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16
17 **IN THE UNITED STATES DISTRICT COURT**
18
19 **SOUTHERN DISTRICT OF CALIFORNIA**

20 KEVIN PARK, individually and on
21 behalf of all others similarly situated,

22 Plaintiff,
23
24 v.
25

26 COLE HAAN, LLC, a Delaware
27 Limited Liability Company,

28 Defendant.

Case No. 3:17-cv-01422-LAB-BGS

FIRST AMENDED 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.;***

DEMAND FOR A JURY TRIAL

1 Plaintiff Kevin Park (“Plaintiff” or “Park”), individually and on behalf of all
 2 others similarly situated, alleges for his complaint against Defendant Cole Haan, Inc.
 3 (“Cole Haan” or “Defendant”) as follows:

4 **SUMMARY OF THE CLAIMS**

5 **1.** This is a class action regarding Defendant’s false and misleading pricing.
 6 Specifically, Defendant owns five (5) retail stores and ten (10) outlet stores
 7 throughout California.¹ Defendant sells items at the outlet stores representing that the
 8 items are discounted and its customers are receiving a discount from what the item is
 9 normally priced at. Defendant does this by marking each item with a price and then
 10 advertising store-wide massive discounts. This however is not the case. Contrary to
 11 Defendant’s representations, the items it sells in its outlet stores are not in fact
 12 discounted as Defendant represents. The items were always sold at a discounted rate.
 13 Thus, the original price was a tactic designed to mislead consumers into believing
 14 they were receiving an item at a discounted rate.

15 **2.** During the Class Period, Defendant continually misled consumers by
 16 advertising the outlet items at discounted or sale prices when in fact the items were
 17 never sold at the price the discount was purportedly taken from. This pricing scheme
 18 is designed to mislead consumers into believing they are receiving a discount, when
 19 in fact, they are not.

20 **3.** As further illustration of Defendant’s misleading price tactics, the
 21 Defendant manufactures the majority of merchandise it sells in its outlet locations
 22 specifically for the outlet stores, instead of selling previous seasons’ merchandise as
 23 is traditionally associated with outlet stores. In order to sell these items at prices that
 24 are only a fraction of the retail store prices, the items are often of inferior quality.
 25 Thus, the general retail stores are often made of better leather, better stitching, etc. yet
 26 Defendant misleads its customers by including prices commensurate with those of the

27
 28 ¹ <https://stores.colehaan.com/us.html>

1 retail store and then marketing purported discounts from these items that are false and
2 misleading because the items were never sold at the price the discount is taken from.
3 Rather, the items were always sold at a rate similar to the discounted price. Defendant
4 subtly marks the items made for the outlet stores by including a "II" after the items'
5 name on the shoebox. For example, the outlet shoebox marks a shoe made specifically
6 for the outlet as "Grand Crosscourt II."

7 4. Because Defendant manufactures its items for sale in its own retail stores
8 and its own outlet stores, this scheme of setting value price and a subsequent discount
9 therefrom on its outlet items is designed solely to mislead consumers. Consumers
10 believe the original prices represent former prices of the items. Further, because of
11 the fact that consumers are shopping in an outlet store and the prices from which the
12 discounts are taken are similar to the prices in the traditional retail stores, consumers
13 believe they are purchasing items previously sold in the retail stores and thus of the
14 same quality.

15 5. Defendant fraudulently concealed from, and intentionally failed to
16 disclose to, Plaintiff, and others similarly situated, the fact that (1) they are buying
17 items made specifically for the outlet and (2) the items were never sold at the price
18 from which the discounted and sale prices is derived from. Therefore, the items or
19 the discounted price they are led to believe they are receiving from Defendant's
20 marketing. The product, the original price of the item, and the discounted rate are
21 material terms to the consumer purchasing one of Defendant's products.

22 6. Defendant could have avoided the false and misleading representations
23 giving rise to the violations alleged herein by indicating to the public it had two lines
24 of products: one prestigious line available at traditional retail stores and one cheaper
25 line sold at the outlet stores. Many companies employ this technique including
26 Victoria's Secrets which has the line Pink and Marc Jacobs which has the line Marc
27 by Marc Jacobs. Moreover, to fuel consumers' beliefs that they were purchasing the

1 high-end Cole Haan products, Defendant misleadingly valued the outlet store items
 2 at prices commensurate to the traditional retail prices and then subsequently marketed
 3 the items as “on sale” and “discounted” from the higher price even though the items
 4 were never sold at the higher price. To add salt to the wound, Defendant never even
 5 intended to sell the item at the price.

6 **THE PARTIES**

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

9. **Defendant:** On information and belief, Defendant Cole Haan, Inc. is a
 10 Delaware corporation with its principal place of business in New Hampshire. Cole
 11 Haan owns and operates hundreds of stores worldwide, including five (5) traditional
 12 retail stores in California and ten (10) outlet stores in California as well as an online
 13 website.

14 **JURISDICTION & VENUE**

15. Plaintiff realleges by reference, as if fully set forth herein, all of the
 16 above Paragraphs.

17. This Court has original jurisdiction over this Action under the Class
 18 Action Fairness Act, 28 U.S.C. § 1332(d), because this is a class action in which: (1)
 19 at least some members of the proposed Class have a different citizenship from
 20 Defendant; and (2) the claims of the proposed Class members exceed \$5,000,000.00
 21 in the aggregate. On information and belief, the claims exceed \$5,000,000 because
 22 Defendant had ten (10) outlet stores that engaged in the pricing scheme at issue herein
 23 and the majority of items sold in the outlet stores were manufactured specifically for
 24 the outlet and subject to the false and misleading pricing scheme whereby the items
 25 were represented to be sold at a discount that was inaccurate. Further, Cole Haan
 26 generates revenue of approximately \$500 million dollars per year.² Because Cole

28 ² <https://www.reuters.com/article/idUSWNB301620130111>

1 Haan has a total of 208 locations³, of which ten (or approximately 5%) are outlet
2 stores in California, the revenue from the California outlet stores alone well exceed
3 \$5,000,000 per year.

4 **11. Personal jurisdiction:** The Southern District of California has personal
5 jurisdiction over defendant Cole Haan, LLC because it has systematic and continuous
6 contacts with the state of California. The Court also has specific personal jurisdiction
7 over Cole Haan, LLC because the claims alleged herein arise directly from its specific
8 contacts with the state of California, namely its sales of Cole Haan products to
9 California citizens using pricing schemes that violate California law.

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

FACTUAL BACKGROUND

14 **13.** As represented above, Defendant operates five (5) retail and ten (10)
15 outlet stores in California. Additionally, Defendant operates an online website where
16 consumers have the option to purchase items from its retail store or its outlet store.

17 **14.** Defendant prides itself by creating an image of quality and luxury
18 “American craftsmanship and ingenuity.” Cole Haan’s website boasts:

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

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

25 15. Additionally, Defendant strives to promote exclusivity of their brand by
26 using celebrities, such as Maria Sharapova, to endorse its products.

³ <https://stores.colehaan.com/index.html>

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

4 17. However, in an effort to maximize their profits, Defendant utilized a
5 scheme where it manufactured inferior products directly for its outlet stores, valued
6 the items at prices commensurate with the retail store prices and then advertised
7 significant discounts and sales from these prices, misleading customers into believing
8 they were receiving a significant discount – when in fact they were not because the
9 products were never sold at the higher rate. The outlet stores essentially allowed
10 Defendants to increase sales by marketing products as if they were retail store
11 products (both in price and quality) but sell them at discounted rates.

12 **18.** Customers of the outlet stores, relying on Defendant's representations,
13 believed they were getting a bargain by receiving the Cole Haan quality retail product,
14 at a discount from the higher price marked on the item. This was not the case.

PLAINTIFF'S FACTS

16 19. On June 25, 2017, Plaintiff purchased the Grand Crosscourt II for his
17 wife. Plaintiff was shopping at the Carlsbad Premium Outlets and was enticed to
18 enter the Cole Haan because of a large sign indicating there was a 20-40% off sale
19 going on inside. Plaintiff interpreted this sign to mean that each of the items were 20-
20 40% off of the original prices. Plaintiff entered the store and found a shoe for his
21 wife. The shoe included a price of \$182 and a sign above it that said 50% off. Because
22 of this signage, Plaintiff believed that he was purchasing an item originally sold at the
23 higher price of \$182 and on sale for 50% off. Moreover, there was a sale whereby if
24 a customer spent over \$200, the customer could receive an additional \$50 off. As
25 such, Plaintiff purchased an additional item to receive the discount.

26 **20.** Plaintiff, believed his purchase, based on the value and discount, was a
27 good deal. Plaintiff relied on the higher price listed on the shoe and discount

1 therefrom to determine whether he believed the shoes were high quality Cole Haan
2 shoes previously sold in the retail store and whether he was receiving a good deal.
3 The higher price led Plaintiff to believe that the shoes were from the traditional store
4 because it was similar to the prices of the traditional stores.

5 **21.** When Plaintiff returned home, his wife tried on the shoe and wore them.
6 His wife commented that they did not feel as comfortable as a high-quality pair she
7 had previously owned. Plaintiff examined the show and noticed that there appeared
8 to be some glue along the sole and the stitching was coming up. Plaintiff did some
9 online research and discovered that the shoes he purchased were not the same quality,
10 never sold at the traditional store, and he had been duped into believing he received a
11 good price for the item but the item had always been sold at around the price he paid
12 for them.

13 **22.** Plaintiff would not have purchased the item, or paid as much for the item,
14 had he known the item was (1) never sold at the traditional retail store and (2) never
15 sold at the higher price listed on the shoe.

16 **23.** Moreover, recently Plaintiff went on the Cole Haan website and noticed
17 that since this lawsuit was filed, Cole Haan revised the website to remove separate
18 tabs for “Cole Haan” and “Outlet” and instead have one Cole Haan website with a
19 link for “\$150 and under.”

CLASS ACTION ALLEGATIONS

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

24 All persons who purchased a Cole Haan Outlet Product made for the
Cole Haan Outlet in California bearing an original price at any time since
July 13, 2013 excluding (a) any officers, directors, or employees of
Defendant, (b) any Judge assigned to hear this case (or spouse or
immediate family member of any assigned Judge), any employee of the
Court, (d) any juror selected to hear the case, and (e) any attorneys of
record and their employees.
25
26
27

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

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

7 4. **Typicality:** Plaintiff is a member of the Class of victims described
8 herein. Plaintiff purchased products from Defendants. Plaintiff was misled by
9 Defendants as to both the product he purchased and the discounted value of the
10 product.

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

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

- f. Whether Defendant sold their outlet products outside their outlet stores at the higher price;
- g. Whether Defendant ever sold its outlet products at the higher price;
- h. Whether Defendant violated the Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*);
- i. Whether Defendant violated the Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*) by violating the Consumer Legal Remedies Act (Cal. Civ. Code §1750 *et seq.*);
- j. Whether Defendant violated the Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*) by violating the Federal Trade Commission Act (15 U.S.C. §§ 45(a)(1), 52(a));
- k. Whether Defendant’s use of false or deceptive price advertising constituted false advertising under California law;
- l. Whether the stated higher prices were the prevailing market prices for the items sold by Defendant during the three-month periods preceding the dissemination or publication of the advertised former prices;
- m. Whether Defendant misrepresented or failed to disclose material facts about its product pricing and discounts, including that the products were never sold for the original price;
- n. Whether Defendant misrepresented or failed to disclose material facts about its products, including that the product was manufactured specifically for the outlet stores;
- o. Whether Defendant made false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;
- p. Whether Defendant has been unjustly enriched as a result of its representations that the “sale” prices represented price reductions;
- q. Whether Defendant’s conduct herein was intentional and knowing;

- r. Whether the Plaintiff and Class Members are entitled to damages or consumer restitution and the proper measure of that loss; and
- s. The appropriate class-wide measure of damages.

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

FIRST CAUSE OF ACTION

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

By Plaintiff and the Class Against Defendant

22 7. Plaintiff incorporates all preceding paragraphs as though fully set forth
23 herein.

24 8. California's unfair competition law, codified in California Business &
25 Professions Code § 17200 *et seq.*, makes actionable "any unlawful, unfair **or**
26 fraudulent business act or practice and unfair, deceptive, untrue or misleading
27 advertising." *See* Cal. Bus. & Prof. Code § 17200 (emphasis added). It allows

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

6 **Unlawful**

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

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

17 11. Because prices are a representation of quality and value, when Defendant
 18 represented its outlet prices had a higher price, it represented that those products were
 19 of a higher standard, quality, or grade when, in fact, they were of another. In
 20 representing that item was sold at a percentage off a higher price marked on the item,
 21 Defendant represented that the items were being sold at a discount, when in fact the
 22 items were not being sold at the discounted rate Defendant represented because the
 23 items were never sold at the original rate. Accordingly, Defendant made false and
 24 misleading statements of fact concerning the existence of, or amounts of price
 25 reductions.

26 12. As another example, Defendant's conduct violated the FTCA (15 U.S.C.
 27 § 45(a)(1) and 15 U.S.C. § 52(a)) which prohibits "unfair or deceptive practices in or
 28

1 affecting commerce and specifically prohibits false advertisements. The FTC has
 2 established regulatory guidelines that prohibit false pricing schemes, similar to
 3 Defendant's pricing scheme described herein, as deceptive practices that would
 4 violate the FTCA. 16 C.F.R. § 233.1 *et seq.*

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

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

16 ***

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

25 ***

26 (i) It bears repeating that the manufacturer, distributor or retailer must in
 27 every case act honestly and in good faith in advertising a list price, and not
 28 with the intention of establishing a basis, or creating an instrumentality, for a
 deceptive comparison in any local or other trade area. For instance, a
 manufacturer may not affix price tickets containing inflated prices as an

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

3 16 C.F.R. § 233.3 (emphasis added).

4

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

9

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

16

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

27

28 **17.** As a result of Defendant's unfair acts and practices, Plaintiff, Class
members, and the general public have suffered injury in fact and have lost money or
property. These violations have unjustly enriched Defendant at the expense of

1 || Plaintiff and the Class.

2 **18.** Under Section 17203 of the Business & Professions Code, the California
3 Plaintiffs and the other members of the Class are entitled to (a) restitution and
4 disgorgement of all unjustly retained profits paid to Defendants; (b) equitable relief;
5 (c) pre- and post-judgment interest at the highest rate allowable by law; and (d)
6 payment of attorneys' fees and costs pursuant to Section 1021.5 of the California
7 Code of Civil Procedure.

8 | 19. THEREFORE, Plaintiff prays for relief as set forth below.

Unfair

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

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

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

26 a. Engaging in conduct for which the utility of the conduct, if any, is
27 outweighed by the gravity of the consequences to Plaintiff and members

1 of the Class;

2 b. Engaging in conduct that is immoral, unethical oppressive,
3 unscrupulous, or substantially injurious to Plaintiff and the members of
4 the Class; and
5 c. Engaging in conduct that undermines or violates the spirit or intent of
6 the consumer protection laws that this Class Action Complaint invokes.

7 **23.** Specifically, Defendant engaged in unfair business acts or practices in
8 violation of the UCL by representing prices for items, from which discounts are taken,
9 even though Defendant never sold, intended or expected to sell the products at that
10 higher price. These tactics, including the fact that the products were made for the
11 outlet, the item was never sold at the higher price, and the erroneous sale price derived
12 from the higher price resulted in false, misleading, and deceptive illusions of
13 discounts.

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

24 **25.** The gravity of harm to members of the Class resulting from these unfair
25 acts and practices outweighed any business justifications for Defendant's deceptive
26 acts and practices. Defendant could have manufactured two separate lines one more
27 prestigious line and one lower cost line and priced each line accordingly. By

1 committing the acts and practices alleged herein, Defendant engaged in unfair
2 business practices within the meaning of the UCL. Such acts and violations have not
3 abated and will continue to occur unless enjoined.

4 **26.** As a result of Defendant's unfair acts and practices, Plaintiff and
5 members of the Class have suffered injury in fact in that they have lost money or
6 property due to Defendant's false representations of an original price for an item from
7 which a discount is taken even though Defendant never sold or intended to sell the
8 item at that price as well as manufacturing the products specifically for its outlet
9 stores.

10 **27.** Moreover, Defendant's conduct as alleged herein solely benefits
11 Defendant while providing no benefit of any kind to any consumer. Such deception
12 utilized by Defendant converted large sums of money from Plaintiff and Class
13 members by misleading them as to the value of the product they purchased. This
14 systematic scheme is tantamount to theft. Thus, the injury suffered by Plaintiff and
15 the members of the Class is not outweighed by any countervailing benefits to
16 consumers.

17 **28.** Finally, the injury suffered by Plaintiff and members of the Class is not
18 an injury that these consumers could reasonably have avoided. Defendant
19 misappropriated funds from Plaintiff and other consumers, and these consumers
20 suffered injury in fact due to Defendant's misrepresentation as to material facts
21 regarding their products. As such, Defendant took advantage of Defendant's position
22 of perceived power in order to deceive Plaintiff and the Class members. Therefore,
23 the injury suffered by Plaintiff and members of the Class is not an injury which these
24 consumers could reasonably have avoided.

25 **29.** Pursuant to California Business & Professions Code § 17203, Plaintiff
26 and the Class are entitled to: (a) full restitution and disgorgement by Defendant of all
27 profits received by Defendant as a result of its wrongful practices; (b) interest at the
28

1 highest rate allowable by law; and (c) the payment of their attorneys' fees pursuant
 2 to, *inter alia*, California Code of Civil Procedure § 1021.5.

3 **30.** THEREFORE, Plaintiff prays for relief as set forth below.

4 **Fraudulent**

5 **31.** California Business & Professions Code § 17200 prohibits any
 6 "unlawful, unfair, or fraudulent" act or practice, as well as any "unfair, deceptive,
 7 untrue, or misleading" advertising. Cal. Bus. & Prof. Code § 17200.

8 **32.** A business act or practice is "fraudulent" under the UCL if it is likely to
 9 deceive members of the consuming public.

10 **33.** Defendants' marketing and advertising were "fraudulent" within the
 11 meaning of the UCL because they deceived Plaintiff, and were likely to deceive
 12 members of the class, into believing that Defendants were offering value, discounts,
 13 and bargains from the prevailing market value or worth of the products sold that did
 14 not, in fact, exist. As a result, purchasers, including Plaintiff reasonably perceived
 15 that they were receiving products that regularly sold in the retail marketplace at
 16 substantially higher prices (and were, therefore, worth more) than what they paid.
 17 This perception induced reasonable purchasers, including Plaintiff, to buy such
 18 products from Defendant, which they otherwise would not have purchased.

19 **34.** Under Section 17203 of the Business & Professions Code, the California
 20 Plaintiff and the other members of the California Subclass are entitled to (a) restitution
 21 and disgorgement of all unjustly retained profits paid to Defendant; (b) equitable
 22 relief; (c) pre- and post-judgment interest at the highest rate allowable by law; and (d)
 23 payment of attorneys' fees and costs pursuant to Section 1021.5 of the California
 24 Code of Civil Procedure.

25 **35.** Defendant's acts and practices as described herein have deceived
 26 Plaintiff and were highly likely to deceive members of the consuming public.
 27 Specifically, in deciding to purchase a product from Defendant, Plaintiff relied on

1 Defendant's misleading and deceptive representations regarding the fact that the items
2 never came from the traditional retail store and were instead manufactured for the
3 outlets, the value of the item, and the amount of the sale and discount. Each of these
4 factors played a substantial role in Plaintiff's decision to purchase the product, and
5 Plaintiff would not have purchased the product but for Defendant's
6 misrepresentations. Accordingly, Plaintiff suffered monetary loss as a direct result of
7 Defendant's practices described herein.

8 **36.** As a result of the conduct described above, Defendant has been unjustly
9 enriched by obtaining revenues and profits it would not have otherwise obtained
10 absent its false, misleading, and deceptive conduct.

11 37. Under Section 17203 of the Business & Professions Code, the California
12 Plaintiffs and the other members of the California Subclass are entitled to (a)
13 restitution and disgorgement of all unjustly retained profits paid to Defendant; (b)
14 equitable relief; (c) pre- and post-judgment interest at the highest rate allowable by
15 law; and (d) payment of attorneys' fees and costs pursuant to Section 1021.5 of the
16 California Code of Civil Procedure.

17 ||| 38. THEREFORE, Plaintiff prays for relief as set forth below.

SECOND CAUSE OF ACTION

Violation of California's Unfair Competition Law, § 17535

By Plaintiff and the Classes Against Defendant

21 **39.** Plaintiff incorporates all preceding paragraphs of this as though fully
22 stated herein.

23 **40.** The California False Advertising Law prohibits unfair, deceptive, untrue,
24 or misleading advertising, including, but not limited to, false statements as to worth,
25 value, and former price.

41. Cal. Bus. & Prof. Code §17535 allows “any person who has suffered
injury in fact and has lost money or property” to prosecute a civil action for violation

1 of the UCL. People may bring such an action on behalf of themselves or themselves
2 and others similarly situated who are affected by the unlawful, unfair, or fraudulent
3 business practice.

4 **42.** Defendant's practice of advertising the a higher price from which a sale
5 percentage off is applied, even though the higher price was materially greater than the
6 true prevailing prices of those products, was an unfair, deceptive, and misleading
7 advertising practice because it gave the false impression that the products sold by
8 Defendant regularly sold in the retail marketplace at substantially higher prices (and
9 were, therefore, worth more) than they actually were. In fact, Defendant's products
10 did not have a prevailing market price anywhere close to the higher price from which
11 the sale discount was applied.

12 **43.** Through its unfair acts and practices, Defendant has improperly obtained
13 money from Plaintiff and the Class. As such, Plaintiff requests that the Court cause
14 Defendant to restore this money to Plaintiff and all Class members.

15 **44.** Plaintiff and the Class request relief as described below.

16 **PRAYER FOR RELIEF**

17 **45.** WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiff
18 and the Class Members damages against Defendant and judgment as follows:

- 19 **a.** That this action be certified as a Class Action, Plaintiff be appointed as
20 the representatives of the Class, and Plaintiff's attorneys be appointed
21 Class Counsel;
- 22 **b.** An order requiring Defendant to pay restitution to Plaintiff and Class
23 Members due to Defendant's UCL violations, pursuant to Cal. Bus. &
24 Prof. Code §§ 17200-17205;
- 25 **c.** An order requiring imposition of a constructive trust and and/or
26 disgorgement of Defendant's ill-gotten gains and to pay restitution to
27 Plaintiffs and all class members and to restore to Plaintiffs and class

1 members all funds acquired by means of any act or practice declared by
2 this court to be an unlawful, fraudulent, or unfair business act or
3 practice, in violation of laws, statutes or regulations, or constituting
4 unfair competition;

5 **d.** That Plaintiff and Class Members be awarded reasonable attorneys'
6 fees and costs of this suit pursuant to Code of Civil Procedure § 1021.5,
7 and California Civil Code § 1780, and/or other applicable law; and
8 **e.** Any and all other relief as this Court may deem necessary or
9 appropriate.

10 **TRIAL BY JURY**

11 Plaintiff demands a trial by jury.

12 Dated: August 13, 2018

13 AMARTIN LAW, PC
14 BRENNAN & DAVID LAW GROUP

15 By: s/ *Lindsay David*
16 Lindsay David, Attorney