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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Case No. 2:16-cv-03791-JGB-SP

AMY EVANS, individually and on
behalf of all others similarly situated,

**SECOND AMENDED CLASS
ACTION COMPLAINT
(CORRECTED)**

Plaintiff,

JURY TRIAL DEMANDED

v.

DSW, INC.,

1. Violation of the “Unfair” Prong of the UCL
2. Violation of the “Fraudulent” Prong of the UCL;
3. Violation of the “Unlawful” Prong of the UCL;
4. Violation of the California False Advertising Law, California Business & Professions Code Section 17500, *et seq.*;
5. Violation of the Consumers Legal Remedies Act, Cal. Civil Code Section 1750, *et seq.*;
6. Unjust Enrichment
7. Breach of Express Warranty
8. Breach of Contract

Defendant.

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CLASS ACTION COMPLAINT

Plaintiff, AMY EVANS (“Plaintiff” or “Evans”), on behalf of herself and all others similarly situated, alleges the following based upon personal knowledge and the investigation of her counsel:

INTRODUCTION

1. This is a civil class action on behalf of a class of consumers (defined below) seeking restitution, actual and punitive damages, and injunctive and declaratory relief from Defendant, DSW, Inc., (“DSW”), arising from its deceptive and misleading labeling and marketing of exclusive merchandise sold only at DSW stores and on DSW’s website, www.dsw.com.

2. During the Class Period (defined below), DSW intentionally misrepresented product prices on products manufactured by DSW and exclusively sold by DSW, by advertising phantom reductions from “Compare At” prices and promising a “YOU SAVE” amount. To illustrate, below is an example of the type of in-store price tags, called “Case Talkers,” Plaintiff and Class members relied on:



3. Plaintiff understood the “Compare At” price to represent an original price or a price at which the products formerly sold. Plaintiff similarly understood

1 the promised “You Save” amount as an amount that she was saving compared to a
2 price at which the products were formerly sold or sold elsewhere.

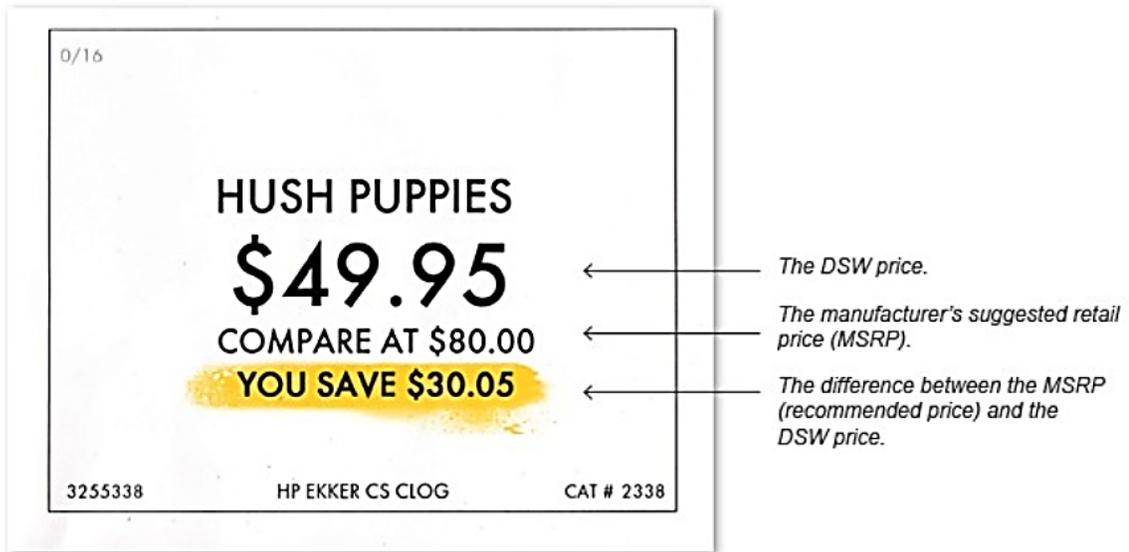
3 4. Plaintiff’s understanding of “Compare At” was reasonable given
4 DSW’s former internal definition of “Compare At.” On its website, and for a
5 majority of the relevant time period, DSW defined the “Compare At” price as a
6 manufacturer’s suggested retail price:

7 **What do "Compare At" and "You Save" mean?** [Back to top](#)

8 At DSW, we're passionate about shoes—and how we sell them.

9 The "COMPARE AT" price refers to the manufacturer's suggested retail price (MSRP).

10 The "YOU SAVED" price is the money you save by shopping at DSW. It's the difference between what DSW customers pay and the "COMPARE AT" price that is recommended by the manufacturer.



20 See http://www.dsw.com/dsw_shoes/customer_service/index.jsp?content=cs_faq
21 (visited December 1, 2015).

22 5. As the FTC has made clear, “[m]any members of the purchasing
23 public believe that a manufacturer’s list price, or suggested retail price, is the price
24 at which an article is generally sold. Therefore, if a reduction from this price is
25 advertised, many people will believe that they are being offered a genuine bargain.”
26 16 C.F.R. § 233.3(a).

27 6. Very recently, DSW changed its website definition of the term
28 “Compare At” to state that some advertised “Compare At” prices are **not** actually

1 MSRPs, but might be “estimates” of prices for non-identical goods: “Our
2 COMPARE AT price typically refers to the manufacturer’s suggested retail price
3 (MSRP), *but when an MSRP is not available, the COMPARE AT price is our*
4 *estimate of other retailers’ ticketed prices for the same or similar items.*” See
5 http://www.dsw.com/dsw_shoes/customer_service/index.jsp?content=cs_faq
6 (visited May 26, 2016) (recently added language italicized).

7
8 **DSW’S BUSINESS MODEL DURING THE CLASS PERIOD**

9 7. DSW’s business model is simple and well documented. As DSW
10 explains in its Form 10-K for the period ending January 30, 2016, “from the day
11 [they] arrive in store,” all products sold at DSW are advertised at a “discount” from
12 higher “Compare At” reference prices:

13 We have historically employed a consistent pricing strategy that
14 provides customers with the same price on our merchandise from the
15 day it arrives in store until it enters our planned clearance rotation. Our
16 pricing strategy differentiates us from our competitors who usually price
and promote merchandise at discounts available only for limited time
periods. We find that customers appreciate shopping for value when it
is most convenient for them, rather than waiting for a sale event.

17 See, e.g., DSW Form 10-K for the period ending January 30, 2016 (“DSW 10-
18 K”), attached as Exhibit A, p. 9.

19 8. In short, every DSW product is always offered at a supposed “discount.”
20 That discount is off the supposed “Compare At” price.

21 9. However, the Compare At prices are not prices at which the DSW
22 Exclusive Products, which are manufactured exclusively for DSW and sold
23 exclusively at DSW, have ever been offered for sale or sold. They are instead
24 deceptive reference prices designed and intended to increase DSW’s sales at the
25 expense of reasonable consumers.

26 **BRANDS MANUFACTURED AND SOLD EXCLUSIVELY BY DSW**

27 10. As part of its business model, DSW creates and trademarks brand names
28 and then produces, markets, and exclusively sells products under those private brand

1 names in DSW stores (“DSW Exclusive Products”):

2 Through sourcing and product development, our buying team *produces*
3 a differentiated, on-trend assortment with exclusive merchandise and
4 *private brands* that effectively distorts our assortment to the most
5 relevant categories. We strive to provide compelling everyday values to
the customer by sourcing opportunistic buys and using our buying
leverage and vendor relationships to secure product at favorable cost.

6 *See* DSW 10-K, p. 37 (emphasis added). DSW does not inform its customers,
7 however, that any particular item is a DSW Exclusive Product.

8 11. DSW Exclusive Products include all products sold under the following
9 brand names, among many others, trademarked by DSW: Kelly & Katie, Lulu
10 Townsend, Poppie Jones, Audrey Brooke, and One Wink. *See* Composite
11 Exhibit B, US Patent and Trademark Office trademark registries for Kelly & Katie,
12 Audrey Brooke, and One Wink. DSW does not inform customers in DSW stores
13 or on www.dsw.com that items bearing these brand names are DSW
14 Exclusive Products.

15 12. The price tags for DSW Exclusive Products include Compare At
16 reference prices. However, the DSW Exclusive Products are *never sold anywhere*
17 at the higher Compare At prices. In fact, DSW Exclusive Products are
18 manufactured *exclusively for DSW* at DSW’s direction. Those products are then
19 marketed and sold *exclusively by DSW* and always sold at a supposed discount off
20 of the Compare At prices. Thus, the “Compare At” prices are not and could not be,
21 as DSW promises, and Plaintiff believed, prices at which the items previously sold.

22 13. DSW Exclusive Products were never sold or intended to be sold at the
23 “Compare At” prices. Indeed, DSW itself sets the prices for its DSW Exclusive
24 Products knowing full well that the products will never be sold anywhere at the
25 Compare At price; the only purpose of the Compare At price is to provide an
26 artificially high price from which a phantom discount can be taken.

27 14. Evans reasonably believed that the Compare At prices she viewed,
28 such as \$75.00 and \$55.00, were true former, original, or regular prices of the DSW

1 Exclusive Products she purchased. Had she known that items she purchased were
2 never sold or intended to be sold at the Compare At price (and that therefore the
3 You Save amount was false), she would not have purchased the products or she
4 would not have been willing to pay the amount she did.

5 **DSW’S DECEPTIVE SCHEME**

6 15. DSW intentionally led Plaintiff, and reasonable consumers like her, to
7 believe that the “Compare At” price advertisements on DSW Exclusive Products
8 represented authentic former price information for the products she purchased. In
9 reality, DSW Exclusive Products are manufactured exclusively for DSW, sold
10 *exclusively* by DSW and are always sold for less than the advertised “Compare At”
11 price. DSW does not inform its customers, moreover, that any particular item is a
12 DSW Exclusive Product

13 16. Accordingly, DSW’s “Compare At” prices are false promises and
14 deceptive advertisements designed by DSW to represent a false reference price,
15 facilitate sham markdowns, and increase sales.

16 17. DSW further advertises false price information and phantom
17 markdowns by prominently representing a “YOU SAVED” amount on receipts
18 consumers are given at the point of sale. The “YOU SAVED” amount is the
19 difference between the advertised Compare At prices and the actual prices for
20 consumers’ product purchases. A true and correct copy of one such receipt
21 presented to Plaintiff at the time of her purchase is reproduced below:
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18. The “YOU SAVED” representation furthered Plaintiff’s reasonable belief that the Compare At price portrayed true and accurate former price information and that she was actually saving the promised “You Save” amount.

19. The “YOU SAVED” affirmation confirms that the promised “You Save” amount was part of the basis of the bargain between Plaintiff and the class on the one hand, and DSW on the other.

20. In reality, contrary to DSW’s promises, consumers like Plaintiff do not “save” any money since the Compare At price on DSW Exclusive Products is a sham. Indeed, “savings” on a product must be based on the actual amount it would cost to purchase the exact same product elsewhere, either currently or in the recent past.

1 21. For example, when Plaintiff bought a pair of Kelly & Katie sandals for
2 \$39.95, she did not “save” \$35.05 as the price tag and receipt told her. The Kelly &
3 Katie sandal she purchased is a DSW Exclusive Product that has never been sold
4 anywhere else at any price, and has only ever been offered for sale at DSW at a
5 price far lower than the “Compare At” price of \$75.00. In other words, Plaintiff did
6 not receive the \$35.05 savings that DSW promised her.

7 22. DSW knows consumers are bargain-hunters, and it knows that
8 consumers are excited by the prospect of a bargain. The juxtaposition of an
9 artificial “Compare At” price and a lower actual price, and a “You Save” price, on
10 DSW Product price tags is intentionally designed to convey to the consumer that he
11 or she is receiving a bargain or a “deal” on the product—on sales terms more
12 preferential or more optimal to the consumer than those offered outside the context
13 of the outlet store. But there is no bargain to be had. DSW includes the “Compare
14 At” price on its DSW Products only to create the illusion of a bargain. Consumers
15 never actually save the promised “You Save” amount on DSW Exclusive Products
16 that were never offered anywhere else for sale.

17 23. Because the products at issue here were never sold anywhere at the
18 Compare At price, the advertised “Compare At” prices were *never* the prevailing
19 market retail prices, and they most certainly were not the prevailing market retail
20 prices within three months immediately preceding the publication of the advertised
21 prices, as required by California law. Business & Professions Code § 17501,
22 entitled “*Value determinations; Former price advertisements*,” states:

23 For the purpose of this article the worth or value of anything advertised
24 is the prevailing market price, wholesale if the offer is at wholesale,
25 retail if the offer at retail, at the time of publication of such
26 advertisement in the locality wherein the advertisement is published.

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

1 (emphasis added).

2 24. The Federal Trade Commission (“FTC”) explicitly describes this
3 fictitious pricing scheme employed at DSW Outlets as deceptive:

4 (a) Many members of the purchasing public believe that a
5 manufacturer's list price, or suggested retail price, is the price at
6 which an article is generally sold. Therefore, if a reduction from
7 this price is advertised, many people will believe that they are
8 being offered a genuine bargain. To the extent that list or
9 suggested retail prices do not in fact correspond to prices at which
10 a substantial number of sales of the article in question are made,
11 the advertisement of a reduction may mislead the consumer. A
12 former price is not necessarily fictitious merely because no sales
at the advertised price were made. The advertiser should be
especially careful, however, in such a case, that the price is one at
which the product was openly and actively offered for sale, for a
reasonably substantial period of time, in the recent, regular course
of her business, honestly and in good faith – and, of course, not
for the purpose of establishing a fictitious higher price on which
a deceptive comparison might be based.

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

17 16 C.F.R. § 233.3.

18 25. Further, to the extent DSW attempted to advertise comparable prices to
19 similar but not identical products, they failed. In fact, DSW’s only mention that
20 their “Compare At” pricing *may* be an “estimate of other retailers’ ticketed prices
21 for the same or similar items” is found buried in their online Frequently Asked
22 Questions, which was only recently updated in light of ongoing litigation.

23 26. The FTC also describes the proper way to perform comparable price
24 advertising and explicitly states that DSW’s pricing scheme serves no legitimate
25 purpose:

26 (a) Another commonly used form of bargain advertising is to
27 offer goods at prices lower than those being charged by others for
28 the same merchandise in the advertiser’s trade area (the area in
which he does business). This may be done either on a temporary
or a permanent basis, but in either case the advertised higher price

1 must be based upon fact, and not be fictitious or misleading.
 2 Whenever an advertiser represents that he is selling below the
 3 prices being charged in his area for a particular article, he should
 4 be reasonably certain that the higher price he advertises does not
 5 appreciably exceed the price at which substantial sales of the
 6 article are being made in the area—that is, a sufficient number of
 7 sales so that a consumer would consider a reduction from the
 8 price to represent a genuine bargain or saving. Expressed another
 9 way, if a number of the principal retail outlets in the area are
 10 regularly selling Brand X fountain pens at \$10, it is not dishonest
 11 for retailer Doe to advertise: “Brand X Pens, Price Elsewhere \$10,
 12 Our Price \$7.50”.

13 (c) A closely related form of bargain advertising is to offer a
 14 reduction from the prices being *charged either by the advertiser*
 15 *or by others in the advertiser’s trade area for other merchandise*
 16 *of like grade and quality—in other words, comparable or*
 17 *competing merchandise—to that being advertised. Such*
 18 *advertising can serve a useful and legitimate purpose when it is*
 19 *made clear to the consumer that a comparison is being made with*
 20 *other merchandise and the other merchandise is, in fact, of*
 21 *essentially similar quality and obtainable in the area. The*
 22 advertiser should, however, be reasonably certain, just as in the
 23 case of comparisons involving the same merchandise that the
 24 price advertised as being the price of comparable merchandise
 25 does not exceed the price at which such merchandise is being
 26 offered by representative retail outlets in the area. For example,
 27 retailer Doe advertises Brand X pen as having “Comparable
 28 Value \$15.00”. Unless a reasonable number of the principal
 outlets in the area are offering Brand Y, an essentially similar pen,
 for that price, this advertisement would be deceptive.

16 C.F.R. § 233.2 (emphasis added).

27. The DSW pricing scheme and promises were prominently advertised
 on the price tags of all products available for sale at DSW stores in California. To
 illustrate, below is an example of the merchandise price tags that Plaintiff relied on:

HUSH PUPPIES
 \$49.95
 COMPARE AT \$80.00
 YOU SAVE \$30.05

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28. Upon information and belief, thousands of California consumers were victims of DSW’s deceptive, misleading and unlawful false pricing scheme and thousands more will be deceived if the practices continue.

29. DSW fraudulently concealed from, and intentionally failed to disclose to, Plaintiff and others similarly situated, the truth about its “Compare At” prices and advertised price discounts from those supposedly higher comparable prices.

30. DSW’s false representations of “Compare At” prices and false representations of savings, discounts and bargains are objectively material to a reasonable consumer.

31. Plaintiff relied upon such false representations of “Compare At” prices and discounts when purchasing shoes from DSW stores in California and DSW’s website. Plaintiff would not have made her purchases, or would not have paid the amount she did, but for DSW’s false representations of the “Compare At” price of the items she purchased, especially when juxtaposed with promised “You Save” amounts calculated based on the supposedly discounted “OUR PRICE” at which DSW offered the items for sale.

32. Plaintiff and other consumers like her reasonably believed that the Compare At prices associated with the products she purchased from DSW referred to a price at which the products were formerly sold. Based on this reasonable belief about the meaning of the Compare At prices, Plaintiff reasonably believed she was getting a terrific bargain on her purchases, and that she was saving the dollar amount promised. In reality, she was not getting a bargain at all, and was not receiving the benefit of the promised “You Save” amount.

33. DSW’s representations and affirmations that Plaintiff and all others would receive the benefit of the “You Save” amount or a discount price were false. Plaintiff and the Class did not, in fact, actually save the amount of savings promised by DSW because the DSW Exclusive Products Plaintiff and the Class purchased

1 were never sold anywhere at the higher “Compare At” price.

2 34. Even when the purchase price is lower than the DSW price due to an
3 additional discount, the “You Save” amount is nonetheless false because it’s
4 calculated based on an artificial “Compare At” price that no customer ever actually
5 paid for the product.

6 35. Through its false and deceptive marketing, advertising and pricing
7 scheme, DSW violated (and continues to violate) California law. Specifically,
8 DSW breached express warranties, breached its contracts with Plaintiff and the
9 class, and violated (and continues to violate) California’s Business & Professions
10 Code § 17200, *et seq.* (the “UCL”), California’s Business and Professions Code §
11 17500, *et seq.* (the “FAL”), the California Consumers’ Legal Remedies Act, Civil
12 Code § 1750, *et seq.* (the “CLRA”), and the Federal Trade Commission Act
13 (“FTCA”), which prohibits “unfair or deceptive acts or practices in or affecting
14 commerce” and specifically prohibits false advertisements. 15 U.S.C. §§ 52(a) &
15 45(a)(1).

16 36. Plaintiff, individually and on behalf of all others similarly situated,
17 seeks injunctive and declaratory relief, restitution, actual and punitive damages,
18 reasonable costs and attorneys’ fees, and other equitable remedies under the UCL,
19 FAL and CLRA.

20 **PARTIES**

21 37. Plaintiff Amy Evans is an individual who is a citizen of Sherman
22 Oaks, California. In reliance on Defendant’s false and deceptive advertising,
23 marketing and pricing schemes, Ms. Evans purchased five DSW Exclusive
24 Products in March and April 2016. These purchases were made at the DSW store
25 located in Sherman Oaks, California and online through DSW’s website,
26 www.dsw.com. As detailed herein, Plaintiff was induced to make these purchases
27 in reliance on DSW’s deceptive reference pricing scheme and was damaged as a
28 result thereof.

1 38. Defendant DSW is a corporation duly organized and existing under the
2 laws of the state of Ohio, with its principal place at 810 DSW Drive, Columbus,
3 Ohio, 43219. Defendant operates 45 DSW locations in California.
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5 **JURISDICTION AND VENUE**

6 39. This Court has original jurisdiction of this action under the Class
7 Action Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this
8 Court has original jurisdiction because the aggregate claims of the members of the
9 putative Class exceed \$5 million, exclusive of costs, and at least one of the
10 members of the proposed Class is a citizen of a different state than DSW.

11 40. The Central District of California has personal jurisdiction over DSW
12 because DSW is licensed and doing business in the State of California, authorized
13 to do business in California and registered with the California Secretary of State,
14 and has sufficient minimum contacts with California, having intentionally availed
15 itself of the California market so as to render the exercise of jurisdiction over it by
16 this District Court consistent with traditional notions of fair play and substantial
17 justice.

18 41. Venue is proper in the United States District Court, Central District of
19 California pursuant to 28 U.S.C. § 1391, because Plaintiff is a resident of Los
20 Angeles County, California; Defendant operates stores in Sherman Oaks, California
21 and because the events giving rise to the claims occurred in Sherman
22 Oaks, California.

23 **FACTUAL ALLEGATIONS**

24 42. Traditionally, retail outlet stores were located in remote areas and
25 typically maintained an inventory of defective and excess merchandise. Customers
26 often flocked to these outlets in hopes of finding steep discounts and bargains. *See*
27 *Investopedia, 7 Tips For Outlet Mall Shopping*, Forbes (Dec. 29, 2012, 12:49pm),
28 <http://www.forbes.com/sites/investopedia/2012/12/29/7-tips-for-outlet-mall->

1 shopping/.

2 43. However, in an effort to increase profits, major retailers such as DSW
3 have, without notice to consumers, begun using outlet or warehouse stores to sell
4 made-for-outlet goods that are never intended to be sold at non-outlet stores.

5 44. Instead, retailers like DSW create the illusion of traditional outlet and
6 warehouse discounts and bargains by offering the made-for-outlet goods at prices
7 reduced from fabricated, arbitrary, and false “Compare At” prices.

8 45. Media reports indicate that outlet stores such as DSW Outlets are using
9 false and fraudulent price comparison tactics. *See Sapna Maheshwari, Consumers*
10 *May Not Know They’re Getting Lower-Quality Clothes At Outlet Stores,*
11 *BuzzFeedNews* (May 14, 2016, 6:30pm),
12 [http://www.buzzfeed.com/sapna/customers-finally-aware-that-most-outlet-](http://www.buzzfeed.com/sapna/customers-finally-aware-that-most-outlet-merchandise-is-now)
13 [merchandise-is-now.](http://www.buzzfeed.com/sapna/customers-finally-aware-that-most-outlet-merchandise-is-now)

14 46. The intentional use of false and fraudulent price comparison tactics is
15 increasingly deceiving consumers in the market. To illustrate, on January 30, 2014,
16 four Members of Congress demanded an FTC investigation of misleading
17 marketing practices by outlet stores across the United States. The four Members of
18 Congress described a pricing scheme similar to the one implemented at DSW stores
19 and stated, “[i]t is a common practice at outlet stores to advertise a retail price
20 alongside the outlet store price—even on made-for-outlet merchandise that does not
21 sell at regular retail locations. Since the item was never sold in the regular retail
22 store or at the retail price, the retail price is impossible to substantiate. We believe
23 this practice may be a violation of the FTC’s Guides Against Deceptive Pricing (16
24 CFR 233).” *See Senator Sheldon Whitehouse, Press Release, Sens. & Rep. to FTC:*
25 *Outlet Stores May be Misleading Consumers* (Jan. 30, 2014)
26 [http://www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-stores-](http://www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-stores-may-be-misleading-consumers)
27 [may-be-misleading-consumers.](http://www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-stores-may-be-misleading-consumers)

28 47. This is precisely the practice used by DSW in its DSW stores and on

1 its website.

2 PLAINTIFF'S PURCHASES

3 48. On March 11, 2016, Plaintiff entered the DSW store located in
4 Sherman Oaks, California. She observed that merchandise was advertised with
5 price tags that represented "Compare At" prices next to significantly reduced actual
6 prices along with promised "You Save" amounts. Ms. Evans believed that the
7 "Compare At" price listed on the tags represented original prices or a price at which
8 the products were formerly sold. As a result of this reasonable belief, she thought
9 the selling price reflected a significant savings over the price available for the same
10 item outside the context of the outlet store. Ms. Evans believed DSW's promise that
11 she would save the "You Save" amount listed on "Case Talkers," as well as on her
12 receipt. Plaintiff relied on the represented discount in deciding to purchase one pair
13 of Kelly & Katie Chris Textured Sandals with a "Compare At" price of \$59.00 and
14 a lower actual price of \$29.95. While at the store, Ms. Evans also tried on the Katie
15 & Kelly Louise Wedge Pump, but the color she wished to purchase was not
16 available in her size. At the register, Plaintiff placed an order for a pair of the Kelly
17 & Katie Louise Wedge Pumps to be shipped to her in the color and size she wanted;
18 the shoes were advertised with a "Compare At" price of \$60.00 and a lower actual
19 price of \$39.95.

20 49. On March 27, 2016, Ms. Evans purchased online a pair of black Kelly
21 & Katie Nadia Sandals and a pair of blush Kelly & Katie Talia Flat Sandals. The
22 Nadia Sandals had a Compare At Price of \$75.00 and a lower actual price of
23 \$39.95. The Talia Flat Sandals had a Compare At price of \$55.00 and a lower
24 actual price of \$39.95.

25 50. On April 6, 2016, Ms. Evans purchased another pair of Kelly & Katie
26 Talia Flat Sandals online, this time in black. Once again, the sandals had a Compare
27 At price of \$55.00 and a lower actual price of \$39.95.

28 51. DSW never sold or intended to sell the items Ms. Evans purchased at

1 the represented “Compare At” price, and never intended to deliver the “You Save”
2 amounts promised. In fact, because the items were DSW Exclusive Products, they
3 were never sold or intended to be sold anywhere at the Compare At price. DSW did
4 not inform Plaintiff, moreover, that the items she purchased were DSW Exclusive
5 Products.

6 52. Plaintiff would not have purchased the products, or would not have
7 paid the price she did, if she had known that the represented discounts were false.
8 She will not purchase DSW Exclusive Products in the future unless or until DSW
9 discontinues the use of false and misleading reference prices.

10 53. Plaintiff and class members’ reliance on Defendant’s false price
11 comparison advertising was reasonable. In fact, empirical marketing studies
12 provide an incentive for retailers to engage in this false and fraudulent behavior:

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

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

20 [b]y creating an impression of savings, the presence of a higher
21 reference price enhances subjects’ perceived value and willingness to
22 buy the product... Thus, if the reference price is not truthful, a consumer
may be encouraged to purchase as a result of a false sense of value.

23 *Id.* at 55, 56.

24 54. Despite the “Compare At” scheme and illusory “You Save” promises
25 used at DSW stores and on its website, Plaintiff would purchase DSW Products in
26 the future from DSW stores or the DSW website, if product labels accurately reflect
27 discounts and bargains. If the Court were to issue an injunction ordering DSW to
28 comply with California’s comparative price advertising laws, and prohibiting

1 DSW's use of the deceptive practices discussed herein, Plaintiff would likely shop
2 for DSW Exclusive Products again in the near future at DSW stores.

3 **CLASS ALLEGATIONS**

4 55. Plaintiff incorporates and realleges by reference each and every
5 allegation contained in the preceding paragraphs as if set forth herein in full.

6 56. Plaintiff brings this action on behalf of herself and the members of the
7 proposed Class. The proposed Class consists of:

8 All California residents who, within the applicable statute of limitations
9 preceding the filing of this action and going forward from the date of
10 the Complaint, purchased a DSW Exclusive Product advertised with a
Compare At price and a lower actual selling price from DSW.

11 57. Excluded from the Class are DSW, its parents, subsidiaries, affiliates,
12 officers and directors, any entity in which DSW has a controlling interest, all
13 customers who make a timely election to be excluded, governmental entities, and
14 all judges assigned to hear any aspect of this litigation, as well as their immediate
15 family members.

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

20 59. The members of the Class are so numerous that joinder is impractical.
21 The Class consists of thousands of members, the precise number of which is within
22 the knowledge of and can be ascertained by resort to DSW's records.

23 60. There are numerous questions of law and fact common to the Class
24 which predominate over any questions affecting only individual members of the
25 Class. Among the questions of law and fact common to the Class are:

26 (a) Whether, during the Class Period, DSW used false price
27 representations and falsely advertised price discounts on its
merchandise sold at DSW stores;

28 (b) Whether, during the Class Period, the Compare At prices advertised by

1 DSW were the prevailing market prices for the DSW Exclusive
2 Products sold at DSW Outlets during the three month period preceding
3 the dissemination and/or publication of the advertised Compare At
prices;

4 (c) Whether DSW's use of false or deceptive price advertising constituted
5 false advertising under California Law;

6 (d) Whether DSW engaged in unfair, unlawful and/or fraudulent business
7 practices under California law;

8 (e) Whether DSW misrepresented and/or failed to disclose material facts
9 about its product pricing and discounts.

10 (f) Whether DSW has made false or misleading statements of fact
11 concerning the reasons for, existence of, or amounts of price
reductions;

12 (g) Whether DSW breached an express warranty made to Plaintiff and the
13 Class;

14 (h) Whether DSW breached its contracts with Plaintiff and the Class;

15 (i) Whether DSW's conduct, as alleged herein, was intentional and
16 knowing;

17 (j) Whether members of the Class are entitled to damages and/or
18 restitution, and in what amount;

19 (k) Whether DSW is likely to continue using false, misleading or illegal
20 price comparisons such that an injunction is necessary; and

21 (l) Whether Plaintiff and Class members are entitled to an award of
22 reasonable attorneys' fees, pre-judgment interest, and costs of suit.

23 61. Plaintiff's claims are typical of the claims of the members of the Class
24 and, like all members of the Class, purchased DSW Exclusive Products from DSW
25 that falsely conveyed a "Compare At" representation and a fictitious discount
26 affirmed by the inclusion of a promised "You Save" amount. Accordingly, Plaintiff
27 has no interests antagonistic to the interests of any other member of the Class.

28 62. Plaintiff is a representative who will fully and adequately assert and

1 protect the interests of the Class, and has retained counsel that are experienced in
2 prosecuting class actions. Accordingly, Plaintiff is an adequate representative and
3 will fairly and adequately protect the interests of the Class.

4 63. A class action is superior to all other available methods for the fair and
5 efficient adjudication of this lawsuit, because individual litigation of the claims of
6 all members of the Class is economically unfeasible and procedurally
7 impracticable. While the aggregate damages sustained by the Class are in the
8 millions of dollars, the individual damages incurred by each member of the Class
9 resulting from DSW's wrongful conduct are too small to warrant the expense of
10 individual lawsuits. The likelihood of individual Class members prosecuting their
11 own separate claims is remote, and, even if every member of the Class could afford
12 individual litigation, the court system would be unduly burdened by individual
13 litigation of such cases.

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

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

24 COUNT I

25 (Violation of the "Unfair" Prong of the UCL)

26 66. Plaintiff incorporates and realleges by reference each and every
27 allegation contained in the preceding paragraphs as if fully set forth herein.

28 67. The UCL defines unfair business competition to include any

1 “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive,
2 untrue or misleading” advertising. Cal. Bus. & Pro. Code § 17200.

3 68. A business act or practice is “unfair” under the UCL if the reasons,
4 justifications and motives of the alleged wrongdoer are outweighed by the gravity
5 of the harm to the alleged victims.

6 69. DSW has violated the “unfair” prong of the UCL by representing a
7 false and misleading “Compare At” and corresponding lower actual price
8 representations for goods exclusively manufactured for sale by DSW at its stores
9 and on its website. As a result, the inflated “Compare At” and corresponding
10 selling price was nothing more than a false, misleading and deceptive illusion of
11 a discount.

12 70. These acts and practices are unfair because they caused Plaintiff and
13 reasonable consumers like her to falsely believe that DSW stores are offering value,
14 discounts or bargains from the prevailing market worth of the products sold that did
15 not, in fact, exist. As a result, purchasers, including Plaintiff, reasonably perceived
16 that they were receiving products that regularly, formerly, or were intended to be
17 sold at substantially higher prices (and were, therefore, worth more) than what they
18 paid. This perception has induced reasonable purchasers, including Plaintiff, to buy
19 such products, which they otherwise would not have purchased or would have paid
20 less for.

21 71. The gravity of the harm to members of the Class resulting from these
22 unfair acts and practices outweighs any conceivable reasons, justifications and/or
23 motives of DSW for engaging in such deceptive acts and practices. By committing
24 the acts and practices alleged above, DSW engages in unfair business practices
25 within the meaning of California Business & Professions Code § 17200, *et seq.*

26 72. Through its unfair acts and practices, DSW has improperly obtained
27 money from Plaintiff and the Class. As such, Plaintiff requests that this court cause
28 DSW to restore this money to Plaintiff and all Class members, and to enjoin DSW

1 from continuing to violate the UCL as discussed herein and/or from violating the
2 UCL in the future. Otherwise, Plaintiff and the Classes may be irreparably harmed
3 and/or denied an effective and complete remedy if such an order is not granted.
4

5 **COUNT II**

6 **(Violation of the “Fraudulent” Prong of the UCL)**

7 73. Plaintiff incorporates and realleges by reference each and every
8 allegation contained in the preceding paragraphs as if fully set forth herein.

9 74. The UCL defines unfair business competition to include any
10 “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive,
11 untrue or misleading” advertising. Cal. Bus. & Pro. Code § 17200.

12 75. A business act or practice is “fraudulent” under the UCL if it is likely
13 to deceive members of the consuming public.

14 76. DSW’s labels and advertising materials concerning false and
15 misleading “Compare At” prices are fraudulent within the meaning of the UCL
16 because they deceived Plaintiff and reasonable consumers like her into believing
17 that DSW was offering value, discounts or bargains at DSW stores from the
18 prevailing market value or worth of the products sold that did not, in fact, exist.

19 77. As a result of DSW’s illusory discounts, purchasers, including
20 Plaintiff, reasonably perceived that they were receiving products that were worth
21 more than what they paid. This perception induced reasonable purchasers,
22 including Plaintiff, to buy such products from DSW stores, which they otherwise
23 would not have purchased or would have paid less for.

24 78. DSW’s acts and practices as described herein have deceived Plaintiff
25 and are highly likely to deceive reasonable members of the consuming public.
26 Specifically, in deciding to purchase merchandise from DSW, Plaintiff relied on
27 DSW’s misleading and deceptive representations regarding its “Compare At”
28 prices. The illusory discounts reflected on DSW’s price tags played a substantial

1 role in Plaintiff's decision to purchase the DSW products she bought, and Plaintiff
2 would not have purchased those items or would not have been willing to pay the
3 amount she did for the shoes in the absence of DSW's misrepresentations.
4 Accordingly, Plaintiff suffered monetary loss as a direct result of DSW's pricing
5 practices described herein.

6 79. As a result of the conduct described above, DSW has been unjustly
7 enriched at the expense of Plaintiff and members of the proposed Class.
8 Specifically, DSW has been unjustly enriched by obtaining revenues and profits
9 that it would not otherwise have obtained absent its false, misleading and
10 deceptive conduct.

11 80. Through its fraudulent acts and practices, DSW has improperly
12 obtained money from Plaintiff and the Class. As such, Plaintiff requests that this
13 court cause DSW to restore this money to Plaintiff and all Class members, and to
14 enjoin DSW from continuing to violate the UCL as discussed herein and/or from
15 violating the UCL in the future. Plaintiff and the Class may be irreparably harmed
16 and/or denied an effective and complete remedy if such an order is not granted.

17 **COUNT III**

18 **(Violation of the "Unlawful" Prong of the UCL)**

19 81. Plaintiff incorporates and realleges by reference each and every
20 allegation contained in the preceding paragraphs as if fully set forth herein.

21 82. The UCL defines unfair business competition to include any
22 "unlawful, unfair or fraudulent" act or practice, as well as any "unfair, deceptive,
23 untrue or misleading" advertising. Cal. Bus. & Pro. Code § 17200.

24 83. A business act or practice is "unlawful" under the UCL if it violates
25 any other law or regulation.

26 84. DSW's misconduct described herein violates three statutes: California
27 Business & Professions Code § 17500 *et seq.*; the Consumers Legal Remedies Act,
28 Cal. Civil Code § 1750 *et seq.*; and the Federal Trade Commission Act, 15 U.S.C.

1 § 45(a)(1) and 15 U.S.C. § 52(a). Each of these violations, described in detail
2 below, is independently sufficient to support Plaintiff’s claim under the unlawful
3 prong of the UCL.

4 85. California statutory and regulatory law expressly prohibits false former
5 pricing schemes. Business & Professions Code § 17501, entitled “*Value*
6 *determinations; Former price advertisements,*” states:

7 For the purpose of this article the worth or value of anything advertised
8 is the prevailing market price, wholesale if the offer is at wholesale,
9 retail if the offer at retail, at the time of publication of such
advertisement in the locality wherein the advertisement is published.

10 *No price shall be advertised as a former price of any advertised thing,*
11 *unless the alleged former price was the prevailing market price as above*
12 *defined within three months next immediately preceding the publication*
13 *of the advertisement or unless the date when the alleged former price*
14 *did prevail is clearly, exactly and conspicuously stated in the*
15 *advertisement. [Emphasis added.]*

13 *Id.*

14 86. The Consumers Legal Remedies Act, Cal. Civ. Code § 1770,
15 subsection (a)(9), prohibits a business from “[a]dvertising goods or services with
16 intent not to sell them as advertised,” and subsection (a)(13) prohibits a business
17 from “[m]aking false or misleading statements of fact concerning reasons for,
18 existence of, or amounts of price reductions.”

19 87. DSW violated and continues to violate Business & Professions Code
20 § 17501 by advertising false discounts from purported former prices that were, in
21 fact, not the prevailing market prices within three months next preceding the
22 publication and dissemination of advertisements containing the false former prices.

23 88. As detailed in Count V, below, DSW violated and continues to violate
24 Civil Code § 1770, sections (a)(9) and (a)(13) by falsely representing the nature,
25 existence and amount of price discounts by fabricating inflated “Compare At”
26 prices from which phantom discounts were taken.

27 89. Further, the Federal Trade Commission Act prohibits “unfair or
28 deceptive acts or practices in or affecting commerce” and specifically prohibits

1 false advertisements. 15 U.S.C. §§ 45(a)(1) & 52(a)). The FTC has established
2 Guidelines which prohibit false pricing schemes, similar to DSW's Compare
3 At/Selling Price scheme in material respects, as deceptive practices that would
4 violate the FTCA:

5 (a) Many members of the purchasing public believe that a
6 manufacturer's list price, or suggested retail price, is the price at
7 which an article is generally sold. Therefore, if a reduction from
8 this price is advertised, many people will believe that they are
9 being offered a genuine bargain. To the extent that list or
10 suggested retail prices do not in fact correspond to prices at which
11 a substantial number of sales of the article in question are made,
12 the advertisement of a reduction may mislead the consumer. A
13 former price is not necessarily fictitious merely because no sales
14 at the advertised price were made. The advertiser should be
15 especially careful, however, in such a case, that the price is one at
16 which the product was openly and actively offered for sale, for a
17 reasonably substantial period of time, in the recent, regular course
18 of her business, honestly and in good faith – and, of course, not
19 for the purpose of establishing a fictitious higher price on which
20 a deceptive comparison might be based.

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

16 C.F.R. § 233.3. Additionally, the FTC also describes the proper way to perform
comparable price advertising and explicitly states that DSW's pricing scheme
serves no legitimate purpose:

(a) Another commonly used form of bargain advertising is to
offer goods at prices lower than those being charged by others for
the same merchandise in the advertiser's trade area (the area in
which he does business). This may be done either on a temporary
or a permanent basis, but in either case the advertised higher price

1 must be based upon fact, and not be fictitious or misleading.
2 Whenever an advertiser represents that he is selling below the
3 prices being charged in his area for a particular article, he should
4 be reasonably certain that the higher price he advertises does not
5 appreciably exceed the price at which substantial sales of the
6 article are being made in the area—that is, a sufficient number of
7 sales so that a consumer would consider a reduction from the
8 price to represent a genuine bargain or saving. Expressed another
9 way, if a number of the principal retail outlets in the area are
10 regularly selling Brand X fountain pens at \$10, it is not dishonest
11 for retailer Doe to advertise: “Brand X Pens, Price Elsewhere \$10,
12 Our Price \$7.50”.

13 (c) A closely related form of bargain advertising is to offer a
14 reduction from the prices being *charged either by the advertiser*
15 *or by others in the advertiser’s trade area for other merchandise*
16 *of like grade and quality—in other words, comparable or*
17 *competing merchandise—to that being advertised. *Such**
18 *advertising can serve a useful and legitimate purpose when it is*
19 *made clear to the consumer that a comparison is being made with*
20 *other merchandise and the other merchandise is, in fact, of*
21 *essentially similar quality and obtainable in the area.* The
22 advertiser should, however, be reasonably certain, just as in the
23 case of comparisons involving the same merchandise that the
24 price advertised as being the price of comparable merchandise
25 does not exceed the price at which such merchandise is being
26 offered by representative retail outlets in the area. For example,
27 retailer Doe advertises Brand X pen as having “Comparable
28 Value \$15.00”. Unless a reasonable number of the principal
outlets in the area are offering Brand Y, an essentially similar pen,
for that price, this advertisement would be deceptive

16 C.F.R. § 233.2 (emphasis added).

90. DSW’s use of and reference to a materially false “Compare At” price
in connection with its marketing and advertisements concerning the merchandise
sold at DSW Outlets violated and continues to violate the FTCA, 15 U.S.C.
§ 45(a)(1) and 15 U.S.C. § 52(a), as well as FTC Guidelines published at 16 C.F.R.
§ 233.

91. As a result of the conduct described above, DSW has been unjustly

1 enriched at the expense of Plaintiff and members of the proposed Class.
2 Specifically, DSW has been unjustly enriched by obtaining revenues and profits
3 that it would not otherwise have obtained absent its false, misleading and deceptive
4 conduct.

5 92. Through its unlawful acts and practices, DSW has improperly obtained
6 money from Plaintiff and the Class. As such, Plaintiff requests that this court cause
7 DSW to restore this money to Plaintiff and all Class members, and to enjoin DSW
8 from continuing to violate the UCL as discussed herein and/or from violating the
9 UCL in the future. Plaintiff and the Class may be irreparably harmed and/or denied
10 an effective and complete remedy if such an order is not granted.

11 **COUNT IV**

12 **(Violation of the California False Advertising Law,
13 California Business & Professions Code Section 17500, *et seq.*)**

14 93. Plaintiff incorporates and realleges by reference each and every
15 allegation contained in the preceding paragraphs as if fully set forth herein.

16 94. California's Business and Professions Code § 17500, *et seq.* prohibits
17 unfair, deceptive, untrue, or misleading advertising, including, but not limited to,
18 false statements as to worth, value and former price.

19 95. DSW's practice of advertising "Compare At" prices on DSW
20 Exclusive Products that were materially greater than any actual former price of
21 those or comparable products was an unfair, deceptive and misleading advertising
22 practice because it gave the false impression that the DSW Exclusive Products were
23 worth more than they actually were worth. In fact, DSW Exclusive Products were
24 never sold anywhere but DSW, and they were never offered for sale at a price
25 anywhere close to the "Compare At" price advertised because the merchandise was
26 always sold for, or discounted further from, the *selling* price listed on the price tag
27 at DSW stores. DSW does not inform its customers that any particular product is
28 sold exclusively at DSW.

1 have paid less for but for Defendant's deceptive pricing, advertising, and
2 marketing. Defendant accepted or retained the non-gratuitous benefits conferred by
3 Plaintiff and Class members, with full knowledge and awareness that, as a result of
4 Defendant's deception, Plaintiff and Class members were not receiving a product of
5 the quality, nature, fitness, or value that had been represented by Defendant and that
6 reasonable consumers would have expected.

7 111. Defendant has been unjustly enriched in retaining the revenues derived
8 from purchases of merchandise by Plaintiff and Class members, which retention
9 under these circumstances is unjust and inequitable because Defendant
10 misrepresented, among other things, that its merchandise was being offered at a
11 significant discount, which caused injuries to Plaintiff and Class members because
12 they paid for, and/or paid more than they otherwise would have due to the
13 misleading pricing and advertising.

14 112. Retaining the non-gratuitous benefits conferred upon Defendant by
15 Plaintiff and Class members under these circumstances made Defendant's retention
16 of the non-gratuitous benefits unjust and inequitable. Thus, Defendant must pay
17 restitution to Plaintiff and the Class for unjust enrichment, as ordered by the Court.

18 **COUNT VII**

19 **(Breach of Express Warranty)**

20 113. Plaintiff incorporates and realleges by reference each and every
21 allegation contained in the preceding paragraphs as if fully set forth herein.

22 114. Plaintiff brings this claim individually, as well as on behalf of
23 members of the Class, under California law.

24 115. In connection with the sale of DSW Exclusive Products, DSW
25 expressly warranted that consumers saved a certain dollar amount compared to a
26 former price. Specifically, DSW issued the following express warranties on case
27 talkers, price tags, and receipts:

28 116. "Compare At \$ [amount]"

1 117. DSW Price \$[amount]

2 118. “You Save(d) \$ [amount]”

3 119. DSW’s affirmations of fact and promises made to Plaintiff and the
4 Class on case talkers, price tags, and receipts, became part of the basis of the
5 bargain between DSW on the one hand, and Plaintiff and the Class on the other,
6 thereby creating express warranties that the DSW Exclusive Product prices would
7 conform to DSW’s affirmations of fact, representations, and promises.

8 120. DSW breached its express warranties because the DSW Exclusive
9 Products were never offered at the represented “Compare At” price such that
10 Plaintiff and the Class never received the promised “You Save(d)” amount. In
11 short, Plaintiff and the Class did not “Save” the amount promised.

12 121. Plaintiff and the Class were injured as a direct and proximate result of
13 DSW’s breach because: (a) they would not have purchased or would have paid less
14 for the DSW Exclusive Products if they had known the true facts; (b) they paid for
15 DSW Exclusive Products based on the promises at issue; and/or (c) the DSW
16 Exclusive Products did not provide the savings as promised. As a result, Plaintiff
17 and the Class have been damaged.

18 122. Plaintiff provided notice to DSW concerning DSW’s failure to deliver
19 the promised discounts and gave DSW an opportunity to correct the representations
20 at issue and to provide refunds.

21 **COUNT VIII**

22 **(Breach of Contract)**

23 123. Plaintiff incorporates and realleges by reference each and every
24 allegation contained in the preceding paragraphs as if fully set forth herein.

25 124. Plaintiff brings this claim individually, as well as on behalf of
26 members of the Class, under California law.

27 125. Plaintiff and the Class entered into a contract with DSW.

28 126. The contract provided that Plaintiff and the Class would pay DSW for

1 its DSW Exclusive Products.

2 127. The contract further provided that Plaintiff would receive the benefit
3 of a deep discount in the “You Save” amount appearing on DSW’s price
4 advertisements and on customers’ receipts. A specific term of the contract is that
5 the customer is receiving a discount. That term was material and it was breached.

6 128. The receipt memorializing the contracts between Plaintiff and the
7 Class on the one hand and DSW on the other confirms that the “You Save(d)”
8 amount is material.

9 129. Plaintiff and the Class paid Defendant for DSW Exclusive Products,
10 and satisfied all other conditions, or same were waived.

11 130. Defendant breached by not delivering the discount reflected by the
12 “You Save” promise.

13 131. As a direct and proximate result of DSW’s breach, Plaintiff and the
14 putative class members have been injured in an amount to be established at trial.

15 **PRAYER FOR RELIEF**

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

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

21 B. A judgment awarding Plaintiff and the Class damages, rescission,
22 restitution and/or other equitable relief, including, without limitation, restitutionary
23 disgorgement of all profits and unjust enrichment that Defendant obtained from
24 Plaintiff and the Class as a result of its breach of express warranties, breach of
25 contract, and unlawful, unfair and fraudulent business practices described herein;

26 C. An order enjoining Defendant from continuing to violate the UCL,
27 False Advertising Law, and CLRA as described herein;

28 D. A judgment awarding actual and punitive damages to Plaintiff and the

1 Class in an amount to be determined at trial;

2 E. A judgment awarding Plaintiff her costs of suit; including reasonable
3 attorneys' fees pursuant to California Civil Code § 1780(d), California Code of
4 Civil Procedure § 1021.5 and as otherwise permitted by statute; and pre and post-
5 judgment interest; and

6 F. Such other and further relief as may be deemed necessary
7 or appropriate.

8 **DEMAND FOR JURY TRIAL**

9 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff
10 demands a jury trial as to all issues triable by a jury.

11
12 Dated: July 3, 2017

Respectfully submitted,

13
14
15 By: /s/ Kristen Law Sagafi

Kristen Law Sagafi

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