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10  
11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
13

14 DANA DELMAN, on behalf of herself  
15 and all others similarly situated,

16 Plaintiff,

17 v.

18 J.CREW GROUP, INC., and J.CREW  
19 INTERNATIONAL, INC.,

20 Defendants.  
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Case No. 2:16-cv-09219-MWF(ASx)

**SECOND AMENDED CLASS  
ACTION COMPLAINT FOR:**

1. **VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW;**
2. **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW;**
3. **VIOLATION OF CALIFORNIA'S CONSUMERS LEGAL REMEDIES ACT**

**JURY TRIAL DEMANDED**

1 Plaintiff Dana Delman (“Plaintiff”), on behalf of herself and all others  
2 similarly situated, through her undersigned attorneys, alleges this Second Amended  
3 Class Action Complaint against Defendants on actual knowledge as to her own acts,  
4 and after due investigation as to all other allegations, as follows:

5 **NATURE OF THE ACTION**

6 1. This is a consumer class action against the owners and/or operators of  
7 the “J.Crew Factory” Website (the “Factory Website”), which are the related  
8 corporations J.Crew Group, Inc. and J.Crew International, Inc. (The corporate  
9 Defendants are hereinafter sometimes collectively referred to as “J.Crew”).

10 2. The Factory Website features apparel and other items sold at what  
11 appears to be a significant discount. But, in the vast majority of cases, there is no  
12 discount of the magnitude asserted, or no discount at all, and the goods are being  
13 sold at their ordinary retail prices. By not delivering the value represented,  
14 Defendants are engaging in deceptive conduct. Accordingly, Plaintiff, a purchaser  
15 of goods via the Factory Website, brings this action on behalf of a Class of  
16 purchasers of items from the Factory Website for damages and a Class for an  
17 injunction (the “Classes”).

18 3. Plaintiff asserts claims under the California False Advertising Law,  
19 Cal. Bus. & Prof. Code § 17500, *et seq.*; Business and Professions Code § 17200, *et*  
20 *seq.* (Unlawful Business Acts and Practices); and the Consumer Legal Remedies  
21 Act, Cal. Civ. Code §1750, *et seq.* The Damages Class consists of all persons who  
22 purchased relevant Factory Website goods (as defined herein) while in California  
23 and who seek damages (the “Damages Class”). Excluded from the Damages Class  
24 are transactions, if any, where the claimed “valued at” price was an actual previous  
25 price at which J.Crew goods were regularly sold for a substantial period of time. The  
26 second class, the “Injunction Class”, consists of all persons who, while in California,  
27 purchased Factory Website goods advertised with a deceptive “Valued At” price.  
28 The Injunction Class seeks an injunction prohibiting the use of deceptive “Valued

1 At” advertising (or any other term of similar deceptive import) pursuant to Federal  
2 Rule 23(a) and 23(b)(2).

3 4. The Factory Website presently and during the Class Period defined  
4 below: (a) promises to deliver goods having a specified value to customers and then  
5 fails to deliver goods having that value; and (b) asserts deceptively that the goods  
6 sold are “Valued At” a significantly higher price than the sales price, creating the  
7 false impression that the goods have been marked down from that “Valued At”  
8 price, or that other merchants sell identical or very similar goods at that higher  
9 “Valued At” price.

10 5. Defendants’ actions create the false impression that consumers are  
11 buying goods at huge discounts to ordinary prices from a factory outlet website  
12 offering discount, close-out and marked-down merchandise. But this is not the  
13 case—the goods are designed and fabricated by J.Crew specifically for the Factory  
14 Website (and Factory and J.Crew Mercantile brick and mortar stores), and there are  
15 no discounts of the asserted magnitude to be had. Indeed, in previous litigation,  
16 J.Crew has admitted that the Factory Website prices *are not mark-down prices*, even  
17 though this is the impression its marketing fosters and conveys.

18 6. Consumers are entitled to receive the value they are promised.  
19 Accordingly, J.Crew’s actions are deceptive. Plaintiff and all members of the  
20 Classes have been injured by these acts.

21 7. In light of the foregoing, Plaintiff seeks, on behalf of herself and all  
22 Class members, statutory relief (including damages and restitution), and an  
23 injunction against further deceptive practices.

24 **JURISDICTION AND VENUE**

25 8. This is a civil action brought pursuant to the California Business &  
26 Professions Code §17200, *et seq.* (the Unfair Competition Law or “UCL”),  
27 California Business & Professions Code §17500, *et seq.* (the False Advertising Law  
28

1 or “FAL”), and California Civil Code §1750, *et seq.* (the California Consumer Legal  
2 Remedies Act or “CLRA”).

3 9. This Court has jurisdiction over this action pursuant to 28 U.S.C.  
4 §1332(d) (the Class Action Fairness Act of 2005 (“CAFA”)) because the amount in  
5 controversy exceeds the value of \$5,000,000, exclusive of interest and costs,  
6 because the classes consists of 100 or more putative Class Members, and because at  
7 least one putative Class Member is diverse from both Defendants, which are citizens  
8 of New York and Delaware.

9 10. Venue is proper in the U.S. District Court for the Central District of  
10 California because Defendants transact a substantial amount of business in this  
11 District. Plaintiff Delman resides in this District, and the transactions which form  
12 the basis of Delman’s claims against Defendants occurred in the city of Thousand  
13 Oaks, California in Ventura County, California. Defendants, directly or indirectly,  
14 maintain many retails sales outlets in this District, and sell into this District via  
15 advertising directed to residents of this District, who access the Factory Website  
16 from computer devices in this District. Plaintiff has filed herewith an appropriate  
17 declaration affirming proper venue, as required by Cal. Civ. Code § 1780(d).

18 11. This Court has *in personam* jurisdiction over the corporate Defendants  
19 because, *inter alia*, these Defendants: (1) transacted substantial business in this  
20 District, including the distribution of goods into this District; (2) maintained  
21 continuous and systematic contacts in this District prior to and during the Class  
22 Period, and continuing to date; (3) purposefully availed themselves of the benefits of  
23 doing business in this District; and (4) caused tortious harm from outside the state  
24 which caused harm to Plaintiff and others within California. In addition, these  
25 Defendants maintain a greater retail presence in California than any other state, and  
26 may be presumed to sell more goods to residents of California (both in stores and  
27 online) than to residents of any other state. Accordingly, the corporate Defendants  
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1 maintain minimum contacts with this district which are more than sufficient to  
2 subject them to service of process and to comply with due process of law.

3 **PARTIES**

4 12. Plaintiff Delman resides in Ventura County, California and is a citizen  
5 of California. Beginning in or about early 2016, on three separate occasions,  
6 Plaintiff purchased goods through the Factory Website. Plaintiff was deceived by  
7 Defendants in that she was of the belief she was obtaining marked down goods of  
8 the value represented by the “Valued At” price. Plaintiff did not receive the value  
9 promised, or the significant discounts claimed, and suffered ascertainable harm and  
10 monetary damages as a result of Defendants’ unlawful conduct. Plaintiff would not  
11 have purchased the items she purchased from J.Crew had she known of this  
12 deceptive misconduct. Plaintiff and the Classes are entitled to such damages and  
13 restitutionary relief as the law may permit, as well as injunctive relief.

14 13. Defendant J.Crew Group, Inc. (“Group”) is a for-profit corporation  
15 formed and existing under the laws of the State of Delaware with its principal place  
16 of business at 770 Broadway, New York, New York 10003, and thus is a citizen of  
17 Delaware and New York. Group and may be served with process by service upon  
18 its registered agent, Corporation Service Company, 80 State Street, Albany, New  
19 York 12207. Group operates the J Crew retail stores and the Factory Website.

20 14. Defendant J.Crew International, Inc. (“International”) is a for-profit  
21 corporation formed and existing under the laws of the State of Delaware with its  
22 principal place of business at 770 Broadway, New York, New York 10003, and thus  
23 is a citizen of Delaware and New York. Defendant International may be served with  
24 process by service upon its registered agent, Corporation Service Company, 2711  
25 Centerville Road, Suite 400, Wilmington, Delaware 19808. International is the  
26 owner/and or operator of the Factory Website according to records obtained from  
27 the Internet Corporation for Assigned Names and Numbers (“ICANN”).

28 15. International is a wholly-owned subsidiary of Group.

**FACTUAL ALLEGATIONS**

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16. Defendants are in the for-profit business of selling apparel and other personal items in their retail J.Crew, J.Crew Factory and J.Crew Mercantile stores, as well as via their online J.Crew website and the Factory Website. “J.Crew” stores carry higher priced, high quality goods. J.Crew Factory and J.Crew Mercantile are names used for stores that carry lower priced goods. As further discussed herein, consumers traditionally believe that any store labeled “factory” is an outlet at which high quality goods are sold at discounted, closeout prices.

17. This action concerns Defendants’ false and misleading marketing and sales practices with respect to their illusory “discounting” of items sold on the Factory Website. Each item offered for sale is, and was during the Class Period, assigned a “Valued At” price (See Exh. A for an illustration of this). Defendants have set up the Factory Website to mimic a real factory, closeout or discount website so that customers are led to believe that the “Valued At” price is the “original” or “previous” selling price of that item, and/or that the item at issue has the value of an item legitimately so priced by others.

18. The “Valued At” price is wholly illusory, however, because no item on the Factory Website is regularly sold, or even offered for sale, at the listed “Valued At” price. Nor is the “Valued At” price the price at which the goods were previously regularly sold in any J.Crew stores. In previous public filings, Defendants have admitted as much. Moreover, “Valued At” prices do not reflect prices similar to those utilized by other merchants selling similar goods.

19. Contrary to the impression created, the Factory Website is not a discount or an outlet website. The apparel offered for sale was manufactured specifically for the Website (and/or Factory or Mercantile retail stores) to resemble the goods offered at Defendants’ high-priced and high quality J.Crew sales venues, which offer higher quality apparel. The apparel does not come from these higher-priced venues, but is designed for sale at the much lower price labeled “Your Price.”

1 These goods have a quality of fabric and manufacture consistent with the lower  
2 sales price.

3 20. The apparel offered for sale on the Factory Website has never been sold  
4 by J.Crew or any other retailer at the “Valued At” price. Rather the apparel is  
5 designed to be sold at what is represented to consumers to be “Your Price.” Thus,  
6 consumers are not getting the discount or the “value” purportedly offered by  
7 Defendants. The promise and lure of the discount is deceptive.

8 21. California’s consumer statutes are modeled after the Federal Trade  
9 Commission Act. In interpreting the scope of the consumer protection statutes,  
10 courts may look to rulings and guidelines of the FTC. *See Colgan v. Leatherman*  
11 *Tool Group, Inc.*, 135 Cal. App. 4th 663, 687 (Cal. App. 2d Dist. 2006). The Federal  
12 Trade Commission (the “FTC”) takes a very dim view of deceptive pricing schemes.  
13 To assist sellers, the FTC provides guidance in the form of regulations indicating  
14 what would constitute unfair trade practices.

15 22. The FTC regulations provide in part:

16 One of the most commonly used forms of bargain advertising is to  
17 offer a reduction from the advertiser's own former price for an article.  
18 If the former price is the actual, bona fide price at which the article  
19 was offered to the public on a regular basis for a reasonably substantial  
20 period of time, it provides a legitimate basis for the advertising of a  
21 price comparison. Where the former price is genuine, the bargain  
22 being advertised is a true one. If, on the other hand, the former price  
23 being advertised is not bona fide but fictitious—for example, where an  
24 artificial, inflated price was established for the purpose of enabling the  
25 subsequent offer of a large reduction—the “bargain” being advertised  
26 is a false one; the purchaser is not receiving the unusual value he  
27 expects. In such a case, the “reduced” price is, in reality, probably just  
28 the seller's regular price. (16 C.F.R. § 233.1).

1           23. Although consumers are led to believe that “Your Price” represents a  
2 mark-down, Defendants have maintained in other litigation that the “Valued At”  
3 price merely is an exercise in comparative marketing—*i.e.*, showing consumers the  
4 value supposedly placed on the same or comparable goods by other apparel retailers.  
5 But the “Valued At” price is not a comparable price.

6           24. To demonstrate that the “Valued At” price is fictitious, and not  
7 reflective of fair comparative pricing, Plaintiff’s counsel retained an investigator  
8 who is an expert in this field, with 45 years’ experience as a principal, executive,  
9 and consultant in the apparel industry. The investigator has held key executive and  
10 management positions, and has been a consultant to a wide range of public and  
11 private apparel companies in the wholesale and retail fashion business. Since 1986,  
12 the investigator has operated a business specializing in issues of marketing and sales  
13 as well as product development and selling strategies in the apparel industry. In  
14 addition, the expert has for many years been a member of the faculty at Fashion  
15 Institute of Design and Merchandising (“FIDM”), was elected to the institution's  
16 "Hall of Fame" and is a three-time recipient of FIDM's "Faculty of the Year" award.  
17 The expert has served as an apparel expert in many legal disputes.

18           25. Based on, *inter alia*, a sampling of J.Crew and other items the expert  
19 purchased and evaluated (as described below), the expert could not find goods  
20 comparable to the Factory Website’s goods being sold in the market at prices  
21 comparable to the specified “Valued At” prices. Rather, the investigation  
22 determined that items comparable to goods purchased by Plaintiff and other relevant  
23 Factory Website consumers could be purchased in the market *at or below the “Your*  
24 *Price” price*. Thus, there is no discount or bargain based on comparable prices.  
25 Defendants’ claim that they are simply engaged in comparative pricing is baseless.  
26 The “Valued At” price is a fiction designed to induce customers to purchase apparel  
27 with the expectation that they are obtaining items with a high value. In actuality,  
28



1 “Your Price” reflects, at best, the true value. In fact, in almost all cases, “Your  
2 Price” even exceeds the market price of comparable items.

3 26. For instance, Plaintiff Delman purchased apparel from the Factory  
4 Website on three occasions: March 7, 2016; July 13, 2016; and September 13, 2016.  
5 (Copies of Plaintiff Delman’s purchases are annexed hereto as Exh. B.)

6 27. Plaintiff’s investigator purchased the items which were originally  
7 purchased by Plaintiff Delman. The items with respect to Delman’s March 7, 2016  
8 purchase are:

- 9 a. J.Crew Factory long-sleeve sunwashed garment-dyed T-shirt  
10 (E8029);
- 11 b. J.Crew Factory slim washed pocket T-shirt (53623); and
- 12 c. J.Crew Factory girls’ pocket T-shirt (C9271).

13 28. Plaintiff’s investigator also purchased the items with respect to  
14 Delman’s July 13, 2016 purchase:

- 15 a. J.Crew Factory slim heathered washed pocket T-shirt (53870);
- 16 b. J.Crew Factory slim heathered washed T-shirt (06506);
- 17 c. J.Crew Factory featherweight slub cotton V-neck T-shirt  
18 (33505); and
- 19 d. J.Crew Factory girls’ heart pocket T-shirt (F4458).

20 29. Plaintiff’s investigator also purchased the items with respect to  
21 Delman’s September 13, 2016 purchase:

- 22 a. JCrew Factory Girls’ flannel shirtdress (E5537);
- 23 b. JCrew Factory Girls’ skinny cord (02098).
- 24 c. JCrew Factory Girls’ long sleeve layering T-shirt (C9274); and
- 25 d. JCrew Factory Girls’ leggings (38566).

26 30. The investigator sought out and purchased comparison garments from  
27 multiple different retail web sites she selected. The purpose of the comparison  
28 shopping was to find garments which were comparable to the Factory Website

1 purchased garments in appearance, manufactured with the same or similar fabrics  
2 and where possible, produced in the same country of origin.

3 31. The objectives of the study were twofold: (1) to ascertain whether  
4 similar garments were selling at other comparable retailers at the same or similar  
5 "Valued At" prices; and (2) to ascertain whether similar garments were available at  
6 retail prices which were equal to, or even lower than, J.Crew's "Your Price." As  
7 discussed below, the investigator found that the "Your Price" value was similar to  
8 retail value at other retailers, and did not reflect a significant discount of any type.

9 32. The investigator found the following information with respect to  
10 Delman's purchases:

11 a. **The J.Crew Factory Men's Long-Sleeve Sunwashed**  
12 **Garment-Dyed T-Shirt made of 100% cotton and imported had a "Valued At"**  
13 **price of \$39.50 and a "Your Price" price of \$23.50 (E8029).** A very similar  
14 men's garment dyed heavy-weight Tee made of 100% cotton and imported, was  
15 selling at Old Navy at a full retail price of \$19.94; another very similar men's long-  
16 sleeve T-shirt, also made of 100% cotton and imported, was selling at H&M at a full  
17 retail price of \$12.99. Both the Old Navy and H&M garments were selling below  
18 the "Valued At" price as well as below the "Your Price" price offered by J.Crew.

19 b. **The JCrew Factory Men's Slim Washed Pocket T-Shirt**  
20 **made of 100% cotton and imported had a "Valued At" price of \$19.50 and a**  
21 **"Your Price" price of \$14.50 (53623).** A very similar men's T-shirt, made of  
22 100% cotton and imported, was selling at Target at a full retail price of \$9.00;  
23 another very similar men's T-shirt, also made of 100% cotton and imported, was  
24 selling at H&M at a full retail price of \$9.99. Both the Target and the H&M  
25 garments were selling at below the "Valued At" price as well as below the "Your  
26 Price" price offered by J.Crew. Although Plaintiff Delman paid \$11.50 for this  
27 item, the "Your Price" at the time was still above the comparative selling price of  
28 the item and the "Valued At" price was far above comparable prices.

1           c.       **The JCrew Factory Girl's Pocket T- T-Shirt made of 100%**  
2 **cotton and imported had a "Valued At" price of \$18.50 and a "Your Price"**  
3 **price of \$12.99 (C9271).** A very similar girl's T-shirt, made of 100% cotton and  
4 imported, was selling at H&M at a full retail price of \$12.99 for a two-pack set;  
5 another similar girl's T-shirt, made of cotton/poly blend and imported, was selling at  
6 Walmart at a full retail price of \$4.88. Both the H&M and the Walmart garments  
7 were selling below the "Valued At" price as well as below the "Your Price" price  
8 offered by J.Crew. Although Plaintiff Delman paid \$11.00 for this item, the "Your  
9 Price" at the time was still above the comparative selling price of the item and the  
10 "Valued At" price was far above comparable prices.

11           d.       **The J.Crew Factory Men's Slim Heathered Washed Pocket**  
12 **T-Shirt, made of a cotton/poly blend and imported had a "Valued At" price of**  
13 **\$19.50 and a "Your Price" price of \$14.50 (53870).** A very similar men's T-shirt,  
14 made of a cotton/poly blend and imported, was selling at Target at a full retail price  
15 of \$9.00; another similar men's T-shirt, also made of cotton/poly blend and  
16 imported, was selling at Target at a full retail price of \$7.99. Both the Target  
17 garments were selling below the "Valued At" price as well as below the "Your  
18 Price" price offered by J.Crew. Although Plaintiff Delman paid \$4.99 for this item  
19 on a final close-out, this does not alter Defendants' continued wrongful conduct as  
20 alleged, as the value advertised was not the value received.

21           e.       **The J.Crew Factory Men's Slim Heathered Washed Pocket**  
22 **T-Shirt, made of a cotton/poly blend and imported had a "Valued At" price of**  
23 **\$19.50 and a "Your Price" price of \$14.50 (06506).** A very similar men's T-shirt,  
24 made of a cotton/poly blend and imported, was selling at Old Navy at a full retail  
25 price of \$10.94; another similar men's T-shirt, also made of cotton/poly blend and  
26 imported, was selling at Target at a full retail price of \$9.00. Both the Old Navy and  
27 the Target garments were selling at below the "Valued At" price as well as below  
28 the "Your Price" price offered by J.Crew. Although Plaintiff Delman paid \$6.49 for

1 this item on a final close-out, this does not alter Defendants' continued wrongful  
2 conduct as alleged, as the value advertised was not the value received.

3 f. **The J.Crew Factory Women's Featherweight Slub Cotton V-**  
4 **Neck T-Shirt made of 100% cotton and imported was "Valued At" at \$22.50**  
5 **and had a "Your Price" price of \$11.00 (33505).** A very similar women's T-shirt  
6 made of 100% cotton and imported was selling at Walmart at a full price of \$5.25;  
7 Target was also selling a very similar women's T-shirt, made of 100% cotton and  
8 imported, at a full retail price of \$9.00. Plaintiff Delman paid \$14.50 for the shirt,  
9 which was far in excess of the comparative selling prices.

10 g. **The J.Crew Factory Girls' Heather Pocket T-Shirt made of a**  
11 **cotton/poly blend and imported had a "Valued At" price of \$18.50 and a "Your**  
12 **Price" price of \$14.50 (F4458).** A very similar girl's T-shirt, made of a cotton/poly  
13 blend and imported, was selling at Walmart at a full retail price of \$4.88; a similar  
14 girls drapery T, a cotton/poly blend and imported, was selling at Target at a full  
15 retail price of \$7.99. Plaintiff Delman paid \$11.00 for the shirt, which was far in  
16 excess of the comparative selling prices.

17 h. **The J.Crew Factory Girls' Flannel Shirtdress made of 100%**  
18 **cotton and imported had a "Valued At" price of \$65.00 and a "Your Price"**  
19 **price of \$39.00 (E5527).** A similar girl's dress, made of 100% cotton and imported,  
20 was selling at Target at a full retail price of \$19.90; a similar girls dress, made of  
21 100% cotton and imported, was selling at Zara at a full retail price of \$35.90.  
22 Plaintiff Delman paid \$45.50 for the dress, which was far in excess of the  
23 comparative selling prices.

24 i. **The J.Crew Factory Girls' Skinny Cord made of 100%**  
25 **cotton and imported had a "Valued At" price of \$44.50 and a "Your Price"**  
26 **price of \$29.50 (02098).** A very similar girl's pants, made of 100% cotton and  
27 imported, was selling at Zara at a full retail price of \$19.90; a very similar girls  
28 pants, made of 100% cotton and imported, was selling at Target at a full retail price

1 of \$16.99. Plaintiff Delman paid \$24.50 for the pants, which was far in excess of  
2 the comparative selling prices.

3 j. **The J.Crew Factory Girls' Long-Sleeve Layering T-Shirt**  
4 **made of 100% cotton and imported had a "Valued At" price of \$19.50 and a**  
5 **"Your Price" price of \$12.99 (C9274).** A very similar girl's T-shirt, made of  
6 100% cotton and imported, was selling at Old Navy at a full retail price of \$8.00; a  
7 similar girls T-shirt, made of a cotton/poly blend and imported, was selling at Target  
8 at a full retail price of \$6.00. Plaintiff Delman paid \$11.50 for the item, which was  
9 far in excess of the comparative selling prices.

10 k. **The J.Crew Factory Girls' Leggings made of a**  
11 **cotton/Spandex blend and imported had a "Valued At" price of \$18.50 and a**  
12 **"Your Price" of \$11.00 (38566).** A very similar girl's leggings, made of a  
13 cotton/Spandex blend and imported, was selling at Target at a full retail price of  
14 \$6.00; a very similar girls leggings, made of a cotton/Spandex blend and imported,  
15 was selling at H&M at a full retail price of \$14.99 for a two-pack. Plaintiff Delman  
16 paid \$12.00 for the shirt, which was far in excess of the comparative selling prices.

17 33. Plaintiff was unaware of Defendants' unlawful conduct alleged herein  
18 and did not know she was actually paying the everyday, regular prices for  
19 Defendants' products, rather than a discounted or bargain price for apparel which  
20 had a value equal to the "Valued At" price. Plaintiff did not receive goods with the  
21 specified value, as promised. Delman would purchase more apparel from  
22 Defendants if Defendants ceased the wrongful practices set forth herein. As a result,  
23 Delman was harmed by the Defendants' continued wrongful conduct which makes  
24 her unable to purchase from the Factory Website.

25 34. As a result of the aforementioned conduct, Plaintiff and the Classes  
26 have been harmed, entitling them to statutory relief, including damages, restitution  
27 and a permanent injunction.

28

1 **CLASS ACTION ALLEGATIONS**

2 35. Plaintiff brings this action as a class action on behalf of a class pursuant  
3 to Rules 23(a) and 23 (b)(3) of the Federal Rule of Civil Procedure, seeking  
4 damages, and restitution under the California state consumer protection statutes on  
5 behalf of herself and all members of the Class (the “Damages Class”), and on behalf  
6 of a class pursuant to Rules 23(a) and 23(b)(2) solely for injunctive relief (the  
7 “Injunction Class”). Each “class” is identical, except as to the remedy sought.

8 36. Each Class consists of all persons who, while in California, purchased  
9 any item from the Factory Website within the applicable statute(s) of limitations  
10 period(s) (the “Class Period”). Excluded from this suit by the Damages Class are  
11 transactions, if any, where the claimed “valued at” price was an actual previous  
12 price at which J. Crew goods were regularly sold for an extended period of time.

13 37. Each Class for whose benefit this action is brought is so numerous that  
14 joinder of all members is impracticable. While the exact number and identities of  
15 Class members is presently unknown, it is evident that there are hundreds if not  
16 thousands of Class members—the exact number can be ascertained from  
17 Defendants’ records. JCrew’s internet sales in 2015 approximated \$826 million,  
18 according to industry magazine, Emarketer. A substantial amount of such sales  
19 occurred in California.

20 38. Common Questions Predominate: This action involves common  
21 questions of law and fact because each Class Member’s claim derives from the same  
22 alleged deceptive actions. The common questions of law and fact involved  
23 predominate over questions that affect only Plaintiff or individual Class Members.  
24 Thus, proof of a common or single set of facts will establish the right of each Class  
25 member to recover, or to obtain injunctive relief.

26 39. Among the questions of law and fact common to the Classes are:

- 27 a. Whether Defendants marketed and sold products by means of a  
28 promise to deliver a specified value, which was not delivered;

- 1           b. Whether Defendants' actions were deceptive and misleading in
- 2           connection with marketing and sale of the items offered for sale via the
- 3           Website in the manner described herein, and violated various California
- 4           consumer protection laws;
- 5           c. Whether Defendants engaged in the course of conduct
- 6           complained of herein;
- 7           d. Whether Defendants' marketing and offering for sale the items
- 8           on the website constitutes a deceptive practice;
- 9           e. The proper measure of damages or restitution; and
- 10          f. The form and extent of the injunctive relief.

11          40. Typicality: Plaintiff's claims are typical of the Classes because she  
12 bought items from the Factory Website during the Class Period. Defendants'  
13 actions concern the same deceptive business practices described herein. Thus,  
14 Plaintiff and Class Members sustained the same injuries and damages arising out of  
15 Defendants' conduct in violation of law, and have the same entitlement to injunctive  
16 relief. The injuries and damages of each Class Member, and the entitlement to  
17 injunctive relief, are directly by Defendants' wrongful conduct in violation of law as  
18 alleged herein, and caused by such conduct.

19          41. Adequacy: Plaintiff will fairly and adequately protect the interests of all  
20 Class Members because it is in their best interests to prosecute the claims alleged  
21 herein to obtain full compensation they are due for the illegal conduct of which they  
22 complain, and injunctive relief. Plaintiff also has no interests that conflict with or  
23 are antagonistic to the interests of Class Members. Plaintiff has retained highly  
24 competent and experienced class action attorneys to represent their interests and that  
25 of the Classes. No conflict of interest exists between Plaintiff and Class Members  
26 because all questions of law and fact regarding liability of Defendants are common  
27 to Class Members and predominate over the individual issues that may exist.  
28 Plaintiff and her counsel have the necessary financial resources to adequately and

1 vigorously litigate this class action, and Plaintiff and counsel are aware of their  
2 fiduciary responsibilities to the Class Members and are determined to diligently  
3 discharge those duties seeking the maximum possible recovery and full equitable  
4 relief for the Class Members.

5       42. Superiority: There is no plain, speedy, or adequate remedy other than  
6 by maintenance of this class action. The prosecution of individual remedies by  
7 members of the Classes will tend to establish inconsistent standards of conduct for  
8 Defendants and result in the impairment of Class Members' rights and disposition of  
9 their interests through actions to which they were not parties. Class action treatment  
10 will permit a large number of similarly situated persons to prosecute their common  
11 claims in a single forum simultaneously, efficiently, and without the unnecessary  
12 duplication of effort and expense that numerous individual actions would engender.  
13 Furthermore, as the damages suffered by each individual member of the Classes  
14 may be relatively small, the expenses and the burden of individual litigation would  
15 make it difficult or impossible for individual members of the Classes to redress the  
16 wrongs done to them, while an important public interest will be served by  
17 addressing the matter as a class action.

18       43. The prerequisites to maintaining a class action for injunctive or  
19 equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendants have  
20 acted or refused to act on grounds generally applicable to this Class, thereby making  
21 appropriate final injunctive or equitable relief with respect to the Class as a whole.

22       44. Plaintiff is unaware of any difficulties that are likely to be encountered  
23 in the management of this action that would preclude its maintenance as a class  
24 action.

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**FIRST CLAIM FOR RELIEF**  
**Violation of the California False Advertising Law Cal. Bus. & Prof. Code §**  
**17500, et seq.**  
**(Against All Defendants)**

45. Plaintiff realleges and incorporates by reference all previous allegations of this Complaint as if they were set forth in full herein.

46. California Business & Professions Code § 17500, *et seq.* (the “FAL”), provides that it is unlawful for any person, firm, corporation or association to dispose of property or perform services, or to induce the public to enter into any obligation relating thereto, through the use of untrue or misleading statements.

47. At all times herein alleged, Defendants have committed acts of disseminating untrue and misleading statements as defined by the FAL by engaging in the following acts and practices with intent to induce members of the public to purchase Defendants’ items:

- a. Representing to Plaintiff and the general public that the “Valued At” price placed on Defendants’ goods offered for sale reflected the true value of the goods;
- b. Engaging in advertising programs designed to create the image, impression and belief by consumers that the “Valued At” price reflected the true value of the goods, and was indicative of the value of the items offered for sale; and
- c. Engaging in advertising programs designed to create the image, impression and belief by consumers that “Your Price” price provided a discount of a specified, great magnitude, when in fact it did not provide the discount represented.

48. In light of the harm caused by the foregoing, Plaintiff, on behalf of herself and the Damages Class, is entitled to judgment against Defendants for restitution, measured by, among other things: (a) **Complete Restitution:** providing

1 Plaintiff and other Class members the opportunity to rescind the purchase, return the  
 2 goods, and obtain a complete refund; and/or (b) **Transaction Value**: awarding  
 3 Plaintiff and the Class the difference between the promised value of the purchased  
 4 goods and the received value of those goods; and/or (c) **Restitutory**  
 5 **Disgorgement**: providing Plaintiff and the Class with disgorgement of the net  
 6 profits realized through the violative sales.

7 49. Plaintiff also seeks injunctive relief to prevent the deceptive conduct  
 8 from continuing. Plaintiff has standing to request such relief as she would purchase  
 9 J.Crew products again if the “sales” prices were not marketed in a deceptive manner  
 10 that is likely to mislead consumers like herself. It would be very difficult for  
 11 Plaintiff and Class members to avoid harm by simply “shopping elsewhere” as false  
 12 discount schemes have become epidemic in California. Many companies similar to  
 13 J.Crew have been called to task for offering non-existent discounts, as action has  
 14 been taken by private litigants and government authorities regarding similar  
 15 practices. In addition, deceptive sales practices stifle competition from honest  
 16 discounters, and thus causes harm to consumers and the general public. The only  
 17 means that can be employed to stop these practices and protect the public is the  
 18 issuance of injunctive relief.

19 **SECOND CLAIM FOR RELIEF**

20 **Violation of the California Unfair Competition Law Cal. Bus. & Prof. Code §**  
 21 **17200, et seq.**

22 **(Against All Defendants—Unfair Prong)**

23 50. Plaintiff realleges and incorporates by reference all previous allegations  
 24 of this Complaint as if they were set forth in full herein.

25 51. California Business and Professions Code Section 17200, *et seq.* (the  
 26 “UCL”), prohibits “any...unfair...business act or practice.” As set forth above,  
 27 Defendants’ deceitful conduct constitutes unfair business acts or practices.  
 28

1           52. The Defendants’ conduct is unfair under the “balancing test” applied in  
2 this Circuit and in California courts. The conduct deceives consumers who are  
3 seeking to save money on purchases in these difficult economic times and is  
4 immoral, unethical, oppressive, unscrupulous and substantially injurious to those  
5 consumers. The utility of such conduct is non-existent, while the harm to the public  
6 and to honest competitors is substantial. Moreover, there are no countervailing  
7 benefits to consumers or competition, and the injury is one that consumers could not  
8 have reasonably avoided. A reasonable consumer would believe that he or she is  
9 obtaining the promised value at a discounted price.

10           53. Accordingly, Defendants have engaged in unfair business acts and  
11 practices in violation of the UCL. In light of the harm caused by the foregoing,  
12 Plaintiff, on behalf of herself and the Damages Class, is entitled to judgment against  
13 Defendants for restitution, measured by, among other things: (a) **Complete**  
14 **Restitution:** providing Plaintiff and other Class members the opportunity to rescind  
15 the purchase, return the goods, and obtain a complete refund; and/or (b)  
16 **Transaction Value:** awarding Plaintiff and the Class the difference between the  
17 promised value of the purchased goods and the received value of those goods;  
18 and/or (c) **Restitutory Disgorgement:** providing Plaintiff and the Class with  
19 disgorgement of the net profits realized through the violative sales.

20           54. Pursuant to Business and Professions Code Section 17203, Plaintiff and  
21 Class members seek an order requiring Defendants to immediately cease such acts  
22 of unfair business practices and requiring Defendants to correct their actions.  
23 Accordingly, Plaintiff also seeks injunctive relief to prevent the deceptive conduct  
24 from continuing. Plaintiff has standing to request such relief as she would purchase  
25 J.Crew products again if the sales prices were not marketed in a deceptive manner  
26 that is likely to mislead consumers like herself. It would be very difficult for  
27 Plaintiff and Class members to avoid harm by simply “shopping elsewhere” as false  
28 discount schemes have become epidemic in California. Many companies similar to

1 J.Crew have been called to task for offering non-existent discounts, as action has  
2 been taken by private litigants and government authorities regarding similar  
3 practices. In addition, deceptive sales practices stifle competition from honest  
4 discounters, and thus causes harm to consumers and the general public. The only  
5 means that can be employed to stop these practices and protect the public is the  
6 issuance of injunctive relief.

7 **THIRD CLAIM FOR RELIEF**

8 **Violation of the California Unfair Competition Law Cal. Bus. & Prof. Code §**  
9 **17200, *et seq.***

10 **(Against All Defendants—Unlawful Prong)**

11 55. Plaintiff realleges and incorporates by reference all previous allegations  
12 of this Complaint as if they were set forth in full herein.

13 56. California Business and Professions Code Section 17200, *et seq.* (the  
14 “UCL”), prohibits “any...unlawful...business act or practice.” As set forth above,  
15 Defendants’ deceitful conduct constitutes and unfair business acts or practices.

16 57. The Defendants’ conduct is unlawful, as deceiving consumers who are  
17 seeking to save money on purchases violates the FAL and the FTC Guidelines, as  
18 set forth above, and the Consumer Legal Remedies Act, as set forth *infra*. A  
19 reasonable consumer would believe that he or she is obtaining the promised value at  
20 a discounted price.

21 58. Accordingly, Defendants have thus engaged in unlawful business acts  
22 and practices in violation of the UCL. In light of the harm caused by the foregoing,  
23 Plaintiff, on behalf of herself and the Damages Class, is entitled to judgment against  
24 Defendants for restitution, measured by, among other things: (a) **Complete**  
25 **Restitution:** providing Plaintiff and other Class members the opportunity to rescind  
26 the purchase, return the goods, and obtain a complete refund; and/or (b)  
27 **Transaction Value:** awarding Plaintiff and the Class the difference between the  
28 promised value of the purchased goods and the received value of those goods;

1 and/or (c) **Restitutory Disgorgement:** providing Plaintiff and the Class with  
2 disgorgement of the net profits realized through the violative sales.

3 59. Pursuant to Business and Professions Code Section 17203, Plaintiff and  
4 Class members seek an order requiring Defendants to immediately cease such acts  
5 of unfair business practices and requiring Defendants to correct their actions.  
6 Accordingly, Plaintiff also seeks injunctive relief to prevent the deceptive conduct  
7 from continuing. Plaintiff has standing to request such relief as she would purchase  
8 J.Crew products again if the sales prices were not marketed in a deceptive manner  
9 that is likely to mislead consumers like herself. It would be very difficult for  
10 Plaintiff and Class members to avoid harm by simply “shopping elsewhere” as false  
11 discount schemes have become epidemic in California. Many companies similar to  
12 J.Crew have been called to task for offering non-existent discounts, as action has  
13 been taken by private litigants and government authorities regarding similar  
14 practices. In addition, deceptive sales practices stifle competition from honest  
15 discounters, and thus causes harm to consumers and the general public. The only  
16 means that can be employed to stop these practices and protect the public is the  
17 issuance of injunctive relief.

18 **FOURTH CLAIM FOR RELIEF**

19 **Violation of the California Consumers Legal Remedies Act**

20 **Cal. Civ. Code § 1750, *et. seq.***

21 **(Against All Defendants)**

22 60. This cause of action is brought pursuant to the Consumer Legal  
23 Remedies Act, California Civil Code § 1750, *et seq.* (the “CLRA”). Plaintiff  
24 realleges and incorporates by reference all previous allegations of the Complaint as  
25 if they were set forth in full herein, except that for this claim Plaintiff disclaims any  
26 allegations that may be construed as asserting that Defendants committed a fraud or  
27 acted with fraudulent intent. Plaintiff has duly served Defendants with a Demand  
28 Letter dated May 10, 2017, and attached hereto as Exh. C. Such Demand Letter

1 constitutes sufficient pre-suit demand as required by the CLRA, which requires  
2 delivery of such a letter prior to asserting any claim under the CLRA for damages.  
3 Plaintiff has filed herewith, as ordered by the Court, Proof of Service of the Demand  
4 Letter. As set forth in that Demand Letter, this Count is brought on the basis of  
5 negligent misrepresentation.

6 61. The CLRA has adopted a comprehensive statutory scheme prohibiting  
7 various deceptive practices in connection with the conduct of a business providing  
8 goods, property, or services to consumers primarily for personal, family, or  
9 household purposes. The self-declared purposes of the CLRA are to protect  
10 consumers against unfair and deceptive business practices and to provide efficient  
11 and economical procedures to secure such protection.

12 62. Each Defendant is a “person” as defined by Civil Code Section  
13 1761(c), because each Defendant is a corporation as set forth above.

14 63. Plaintiff and Class Members are “consumers,” within the meaning of  
15 Civil Code Section 1761(d), because they are individuals who purchased the items  
16 for personal and/or household use.

17 64. Defendants’ items are “goods” within the meaning of California Civil  
18 Code Section 1761(a), in that they are tangible products bought by Plaintiff and  
19 Class Members for personal, family, and/or household use.

20 65. Defendants’ offer of their items for sale via the website was “intended  
21 to result or which result[ed] in the sale” of goods to consumers within the meaning  
22 of Civil Code Sections 1761(e) and 1770(a).

23 66. Plaintiff has standing to pursue this claim as she has suffered injury in  
24 fact as a result of Defendants’ actions as set forth herein. Specifically, Plaintiff  
25 purchased items from the Factory Website, and failed to receive the value and  
26 discount represented. Had Defendants not misrepresented all the terms of the sale as  
27 alleged herein, Plaintiff would not have purchased the items, would have purchased  
28 less of the items or would have purchased items elsewhere.

1 67. Section 1770 (a)(13) prohibits the conduct alleged herein.

2 68. Section 1770(a)(13) of the CLRA prohibits anyone from “making false  
3 or misleading false or misleading statements of fact concerning reasons for,  
4 *existence of, or amounts of price reductions.*”

5 69. Plaintiff and the class members have suffered legal injury and damages  
6 by being deceived when purchasing from the Factory Website as set forth above.  
7 Damages under the CLRA are broadly construed. Finally, Plaintiff and the  
8 Damages Class she represents is entitled to restitutionary relief measured by, among  
9 other things: (a) **Complete Restitution:** providing Plaintiff and other Class  
10 members the opportunity to rescind the purchase, return the goods, and obtain a  
11 complete refund; and/or (b) **Transaction Value:** awarding Plaintiff and the Class  
12 the difference between the promised value of the purchased goods and the received  
13 value of those goods; and/or (c) **Restitutionary Disgorgement:** providing Plaintiff  
14 and the Class with disgorgement of the net profits realized through the violative  
15 sales. Finally, Plaintiff may seek actual damages to the extent she was induced to  
16 pay prices in excess of prevailing market prices.

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff demands a trial by jury.

19 **REQUEST FOR RELIEF**

20 **WHEREFORE,** Plaintiff requests relief providing that:

- 21 1. this action be certified as a class action, that Plaintiff be designated the  
22 class representative, and that her counsel be appointed as class counsel;
- 23 2. the Defendants’ conduct be declared violative of the FAL, UCL, and  
24 CLRA as alleged; that Plaintiff and the Damages Class be awarded due  
25 restitution under the FAL, UCL and CLRA, and damages under the CLRA;  
26 and that a further award be made of pre-judgment interest as appropriate;
- 27 3. Defendants be enjoined from effecting any further violations of the  
28 law;

1 4. Plaintiff be awarded attorneys' fees and reimbursement of all costs  
2 incurred in the prosecution of this action under Code of Civil Procedure  
3 section 1021.5 as: (a) this litigation is aimed at enforcing important rights  
4 affecting the public interest; (b) it seeks to confer a significant benefit on the  
5 general public or a large class of persons; and (c) the necessity and financial  
6 burden of private enforcement is such as to make the award appropriate; and  
7 6. such other relief as this Court deems just and proper.

8  
9 Dated: May 29, 2017

10 **LAW OFFICES OF DAVID N. LAKE**

11  
12 By: /s/ David N. Lake  
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