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15
16 **IN THE UNITED STATES DISTRICT COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 KEVIN PARK, individually and on
19 behalf of all others similarly situated,

20 Plaintiff,

21 v.

22 COLE HAAN, LLC, a Delaware
23 Limited Liability Company; and
24 APAX PARTNERS WORLDWIDE
25 LLP; a Limited Liability Partnership,

26 Defendants.

Case No. '17CV1422 LAB BGS

CLASS ACTION

COMPLAINT FOR:

1. **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW, CAL. BUS. & PROF. CODE §17200 ET SEQ.;**
2. **VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAWS. CAL. BUS. & PROF. CODE § 17500, ET SEQ.;**
3. **VIOLATIONS OF CALIFORNIA CONSUMER LEGAL REMEDIES ACT. CIV CODE § 1750, ET SEQ.**

DEMAND FOR A JURY TRIAL

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Plaintiff Kevin Park (“Plaintiff” or “Park”), individually and on behalf of all others similarly situated, alleges for his complaint against Defendant Cole Haan, Inc. and Defendant Apax Partners Worldwide LLP (collectively “Defendants”) as follows:

SUMMARY OF THE CLAIMS

1. This is a class action regarding Defendants’ false and misleading pricing. Specifically, Defendants own various retail stores and outlet stores throughout California. Defendants set “original” or “regular” prices for the items it sells at its outlet stores leading the consumer to believe the items they are purchasing items once priced at that rate (and thus sold in Defendants’ retail store at some point). This however is not the case. Defendants manufacture a distinct line of products specifically made for its outlet stores. These items, contrary to Defendants representations, were never sold at the “original” and “regular” prices. The items were always sold at a discounted rate. Thus, the original price was a tactic designed to mislead consumers into believing they were receiving an item at a discounted rate.

2. During the Class Period, Defendants continually misled consumers by advertising the outlet items at “discounted” or “sale” prices when in fact the items were never sold at the “original” or “regular” price. The “original” or “regular” price is designed to mislead consumers into believing they are receiving a discount, when in fact, they are not.

3. Further, the Defendants manufacture merchandise specifically for the outlet stores are often of inferior quality. The general retail stores are often made of better leather, better stitching, etc. Defendants subtly mark the items made for the outlet stores by including a “II” after the items’ name on the shoebox. For example, the outlet shoebox marks a shoe made specifically for the outlet as “Grand Crosscourt II.”

4. Because Defendants manufactures their items for sale in its own retail stores and its own outlet stores, this scheme of setting the “original” or “regular” price on its outlet items is designed solely to mislead consumers. Consumers believe the

1 original prices represent former prices of the items. Further, because of the “original”
2 or “regular” price, consumers believe they are purchasing the same quality items from
3 the retail store.

4 **5.** Cole Haan fraudulently concealed from, and intentionally failed to disclose
5 to, Plaintiff, and others similarly situated, the fact that (1) they are buying items made
6 specifically for the outlet and (2) the items were never sold at the “original” price. The
7 product, the original price, and the discounted rate are material terms to the consumer
8 purchasing one of defendants’ products.

9 **THE PARTIES**

10 **6. Plaintiff:** Kevin Park is an individual and is and was at all relevant times
11 herein a citizen of California.

12 **7. Defendant:** On information and belief, Defendant Cole Haan, Inc. is a
13 Delaware corporation with its principal place of business in New Hampshire. Cole
14 Haan owns and operates hundreds of stores worldwide.

15 **8. Defendant:** On information and belief, Defendant Apax Partners LLP is a
16 Limited Liability Partnership with its headquarters in London, England.

17 **JURISDICTION & VENUE**

18 **9.** Plaintiff realleges by reference, as if fully set forth herein, all of the above
19 Paragraphs.

20 **10.** This Court has original jurisdiction over this Action under the Class
21 Action Fairness Act, 28 U.S.C. § 1332(d), because this is a class action in which: (1) at
22 least some members of the proposed Class have a different citizenship from
23 Defendants; and (2) the claims of the proposed Class members exceed \$5,000,000.00 in
24 the aggregate.

25 **11. Personal jurisdiction:** The Southern District of California has personal
26 jurisdiction over defendants Cole Haan, LLC and Apax Partners, LLP because they
27 have systematic and continuous contacts with the state of California. The Court also
28 has specific personal jurisdiction over Cole Haan, LLC and Apax Partners, LLP,

1 because the claims alleged herein arise directly from its specific contacts with the state
2 of California, namely its sales of Cole Haan products to California citizens using billing
3 programs that violate California law.

4 **12. Venue:** Venue is proper in this District pursuant to 28 U.S.C. §1391,
5 because, among other reasons, Plaintiff resides in San Diego County and because
6 Plaintiff's and the Class's claims arose here.

7 **FACTUAL BACKGROUND**

8 **13.** As represented above, Defendants operate multiple retail and outlet stores
9 both throughout the United States and worldwide. Additionally, Defendants operate an
10 online website where consumers have the option to purchase items from the outlet.

11 **14.** Defendants pride themselves by creating an image of quality and luxury
12 "American craftsmanship and ingenuity." Cole Haan's website boasts:

13 Founded by Trafton Cole and Eddie Haan in 1928, Cole Haan is
14 built on American craftsmanship and ingenuity. We combine
15 traditional methods, timeless style and modern innovations to
16 create footwear and accessories for optimists of all ages. This
17 company was started to make good things for people who make
18 good things happen; it still does.

18 Cole Haan recently returned to its roots as an independently
19 owned company and is growing rapidly in the US and abroad, as
20 people rediscover the value of quality goods made without
21 compromises. It's about time.

21 **15.** Additionally, Defendants strive to promote exclusivity of their brand by
22 using celebrities, such as Maria Shariapova, to endorse their products.

23 **16.** As a result of the foregoing, consumers believe, when they purchase a
24 Cole Haan product, they are purchasing exclusive and "quality goods without
25 compromises." Thus, consumers are willing, and in fact do, pay higher prices.

26 **17.** However, in an effort to maximize their profits, Defendants devised a
27 scheme where they would manufacture inferior products directly for their outlet stores
28 but price them at retail store prices leading customers to believe they were buying retail

1 products. Defendants then discount the items to mislead customers into believing they
2 were receiving a significant discount – when in fact they were not because the products
3 were never sold at the higher rate. The outlet stores essentially allowed Defendants to
4 market products as if they were retail store products (both in price and quality) but sell
5 them at “sale” prices.

6 **18.** Customers of the outlet stores, relying on Defendants’ representations,
7 believed they were getting a bargain by receiving the Cole Haan quality retail product,
8 once priced at the “original price” at a discounted rate. This was not the case.

9 **PLAINTIFF’S FACTS**

10 **19.** On June 25, 2017, Plaintiff purchased the Grand Crosscourt II for his wife.
11 Defendants represented that the shoes were discounted 50% from the original price of
12 \$182.

13 **20.** Plaintiff, believed his purchase, based on the discount, was a good deal.
14 Plaintiff relied on the “original price” to determine whether he believed the shoes were
15 a good deal and whether he should purchase the shoes.

16 **21.** Plaintiff would not have purchased the item, or paid as much for the item,
17 had he known the item was (1) never sold at the traditional retail store and (2) never
18 sold at the “original price.”

19 **CLASS ACTION ALLEGATIONS**

20 **1. Class Definition:** Pursuant to Rules 23(a), 23(b)(2), and 23(b)(3) of the
21 Federal Rules of Civil Procedure, Plaintiff brings this action on behalf of himself and
22 the following class of similarly situated individuals defined as:

23 All persons who purchased a Cole Haan Outlet Product made for the Cole
24 Haan Outlet in California bearing an original price at any time during the
25 four years preceding the filing of this complaint. (“Class”)

26 **2. Exclusion:** The Class excludes: (a) any officers, directors, or employees of
27 Defendants; (b) any Judge assigned to hear this case (or spouse or immediate family
28

1 member of any assigned Judge); any employee of the Court; (d) any juror selected to
2 hear the case; and (e) any attorneys of record and their employees

3 **3. Reservation:** Plaintiff reserves the right to modify, expand, or amend the
4 class description with greater particularity or further division into subclasses or
5 limitation to particular issues.

6 **4. Numerosity:** Membership in the Class is so numerous that separate
7 joinder of each member is impracticable. The number of Class members is unknown,
8 but can be readily determined from Defendants' records.

9 **5. Typicality:** Plaintiff is a member of the Class of victims described herein.
10 Plaintiff purchased products from Defendants. Defendants misled plaintiff as to both
11 the product he purchased and the discounted value of the product.

12 **6. Commonality and Predominance:** Defendants have engaged in a
13 common course of misconduct by maintaining a practice of manufacturing products
14 specifically for its outlet stores and misleading consumers as to the product they are
15 purchasing the value of the product they are purchasing. There are numerous and
16 substantial questions of law and fact common to all Class members that control this
17 litigation and predominate over any individual issues. Included within these common
18 questions are:

- 19 **a.** Whether Defendants' creation of the original price from which the shoes
20 are discounted is deceptive;
- 21 **b.** Whether the original price is synonymous with an item's expected price,
22 suggested sales price, or retail price;
- 23 **c.** Whether the original prices advertised by Defendants represent actual
24 retail prices;
- 25 **d.** Whether the original prices advertised by Defendants are backed by actual
26 sales data for those items;
- 27 **e.** Whether Defendants' outlet products are sold outside Defendants' outlet
28 stores;

- 1 **f.** Whether Defendants sold their outlet products outside their outlet stores at
2 the original price;
- 3 **g.** Whether Defendants ever sold their outlet products at the original price;
- 4 **h.** Whether Defendants violated the Unfair Competition Law (Cal. Bus. &
5 Prof. Code § 17200 *et seq.*);
- 6 **i.** Whether Defendants violated the Unfair Competition Law (Cal. Bus. &
7 Prof. Code § 17200 *et seq.*) by violating the Consumer Legal Remedies
8 Act (Cal. Civ. Code §1750 *et seq.*);
- 9 **j.** Whether Defendants violated the Unfair Competition Law (Cal. Bus. &
10 Prof. Code § 17200 *et seq.*) by violating the Federal Trade Commission
11 Act (15 U.S.C. §§ 45(a)(1), 52(a));
- 12 **k.** Whether Defendants use of false or deceptive price advertising constituted
13 false advertising under California law;
- 14 **l.** Whether the stated original prices were the prevailing market prices for
15 the respective prices sold by Defendants during the three-month periods
16 preceding the dissemination or publication of the advertised former prices;
- 17 **m.** Whether Defendants violated the Consumers Legal Remedies Act (Cal.
18 Civ. Code § 1750 *et seq.*);
- 19 **n.** Whether Defendants misrepresented or failed to disclose material facts
20 about their product pricing and discounts, including that the products were
21 never sold for the original price;
- 22 **o.** Whether Defendants misrepresented or failed to disclose material facts
23 about their product, including that the product was manufactured
24 specifically for the outlet stores;
- 25 **p.** Whether Defendants made false or misleading statements of fact
26 concerning the reasons for, existence of, or amounts of price reductions;
- 27 **q.** Whether Defendants have been unjustly enriched as a result of its
28 representations that the “sale” prices represented price reductions;

- r. Whether Defendants' conduct herein was intentional and knowing;
- s. Whether Defendants are likely to continue to use false, misleading, or illegal price comparisons such that an injunction is necessary;
- t. Whether the Plaintiff and Class Members are entitled to damages or consumer restitution and the proper measure of that loss; and
- u. The appropriate class-wide measure of damages.

7 **7. Superiority and Manageability:** This case is also appropriate for class
8 certification as class proceedings are superior to all other available methods for the fair
9 and efficient adjudication of this controversy. Joinder of all parties is impracticable.
10 The damages suffered by the individual members of the Class will likely be relatively
11 small, especially given the burden and expense required for individual prosecution of
12 the complex litigation necessitated by Defendants' actions. Thus, it would be virtually
13 impossible for the individual members of the Class to obtain effective relief from
14 Defendants' misconduct. Even if members of the Class could sustain such individual
15 litigation, it would still not be preferable to a class action because individual litigation
16 would increase the delay and expense to all parties due to the complex legal and factual
17 controversies presented in this Complaint. By contrast, a class action presents far fewer
18 management difficulties and provides the benefits of single adjudication, economies of
19 scale, and comprehensive supervision by a single Court. Economies of time, effort, and
20 expense will be fostered and uniformity of decisions ensured.

21 **FIRST CAUSE OF ACTION**

22 **Violation of California's Unfair Competition Law, §§ 17200 et seq.**

23 **By Plaintiff and the Class Against Defendants**

24 **8.** Plaintiff incorporates all preceding paragraphs as though fully set forth
25 herein.

26 **9.** California's unfair competition law, codified in California Business &
27 Professions Code § 17200 et seq., makes actionable "any unlawful, unfair *or* fraudulent
28 business act or practice and unfair, deceptive, untrue or misleading advertising." See

1 Cal. Bus. & Prof. Code § 17200 (emphasis added). It allows plaintiffs to seek
2 injunctive relief as well as restitution. *Id.* § 17203. The law’s scope “is quite broad. . . .
3 Because the statute is framed in the disjunctive, a business practice need only meet one
4 of the three criteria to be considered unfair competition. *McKell v. Wash. Mutual, Inc.*,
5 142 Cal. App. 4th 1457, 1471 (2006). Here, Defendants’ practice meet the criteria, any
6 of which would be sufficient to give rise to liability.

7 Unlawful

8 **10.** Defendants’ practice is “unlawful” because it violates the Cal. Bus. &
9 Prof. Code § 17200 *et seq.* (the “UCL”), Cal. Bus. & Prof. Code § 17500 *et seq.* (the
10 “FAL”), the California Consumers’ Legal Remedies Act, and Civil Code Section 1750
11 *et seq.* (the “CLRA”), and the Federal Trade Commission Act (“FTCA”).

12 **11.** By way of example, Defendants’ conduct is unlawful in that it violates the
13 CLRA (Cal. Civ. Code § 1750 *et seq.*). Civ. Code § 1770(a)(7) prohibits a business
14 from “[a]dvertising goods or services with intent not to sell them as advertised,” and
15 subsection (a)(13) prohibits a business from “[m]aking false or misleading statements
16 of fact concerning reasons for, existence of, or amounts or price reductions.”

17 **12.** Because prices are a representation of quality and value, when Defendants
18 represented they their outlet prices had a certain retail price, they represented that those
19 products were of a higher standard, quality, or grade when they were of another. In
20 representing that the sale price was less than the original price, Defendants represented
21 that the items were being sold at a discount, when in fact the items were not bring sold
22 at the discounted rate Defendants represented because the items were never sold at the
23 original rate. Accordingly, Defendants made false and misleading statements of fact
24 concerning the existence of, or amounts of price reductions.

25 **13.** As another example, Defendants’ conduct violated the FTCA (15 U.S.C. §
26 45(a)(1) and 15 U.S.C. § 52(a)) which prohibits “unfair or deceptive practices in or
27 affecting commerce and specifically prohibits false advertisements. The FTC has
28 established regulatory guidelines that prohibit false pricing schemes, similar to

1 Defendants' pricing scheme described herein, as deceptive practices that would violate
2 the FTCA. 16 C.F.R. § 233.1 *et seq.*

3 **14.** Defendants' reference to an original price for its outlet shoes, from which
4 markets and advertises a discount violated and continues to violate the FTCA, 15
5 U.S.C. §45(a)(1) and 15 U.S.C. §52(a) as well as FTC guidelines published at 16
6 C.F.R. §233, including but not limited to §233.3, "Advertising retail prices which have
7 been established or suggested by manufacturers (or other nonretail distributors)," which
8 states in part:

9 (a) Many members of the purchasing public believe that a
10 manufacturer's list price, or suggested retail price, is the price at
11 which an article is generally sold. Therefore, if a reduction from
12 this price is advertised, many people will believe that they are
13 being offered a genuine bargain. **To the extent that list or**
14 **suggested retail prices do not in fact correspond to prices at**
15 **which a substantial number of sales of the article in question**
16 **are made, the advertisement of a reduction may mislead the**
17 **consumer.**

18 ***

19 (d) Typically, a list price is a price at which articles are sold, if not
20 everywhere, then at least in the principal retail outlets which do
21 not conduct their business on a discount basis. It will not be
22 deemed fictitious if it is the price at which substantial (that is, not
23 isolated or insignificant) sales are made in the advertiser's trade
24 area (the area in which he does business). Conversely, if the list
25 price is significantly in excess of the highest price at which
26 substantial sales in the trade area are made, there is a clear and
27 serious danger of the consumer being misled by an advertised
28 reduction from this price.

(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

1 affix price tickets containing inflated prices as an accommodation
2 to particular retailers who intend to use such prices as the basis for
3 advertising fictitious price reductions. [Guide III]

4 16 C.F.R. § 233.3 (emphasis added).

5 **15.** Defendants deceived consumers into believing that they were offering
6 value, discounts, and/or bargains at the outlet stores from an actual retail price, intended
7 retail price, or expected retail price of the products sold that did not, in fact, exist.

8 **16.** As a result, consumers, including Plaintiff, believed they were purchasing
9 products worth more and valued at more than what they received based on Defendants'
10 misrepresentation of the original price. This perception has induced reasonable
11 purchasers, including Plaintiff, to buy Defendants' products, which they otherwise
12 would not have purchased, would not have paid as much for, or would not have paid
13 the premium price for a luxury item.

14 **17.** Defendants' acts and practices as described herein have deceived Plaintiff
15 and were highly likely to deceive members of the consuming public. Specifically, in
16 deciding to purchase Defendants' outlet products, Plaintiff relied on Defendants' false,
17 misleading, and deceptive representations regarding its original and discounted prices.
18 Each of these factors played a substantial role in Plaintiff's decisions to purchase those
19 products, and Plaintiff would not have purchased those items or would not have paid as
20 much for those items in the absence of Defendants' misrepresentations. Accordingly,
21 Plaintiff suffered monetary loss as a direct result of Defendants' pricing practices
22 described herein.

23 **18.** As a result of Defendants' unfair acts and practices, Plaintiff, Class
24 members, and the general public have suffered injury in fact and have lost money or
25 property. These violations have unjustly enriched Defendants at the expense of Plaintiff
26 and the Class.

27 **19.** Under Section 17203 of the Business & Professions Code, Plaintiff and the
28 other members of the California Subclass are entitled to (a) an injunction ordering

1 Defendants to cease engaging in any acts of unfair competition and to engage in a
2 corrective advertising campaign in compliance with all applicable laws; (b) restitution
3 and disgorgement of all unjustly retained profits paid to Defendants; (c) equitable relief;
4 (d) pre- and post-judgment interest at the highest rate allowable by law; and (e)
5 payment of attorneys' fees and costs pursuant to Section 1021.5 of the California Code
6 of Civil Procedure.

7 **20.** THEREFORE, Plaintiff prays for relief as set forth below.

8 **Unfair**

9 **21.** California Business & Professions Code § 17200 prohibits any “unfair ...
10 business act or practice.” Defendants’ acts, omissions, misrepresentations, and practices
11 as alleged herein also constitute “unfair” business acts and practices within the meaning
12 of the UCL in that its conduct is substantially injurious to consumers, offends public
13 policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity of the
14 conduct outweighs any alleged benefits attributable to such conduct. There were
15 reasonably available alternatives to further Defendants’ legitimate business interests,
16 other than the conduct described herein. Plaintiff reserves the right to allege further
17 conduct which constitutes other unfair business acts or practices. Such conduct is
18 ongoing and continues to this date.

19 **22.** In order to satisfy the “unfair” prong of the UCL, a consumer must show
20 that the injury: (1) is substantial; (2) is not outweighed by any countervailing benefits to
21 consumers or competition; and, (3) is not one that consumers themselves could
22 reasonably have avoided.

23 **23.** Defendants committed, and continue to commit, “unfair” business acts or
24 practices by, among other things:

- 25 **a.** Engaging in conduct for which the utility of the conduct, if any, is
26 outweighed by the gravity of the consequences to Plaintiff and members
27 of the Class;
- 28 **b.** Engaging in conduct that is immoral, unethical oppressive, unscrupulous,

1 or substantially injurious to Plaintiff and the members of the Class; and
2 c. Engaging in conduct that undermines or violates the spirit or intent of the
3 consumer protection laws that this Class Action Complaint invokes.

4 **24.** Specifically, Defendants engaged in unfair business acts or practices in
5 violation of the UCL by representing false original prices at which prices it never
6 intended or expected to sell products. Defendants' corresponding posting of lower sales
7 prices for its produces, and further price reductions, resulted in false, misleading, and
8 deceptive illusions of discounts.

9 **25.** These acts and practices are unfair because they caused Plaintiff and other
10 reasonable consumers to falsely believe that Defendants were offering value, discounts,
11 or bargains from an actual retail price or a price at which the manufacturer expected the
12 retailer to sell the products. The original price, however, did not, in fact, exist. For
13 Defendants, the original price is a false and deceptive marker of value. As a result,
14 purchasers, including Plaintiff, reasonably perceived that the products were worth more
15 and valued at more than what they received. This perception has induced reasonable
16 purchasers, including Plaintiff, to buy Defendants' Outlet Products, which they
17 otherwise would not have purchased, would not have paid as much for, or would not
18 have paid a premium price for a luxury item.

19 **26.** The gravity of harm to members of the Class resulting from these unfair
20 acts and practices outweighed any business justifications for Defendants' deceptive acts
21 and practices. By committing the acts and practices alleged herein, Defendants engaged
22 in unfair business practices within the meaning of the UCL. Such acts and violations
23 have not abated and will continue to occur unless enjoined.

24 **27.** As a result of Defendants' unfair acts and practices, Plaintiff and members
25 of the Class have suffered injury in fact in that they have lost money or property due to
26 Defendants' false representations of original prices and discounts thereto by
27 manufacturing products specifically for its outlet stores and including original prices for
28 the items at prices Defendants never intended or expected to sell the items for.

1 Defendants then marketed “sales” and “discounts” from the original price – even
2 though the items were never sold for the original price.

3 **28.** Moreover, Defendants’ conduct as alleged herein solely benefits
4 Defendants while providing no benefit of any kind to any consumer. Such deception
5 utilized by Defendants converted large sums of money from Plaintiff and Class
6 members by misleading them as to the value of the product they purchased. This
7 systematic scheme is tantamount to theft. Thus, the injury suffered by Plaintiff and the
8 members of the Class is not outweighed by any countervailing benefits to consumers.

9 **29.** Finally, the injury suffered by Plaintiff and members of the Class is not an
10 injury that these consumers could reasonably have avoided. Defendants
11 misappropriated funds from Plaintiff and other consumers, and these consumers
12 suffered injury in fact due to Defendants’ misrepresentation as to material facts
13 regarding their products. As such, Defendants took advantage of Defendants’ position
14 of perceived power in order to deceive Plaintiff and the Class members. Therefore, the
15 injury suffered by Plaintiff and members of the Class is not an injury which these
16 consumers could reasonably have avoided.

17 **30.** Pursuant to California Business & Professions Code § 17203, Plaintiff and
18 the Class are entitled to: (a) an order requiring Defendants to cease the acts of unfair
19 competition alleged herein; (b) an order enjoining Defendants from continuing to utilize
20 this deceptive scheme; (c) full restitution and disgorgement by Defendants of all profits
21 received by Defendants as a result of its wrongful practices; (d) interest at the highest
22 rate allowable by law; and (e) the payment of their attorneys’ fees pursuant to, *inter*
23 *alia*, California Code of Civil Procedure § 1021.5.

24 **31.** THEREFORE, Plaintiff prays for relief as set forth below.

25 **Fraudulent**

26 **32.** California Business & Professions Code § 17200 prohibits any “unlawful,
27 unfair, or fraudulent” act or practice, as well as any “unfair, deceptive, untrue, or
28 misleading” advertising. Cal. Bus. & Prof. Code § 17200.

1 **33.** A business act or practice is “fraudulent” under the UCL if it is likely to
2 deceive members of the consuming public.

3 **34.** Defendants’ marketing and advertising were “fraudulent” within the
4 meaning of the UCL because they deceived Plaintiff, and were likely to deceive
5 members of the class, into believing that Defendants were offering value, discounts, or
6 bargains from the prevailing market value or worth of the products sold that did not, in
7 fact, exist. As a result, purchasers, including Plaintiff reasonably perceived that they
8 were receiving products that regularly sold in the retail marketplace at substantially
9 higher prices (and were, therefor, worth more) than what they paid. This perception
10 induced reasonable purchasers, including Plaintiff, to buy such products from
11 Defendants, which they otherwise would not have purchased.

12 **35.** Under Section 17203 of the Business & Professions Code, Plaintiff and the
13 other members of the California Subclass are entitled to (a) an injunction ordering
14 Defendants to cease engaging in any acts of unfair competition and to engage in a
15 corrective advertising campaign in compliance with all applicable laws; (b) restitution
16 and disgorgement of all unjustly retained profits paid to Defendants; (c) equitable relief;
17 (d) pre- and post-judgment interest at the highest rate allowable by law; and (e)
18 payment of attorneys’ fees and costs pursuant to Section 1021.5 of the California Code
19 of Civil Procedure.

20 **36.** Defendants’ acts and practices as described herein have deceived Plaintiff
21 and were highly likely to deceive members of the consuming public. Specifically, in
22 deciding to purchase a product from Defendants, Plaintiff relied on Defendants’
23 misleading and deceptive representations regarding its “MSRP” and “sale” prices.
24 Each of these factors played a substantial role in Plaintiff’s decision to purchase those
25 products, and Plaintiff would not have purchased those items but for Defendants’
26 misrepresentations. Accordingly, Plaintiff suffered monetary loss as a direct result of
27 Defendants’ practices described herein.

28 **37.** As a result of the conduct described above, Defendants have been unjustly

1 enriched by obtaining revenues and profits it would not have otherwise obtained absent
2 its false, misleading, and deceptive conduct.

3 **38.** Under Section 17203 of the Business & Professions Code, Plaintiff and the
4 Class are entitled to (a) an injunction ordering Defendants to cease engaging in any acts
5 of unfair competition and to engage in a corrective advertising campaign in compliance
6 with all applicable laws; (b) restitution and disgorgement of all unjustly retained profits
7 paid to Defendants; (c) equitable relief; (d) pre- and post-judgment interest at the
8 highest rate allowable by law; and (e) payment of attorneys' fees and costs pursuant to
9 Section 1021.5 of the California Code of Civil Procedure.

10 **39.** THEREFORE, Plaintiff prays for relief as set forth below.

11 **SECOND CAUSE OF ACTION**

12 **Violation of California's Unfair Competition Law, § 17535**

13 **By Plaintiff and the Class Against Defendants**

14 **40.** Plaintiff incorporates all preceding paragraphs as though fully stated
15 herein.

16 **41.** The California False Advertising Law prohibits unfair, deceptive, untrue,
17 or misleading advertising, including, but not limited to, false statements as to worth,
18 value, and former price.

19 **42.** Cal. Bus. & Prof. Code §17535 allows "any person who has suffered
20 injury in fact and has lost money or property" to prosecute a civil action for violation of
21 the UCL. People may bring such an action on behalf of themselves or themselves and
22 others similarly situated who are affected by the unlawful, unfair, or fraudulent business
23 practice.

24 **43.** Defendants' practice of advertising the original prices, which were
25 materially greater than the true prevailing prices of those products, was an unfair,
26 deceptive, and misleading advertising practice because it gave the false impression that
27 the products sold by Defendants regularly sold in the retail marketplace at substantially
28 higher prices (and were, therefore, worth more) than they actually were. In fact,

1 Defendants' products did not have a prevailing market price anywhere close to the
2 original price advertised.

3 **44.** Through its unfair acts and practices, Defendants have improperly
4 obtained money from Plaintiff and the Class. As such, Plaintiff requests that the Court
5 cause Defendants to restore this money to Plaintiff and all Class members, and to enjoin
6 Defendants from continuing to violate the False Advertising Law as discussed herein
7 and/or from violating the UCL in the future. Otherwise, Plaintiff, the Class, and
8 members of the general public may be irreparably harmed and/or denied an effective
9 and complete remedy if such an order is not granted.

10 **45.** Plaintiff and the Class requested relief as described below.

11 **THIRD CAUSE OF ACTION**

12 **Violation of California's Consumer Legal Remedies Act, Cal. Civ. Code §**
13 **17250 *et seq.***

14 **By Plaintiff and the Class Against Defendants**

15 **46.** Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

16 **47.** Plaintiff and each member of the Class is a "consumer" within the
17 meaning of California Civil Code § 1761(d).

18 **48.** Defendants are "persons" that sell "goods" to "consumers" within the
19 meaning of Sections 1761(c), (a), and (d) of the Civil Code. Each individual purchase
20 of the Cole Haan Outlet Products constitutes a separate "transaction" under Section
21 1761(e) of the California Civil Code.

22 **49.** As described herein, Defendants violated the CLRA by representing and
23 creating a false original price and falsely representing the nature, existence, and amount
24 of price discounts based on the false original price. Such a pricing scheme is in
25 violation of California Civil Code Section 1770(a)(7), which prohibits "representing
26 that goods ... are of a particular standard, quality, or grade, or that goods are of a
27 particular style or model, if they are of another" and California Civil Code Section
28 1770(a)(9), which prohibits "[a]dvertising goods or services with intent not to sell them

1 as advertised.”

2 **50.** The pricing scheme is also in violation of California Civil Code Section
3 1770(a)(13), which prohibits “[m]aking false or misleading statements of fact
4 concerning reasons for, existence of, or amounts of price reductions.”

5 **51.** Defendants’ representations of false original prices and false
6 representations of purported savings, discounts, and bargains were material to
7 Plaintiff’s decision to purchase Cole Haan Outlet Products.

8 **52.** Plaintiff relied on Defendants’ false representations in deciding to
9 purchase Cole Haan Outlet Products. Plaintiff would not have purchased Cole Haan
10 Outlet Products, or would not have paid as much as they did, absent Defendants’
11 unlawful conduct.

12 **53.** Defendants knew their conduct was deceptive and likely to mislead
13 reasonable consumers, including Plaintiff and the Class.

14 **54.** Defendants had a duty to affirmatively disclose that its original price is
15 false because it is not intended or expected to represent an actual retail price or retail
16 value of any product.

17 **55.** Defendants failed to disclose that the Cole Haan Outlet Products were not
18 ever sold at the original advertised price.

19 **56.** Defendants intended to engage in the deceptive or fraudulent acts of
20 misrepresenting and omitting the false pricing scheme.

21 **57.** As a direct and proximate result of Defendants’ unlawful acts, the Plaintiff
22 and all other members of the Class have suffered and will continue to suffer damages.
23 Pursuant to Section 1780(a)(2) of the California Civil Code, Defendants should be
24 enjoined from continuing to employ the unlawful methods, acts, and practices alleged
25 in this Complaint to prevent any future harm to Plaintiff and the Class.

26 **58.** Plaintiff, on behalf of himself and all others similarly situated, seek
27 equitable relief in the form of an Order prohibiting Defendants from engaging in the
28 alleged misconduct described herein, as well as other relief, such as corrective

1 advertising.

2 **59.** THEREFORE, Plaintiff prays for relief as set forth below.

3 **PRAYER FOR RELIEF**

4 **60.** WHEREFORE, Plaintiff respectfully request the Court grant Plaintiff
5 and the Class Members damages against Defendants and judgment as follows:

- 6 **a.** That this action be certified as a Class Action, Plaintiff be appointed as
7 the representatives of the Class, and Plaintiff’s attorneys be appointed
8 Class Counsel;
- 9 **b.** An order requiring Defendants to pay restitution to Plaintiff and Class
10 Members due to Defendants’ UCL violations, pursuant to Cal. Bus. &
11 Prof. Code §§ 17200-17205, in the amount of their subscription
12 agreement payments;
- 13 **c.** An order requiring imposition of a constructive trust and and/or
14 disgorgement of Defendants’ ill-gotten gains and to pay restitution to
15 Plaintiff and all class members and to restore to Plaintiff and class
16 members all funds acquired by means of any act or practice declared by
17 this court to be an unlawful, fraudulent, or unfair business act or
18 practice, in violation of laws, statutes or regulations, or constituting
19 unfair competition;
- 20 **d.** That Plaintiff and Class Members are entitled to injunctive relief
21 pursuant to Cal. Civ. Code § 17250 *et seq*
- 22 **e.** That Plaintiff and Class Members are entitled to injunctive relief and
23 restitution pursuant to Cal. Bus & Prof. Code § 17535;

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- f. That Plaintiff and Class Members be awarded reasonable attorneys’ fees and costs of this suit pursuant to Code of Civil Procedure § 1021.5, and California Civil Code § 1780, and/or other applicable law; and
- g. Any and all other relief as this Court may deem necessary or appropriate.

TRIAL BY JURY

Plaintiff demands a trial by jury.

Dated: June 27, 2017

AMARTIN LAW, PC
BRENNAN & DAVID LAW GROUP

By: 

Lindsay David, Attorney

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DECLARATION OF KEVIN PARK

I, KEVIN PARK, hereby declare that:

1. I have personal knowledge of the following facts stated in this Declaration and could competently testify thereto if called upon to do so.
2. I am the named Plaintiff in this case.
3. I purchased the Cole Haan product, as described in Paragraph 19 of the Complaint in San Diego County, California.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing Declaration is true and correct and was executed in San Diego County, California on July 13, 2017.

Dated: July 13, 2017

DocuSigned by:
Kevin Park
KEVIN PARK, Declarant

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Kevin Park, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Alisa Martin, SBN 224037 600 W Broadway, Ste 700, San Diego, CA
Lindsay David, SBN 149075, 2173 Salk Ave, Suite 250, Carlsbad, CA
(760)730-9408

DEFENDANTS
Cole Haan LLC and Apax Partners Worldwide

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'17CV1422 LAB BGS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party) **AJS**
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input checked="" type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|---|--|---|---|---|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY | CIVIL RIGHTS | PRISONER PETITIONS | | | |
| <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | | |

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Cal. Bus & Prof Code Section 17200; Cal Bus & Prof Code Section 17500; Cal Civ Code Section 1750
 Brief description of cause:
Class action arising from Defendants' False and Misleading Pricing.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 7,500,000 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 07/13/2017 SIGNATURE OF ATTORNEY OF RECORD: *Lindsay David*

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.