fact *bona fide*. Due to the scope and extent of Nine West’s
4 consistent false “discount” price advertising scheme, disseminated in a years-long
5 campaign to California consumers, it can be reasonably inferred that such
6 misrepresentations or omissions of material fact were uniformly made to all members of
7 the Class. In addition, it can be reasonably presumed that all Class members, including
8 Plaintiff, affirmatively acted in response to the representations contained in Nine West’s
9 false advertising scheme when she purchased her heels at the Nine West outlet store.

10 49. Nine West keeps extensive computerized records of its customers through,
11 *inter alia*, customer loyalty rewards programs and general marketing programs. Nine West
12 has one or more databases through which a significant majority of Class members may be
13 identified and ascertained, and it maintains contact information, including email and home
14 addresses, through which notice of this action could be disseminated in accordance with
15 due process requirements.

16 **VI. CAUSES OF ACTION**

17 **FIRST CAUSE OF ACTION**

18 **Violation of California’s Unfair Competition Law (“UCL”)**
19 **California Business & Professions Code Section 17200, *et seq.***

20 50. Plaintiff repeats and re-alleges the allegations contained in ever preceding
21 paragraph as if fully set forth herein.

22 51. The UCL defines “unfair business competition” to include any “unlawful,
23 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or
24 misleading” advertising. Cal. Bus. & Prof. Code § 17200.

25 52. The UCL imposes strict liability. Plaintiff need not prove that Nine West
26 intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices—
27 but only that such practices occurred.

28 ///

///

1 ***“Unfair” Prong***

2 53. A business act or practice is “unfair” under the UCL if it offends an
3 established public policy or is immoral, unethical, oppressive, unscrupulous, or
4 substantially injurious to consumers, and that unfairness is determined by weighing the
5 reasons, justifications, and motives of the practice against the gravity of the harm to the
6 alleged victims.

7 54. Nine West’s actions constitute “unfair” business practices because, as alleged
8 above, Nine West engaged in misleading and deceptive price comparison advertising that
9 represented false “SUGG. RETAIL” prices and corresponding deeply discounted “OUR
10 PRICE” prices. The “SUGG. RETAIL” prices were nothing more than fabricated
11 reference prices leading to phantom markdowns. Nine West’s acts and practices offended
12 an established public policy of transparency in pricing, and engaged in immoral, unethical,
13 oppressive, and unscrupulous activities that are substantially injurious to consumers.

14 55. The harm to Plaintiff and Class members outweighs the utility of Nine West’s
15 practices. There were reasonably available alternatives to further Nine West’s legitimate
16 business interests other than the misleading and deceptive conduct described herein.

17 ***“Fraudulent” Prong***

18 56. A business act or practice is “fraudulent” under the UCL if it is likely to
19 deceive members of the consuming public.

20 57. Nine West’s acts and practices alleged above constitute fraudulent business
21 acts or practices as they have deceived Plaintiff and are highly likely to deceive members
22 of the consuming public. Plaintiff relied on Nine West’s fraudulent and deceptive
23 representations regarding its “SUGG. RETAIL” prices for products which Nine West sells
24 exclusively at its Nine West outlet stores. These misrepresentations played a substantial
25 role in Plaintiff’s decision to purchase those products at steep discounts, and Plaintiff
26 would not have purchased those products without Nine West’s misrepresentations.

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28 ///

1 ***“Unlawful” Prong***

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

4 59. Nine West’s acts and practices alleged above constitute unlawful business acts
5 or practices as they have violated state and federal law in connection with their deceptive
6 pricing scheme. The Federal Trade Commissions Act (“FTCA”) prohibits “unfair or
7 deceptive acts or practices in or affecting commerce” (15 U.S.C. § 45(a)(1)) and prohibits
8 the dissemination of any false advertisements. 15 U.S.C. § 52(a). Under the Federal Trade
9 Commission, false former pricing schemes, similar to the ones implemented by Nine West,
10 are described as deceptive practices that would violate the FTCA:

11 (a) One of the most commonly used forms of bargain advertising is to offer a
12 reduction from the advertiser’s own former price for an article. If the
13 former priced is the actual, bona fide price at which the article was offered
14 to the public on a regular basis for a reasonably substantial period of time,
15 it provides a legitimate basis for the advertising of a price comparison.
16 Where the former price is genuine, the bargain being advertised is a true
17 one. If, on the other hand, the former price being advertised is not bona
18 fide but fictitious—***for example, where an artificial, inflated price was
19 established for the purpose of enabling a subsequent offer of a large
20 reduction—the “bargain” being advertised is a false one;*** the purchaser
21 is not receiving the unusual value he expects. In such a case, the “reduced”
22 price is, in reality, probably just the seller’s regular price.

23 (b) A former price is not necessarily fictitious merely because no sales at the
24 advertised price were made. The advertiser should be especially careful,
25 however, in such a case, that the price is one at which the product was
26 openly and actively offered for sale, for a reasonably substantial period of
27 time, in the recent, regular course of her business, honestly and in good
28 faith—and, of course, not for the purpose of establishing a fictitious higher
price on which a deceptive comparison might be based.

16 C.F.R. § 233.1(a) and (b) (emphasis added).

60. In addition to federal law, California law also expressly prohibits false former
pricing schemes. California’s False Advertising Law, Bus. & Prof. Code § 17501,
 (“FAL”), entitled “*Worth or value; statements as to former price,*” states:

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

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

10 Cal. Bus. & Prof. Code § 17501(emphasis added).

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

16 62. The violation of any law constitutes an “unlawful” business practice under the
17 UCL.

18 63. As detailed herein, the acts and practices alleged were intended to or did result
19 in violations of the FTCA, the FAL, and the CLRA.

20 64. Nine West’s practices, as set forth above, have misled Plaintiff, the proposed
21 Class, and the public in the past and will continue to mislead in the future. Consequently,
22 Nine West’s practices constitute an unlawful, fraudulent, and unfair business practice
23 within the meaning of the UCL.

24 65. Nine West’s violation of the UCL, through its unlawful, unfair, and fraudulent
25 business practices, are ongoing and present a continuing threat that Class members and the
26 public will be deceived into purchasing products based on price comparisons of arbitrary
27 and inflated “SUGG. RETAIL” prices and substantially discounted “OUR PRICE” prices.
28 These false comparisons created phantom markdowns and lead to financial damage for
consumers like Plaintiff and the Class.

1 66. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent
2 injunctive relief and order Nine West to cease this unfair competition, as well as
3 disgorgement and restitution to Plaintiff and the Class of all Nine West’s revenues
4 associated with its unfair competition, or such portion of those revenues as the Court may
5 find equitable.

6 **SECOND CAUSE OF ACTION**

7 **Violation of California’s False Advertising Law (“FAL”)**
8 **California Business and Professions Code Section 17500, *et seq.***

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

11 68. Cal. Bus. & Prof. Code § 17500 provides:

12 It is unlawful for any . . . corporation . . . with intent . . . to dispose of . . .
13 personal property . . . to induce the public to enter into any obligation relating
14 thereto, to make or disseminate or cause to be made or disseminated . . . from
15 this state before the public in any state, in any newspaper or other publication,
16 or any advertising device, or by public outcry or proclamation, or in any other
17 manner or means whatever, including over the Internet, any statement . . .
18 which is untrue or misleading, and which is known, or which by the exercise
19 of reasonable care should be known, to be untrue or misleading . . .
(Emphasis added).

20 69. The “intent” required by Section 17500 is the intent to dispose of property,
21 and not the intent to mislead the public in the disposition of such property.

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

27 71. Nine West’s routine of advertising discounted prices from false “SUGG.
28 RETAIL” prices, which were never the prevailing market prices of those products and were
materially greater than the true prevailing prices, was an unfair, untrue, and misleading
practice. This deceptive marketing practice gave consumers the false impression that the

1 products were regularly sold on the market for a substantially higher price than they
2 actually were; therefore, leading to the false impression that the Nine West outlet store
3 products were worth more than they actually were.

4 72. Nine West misled consumers by making untrue and misleading statements
5 and failing to disclose what is required as stated in the Code alleged above.

6 73. As a direct and proximate result of Nine West's misleading and false
7 advertisements, Plaintiff and the Class have suffered injury in fact and have lost money.
8 As such, Plaintiff requests that this Court order Nine West to restore this money to Plaintiff
9 and all Class members, and to enjoin Nine West from continuing these unfair practices in
10 violation of the UCL in the future. Otherwise, Plaintiff, Class members, and the broader
11 public will be irreparably harmed and/or denied an effective and complete remedy.

12 **THIRD CAUSE OF ACTION**

13 **Violation of California's Consumers Legal Remedies Act ("CLRA"),**
14 **California Civil Code Section 1750, *et seq.***

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

17 75. This cause of action is brought pursuant to the CLRA, Cal. Civ. Code § 1750,
18 *et seq.* Plaintiff and each member of the proposed Class are "consumers" as defined by
19 Cal. Civ. Code § 1761(d). Nine West's sale of their merchandise to Plaintiff and the Class
20 were "transactions" within the meaning of Cal. Civ. Code § 1761(e). The products
21 purchased by Plaintiff and the Class are "goods" within the meaning of Cal. Civ. Code §
22 1761(a).

23 76. Nine West violated and continues to violate the CLRA by engaging in the
24 following practices proscribed by Cal. Civ. Code § 1770(a) in transactions with Plaintiff
25 and the Class which were intended to result in, and did result in, the sale of Nine West
26 products:

- 27 a. Advertising goods or services with intent not to sell them as advertised;
28 (a)(9);

- 1 b. Making false or misleading statements of fact concerning reasons for,
2 existence of, or amounts of price reductions; (a)(13).

3 77. Pursuant to Section 1782(a) of the CLRA, on July 5, 2017, Plaintiff's counsel
4 notified Nine West in writing by certified mail of the particular violations of § 1770 of the
5 CLRA and demanded that it rectify the problems associated with the actions detailed above
6 and give notice to all affected consumers of Nine West's intent to act.

7 78. Nine West failed to appropriately respond to Plaintiff's letter or agree to
8 rectify the problems associated with the actions detailed above and give notice to all
9 affected consumers within 30 days of the date of written notice pursuant to § 1782 of the
10 Act. Therefore, Plaintiff seeks claims for actual and punitive damages, restitution, and
11 injunctive relief, as is provided for pursuant to § 1780(a).

12 **VII. PRAYER FOR RELIEF**

13 79. Wherefore, Plaintiff, on behalf of herself and all other members of the Class,
14 requests that this Court award relief against Nine West as follows:

- 15 a. An order certifying the Class and designating Plaintiff as the Class
16 Representative and her counsel as Class Counsel;
- 17 b. Awarding Plaintiff and the proposed Class members damages;
- 18 c. Awarding restitution and disgorgement of all profits and unjust
19 enrichment that Nine West retained from Plaintiff and the Class
20 members as a result of its unlawful, unfair, and fraudulent business
21 practices described herein;
- 22 d. Awarding declaratory and injunctive relief as permitted by law or
23 equity, including: enjoining Nine West from continuing the unlawful
24 practices as set forth herein, and directing Nine West to identify, with
25 Court supervision, victims of its misconduct and pay them all money
26 they are required to pay;
- 27 e. Order Nine West to engage in a corrective advertising campaign;
- 28 f. Awarding attorneys' fees and costs; and

1 g. For such other and further relief as the Court may deem necessary or
2 appropriate.

3 **VIII. DEMAND FOR JURY TRIAL**

4 80. Plaintiff hereby demands a jury trial for all the claims so triable.

5
6 Dated: October 31, 2017

**CARLSON LYNCH SWEET
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/s/ Todd D. Carpenter

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