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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13	JOSE JACOBO, an individual; and	)	Case No. 2:15-cv-04701-MWF-AGR _x
14	THERESA METOYER, an individual;)	
15	individually and on behalf of all others	)	CLASS ACTION
	similarly situated,)	
16		)	THIRD AMENDED COMPLAINT
	Plaintiffs,	)	[PROPOSED]
17)	
18	vs.	)	1. UNFAIR BUSINESS PRACTICES;
		)	2. FRAUDULENT BUSINESS
19	ROSS STORES, INC., a Delaware	)	PRACTICES;
20	Corporation; and DOES 1 through 10,	)	3. FALSE ADVERTISING; and,
21	inclusive,	)	4. NEGLIGENT
		)	MISREPRESENTATION
22)	
	Defendants.)	
23)	
24)	

1 This Third Amended Class Action Complaint (“Complaint”) is brought by
2 individual consumers in California against retailer ROSS STORES, INC.
3 (“Defendant”) for using false, deceptive, or misleading comparative reference
4 prices on the price tags of the products sold in Ross Dress for Less (“Ross”) stores
5 in the United States of America. Plaintiffs JOSE JACOBO (“Jacob”) and
6 THERESA METOYER (“Metoyer”) (collectively referred to as “Plaintiffs”),
7 individually and on behalf of all others similarly situated (collectively referred to
8 as “Class Members”), bring this action against Defendant, and for causes of action
9 against Defendant, based upon personal knowledge, information and belief, and
10 investigation of counsel, allege as follows:

11 **JURISDICTION AND VENUE**

- 12 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332(d)
13 (the Class Action Fairness Act of 2005 (“CAFA”)) because the amount in
14 controversy exceeds the value of \$5,000,000, exclusive of interest and costs,
15 because the Class consists of 100 or more putative Class Members, and
16 because at least one putative Class Member is diverse from Defendant, a
17 Delaware corporation with its principal place of business in Dublin,
18 California.
- 19 2. This is a civil action brought under and pursuant to California Business &
20 Professions Code §17200, *et seq.* (the Unfair Competition Law or “UCL”),
21 and California Business & Professions Code §17500, *et seq.* (the False
22 Advertising Law or “FAL”).
- 23 3. Venue is proper in the Western Division of the Central District of California
24 because Defendant transacts a substantial amount of business in this District,
25 Plaintiff Jacobo resides in Los Angeles County, California, and the
26 transactions which form the basis of his claims against Defendant occurred
27 in the cities of La Puente and City of Industry, in Los Angeles County,
28 California.

1 4. The Central District of California has personal jurisdiction over the
2 Defendant named in this action because Defendant is a corporate business
3 entity authorized to do business in the State of California and registered with
4 the California Secretary of State to do business, with sufficient minimum
5 contacts in California. Defendant has otherwise intentionally availed itself
6 of the California market through the ownership and operation of
7 approximately 240 retail stores within the State of California, such that the
8 exercise of jurisdiction over Defendant by the California courts is consistent
9 with traditional notions of fair play and substantial justice.

10 5. Defendant transacts business within the county of Los Angeles, and
11 elsewhere throughout the State of California. The violations of law alleged
12 herein have been carried out within the County of Los Angeles and
13 throughout the State of California.

14 **INTRODUCTION**

15 6. A product's regular price, the price at which a product generally sells for in
16 the marketplace, matters to consumers. The price that a product generally
17 sells for in the marketplace provides important information to consumers
18 about the product's worth and the prestige that ownership of that product
19 conveys. Many retailers these days use comparative reference prices to
20 assure their customers that their sale prices are lower than the prices their
21 products regularly sell for at other retailers in the marketplace.

22 7. This is a case about one of the nation's largest retailers, Ross, using
23 deceptive comparative prices at each of its California stores and throughout
24 the United States to trick its customers into mistakenly believing that the
25 selling prices of products at Ross stores are significantly lower than the
26 regular prices of those same products at other retailers in the United States.
27 Plaintiffs are typical reasonable American consumers who, like all
28 reasonable consumers, are motivated by the promise of a good deal.

1 Defendant is a large national retailer that makes enormous profits by
2 promising consumers a good deal. Defendant owns and operates a chain of
3 so called “off-price” department stores in California known as Ross stores.
4 Plaintiffs occasionally shop at Ross because of Defendant’s promise that
5 they can get name brand products for 20 to 60% below department store
6 prices. Defendant supports that promise with price tags on each item in each
7 store which feature Defendant’s selling prices alongside much higher
8 supposedly comparative prices. The comparative prices assure consumers
9 like Plaintiffs that they are receiving an exceptionally good deal and saving a
10 specific dollar amount equal to the difference between the two prices.
11 Defendant’s price tags deceptively instruct customers to “compare” the
12 selling prices of Defendant’s products to these higher comparative reference
13 prices. The comparative prices, however, are deceptive. They are not true,
14 bona fide comparative prices. They are not what typical, reasonable
15 consumers, like Plaintiffs, think they are. Defendant does not adequately,
16 clearly, or conspicuously disclose to consumers that its “Compare At”
17 reference prices are references to prices of supposedly “similar,” non-
18 identical items. There are no definitions or disclosures of what Defendant’s
19 Compare At prices are at or near the comparative price representations made
20 on the price tags of the items sold at Ross stores in the United States. a.
21 Plaintiffs, having been misled and deceived by Defendant’s deceptive
22 pricing practices like all other Ross customers, bring this action against
23 Defendant for false, deceptive and misleading advertising on behalf of
24 themselves and all other consumers who have purchased items at Ross stores
25 in the United States throughout the period from June 20, 2011, to the present
26 (the “Class Period”).¹

27 ¹ Unless otherwise specified, all references to time periods in this Second Amended Complaint
28 refer to the “Class Period.”

PARTIES

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8. Plaintiff Jacobo is, and at all times relevant hereto has been, an individual and a resident of Los Angeles County, California. On over 10 occasions throughout the Class Period, Jacobo purchased products from the La Puente and City of Industry, California, Ross stores which were falsely, deceptively, and/or misleadingly labeled with false, deceptive, and/or misleading, comparative prices. The marked “Compare At” prices for the products which Jacobo purchased from Defendant were not actual prices at which substantial and significant sales of those same products were made at other principal retail outlets in California. The marked “Compare At” prices for many of the products which Jacobo purchased from Defendants were supposed prices of supposed “similar,” non-identical items. Jacobo, a reasonable consumer, did not interpret the phrase, “Compare At” on Defendant’s price tags to be a possible reference to the price of a “similar,” non-identical item. Jacobo purchased products from Defendant throughout the Class Period in reliance on Defendant’s false, deceptive and misleading advertising, marketing and pricing schemes, which he would not otherwise have purchased absent Defendant’s deceptive advertising and pricing scheme, and Jacobo has lost money and/or property, and has been damaged as a result. Jacobo is a reasonable consumer.

9. Plaintiff Metoyer is, and at all times relevant hereto has been, an individual and a resident of Riverside County, California. On over 10 occasions throughout the Class Period, Metoyer purchased products from the Hemet, Beaumont, Indio, and Mira Loma, California, Ross stores which were falsely, deceptively, and/or misleadingly labeled with false, deceptive, and/or misleading, comparative prices. The marked “Compare At” prices for the products which Metoyer purchased from Defendant were not actual prices at which substantial and significant sales of those same products were

1 made at other principal retail outlets in California. The marked “Compare
2 At” prices for many of the products which Metoyer purchased from
3 Defendants were supposed prices of supposed “similar,” non-identical items.
4 Metoyer, a reasonable consumer, did not interpret the phrase, “Compare At”
5 on Defendant’s price tags to be a possible reference to the price of a
6 “similar,” non-identical item. Metoyer purchased products from Defendant
7 throughout the Class Period in reliance on Defendant’s false, deceptive and
8 misleading advertising, marketing and pricing schemes, which she would not
9 otherwise have purchased absent Defendant’s deceptive advertising and
10 pricing scheme, and Metoyer has lost money and/or property, and has been
11 damaged as a result. Metoyer is a reasonable consumer.

12 10. Defendant is a Delaware corporation, organized under the laws of the state
13 of Delaware, which conducts substantial business on a regular and
14 continuous basis in the state of California. Defendant’s principal place of
15 business is in Dublin, California.

16 11. The true names and capacities of the Defendants named herein as DOES 1
17 through 10, inclusive, whether individual, corporate, associate or otherwise,
18 are unknown to Plaintiffs who therefore sue such Defendants under fictitious
19 names. Plaintiffs are informed and believe, and on that basis allege, that
20 these Defendants, DOES 1 through 10, are in some manner or capacity, and
21 to some degree, legally responsible and liable for the damages of which
22 Plaintiffs complain. Plaintiffs will seek leave of Court to amend this
23 Complaint to set forth the true names and capacities of all fictitiously-named
24 Defendants within a reasonable time after they become known.

25 **FACTUAL ALLEGATIONS**

26 12. During the Class Period, Plaintiffs bought apparel and other items from
27 various Ross stores in Southern California.

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1 13. Plaintiffs were each lured into Defendant’s stores with the promise of
2 significant savings on name brand merchandise such as, without limitation,
3 apparel, handbags, shoes, and bed, bath and home items.

4 14. Plaintiffs would each shop at Ross stores in California in the future if they
5 could be assured that the comparative reference prices advertised by
6 Defendant were true and accurate, and not misleading or deceptive,
7 reference prices.

8 **I. Defendant Labels Its Products With “Compare At” Reference Prices:**

9 15. At all relevant times throughout the Class Period, each item offered for sale
10 at Ross was displayed with a comparative price tag which provided 2 prices:
11 the Ross sale price, and another significantly higher price described simply
12 as the “Compare At” price.

13 16. The price tags used by Defendant at Ross stores throughout California are
14 identical in all material respects. They each have a sale price (i.e., a price at
15 which Defendant is selling the item for), and a higher comparative reference
16 price listed above the sale price accompanied by the phrase “Compare At.”

17 17. The price tags do not tell consumers what the phrase “Compare At” means,
18 or give any information about the comparative price other than the dollar
19 amount and the phrase, “Compare At.” Nor are consumers told where
20 Defendant came up with the “Compare At” price. They are simply
21 presented with the 2 prices (the sale price, and the higher “Compare At”
22 reference price), left to guess what the “Compare At” price is a reference to,
23 and are led to believe that they are actually saving the difference between the
24 2 prices.

25 **II. Comparative Reference Prices Are Material to Consumers:**

26 18. Defendant compares the prices of its products with higher reference prices
27 which consumers are led to believe are the prices supposedly charged by
28

- 1 other merchants for the same identical products. Defendant labels those
2 higher comparative prices as the “Compare At” prices for those products.
- 3 19. Defendant presents its reference prices (commonly referred to as “advertised
4 reference prices” or “ARPs”) to consumers with the simple, short tag-line
5 phrase, “Compare At.” These types of marketing phrases are commonly
6 referred to as “semantic cues.”
- 7 20. Over 30 years of marketing research unanimously concludes that semantic
8 cues presented with comparative reference prices, such as Defendant’s use
9 of the phrase “Compare At” on its price tags, are material to consumers such
10 as Plaintiffs. That is, they influence consumers’ purchasing decisions.
11 Defendant’s use of the phrase, “Compare At,” on its price tags did in fact
12 influence both Plaintiffs’ decisions to purchase products from Ross.
- 13 21. For example, a well-respected and oft-cited study by Dhruv Grewal & Larry
14 D. Compeau, *Comparative Price Advertising: Informative or Deceptive?*, 11
15 J. of Pub. Pol’y & Mktg. 52, 55 (Spring 1992), concludes that “[b]y creating
16 an impression of savings, the presence of a higher reference price enhances
17 [consumers’] perceived value and willingness to buy [a] product.” In other
18 words, comparative reference prices lead consumers, like Plaintiffs, to
19 believe they are saving money, and increase their willingness to buy
20 products.
- 21 22. Numerous other consumer and marketing research studies arrive at similar
22 conclusions. For example, Compeau & Grewal, in *Comparative Price*
23 *Advertising: Believe It Or Not*, J. of Consumer Affairs, Vol. 36, No. 2, at
24 287 (Winter 2002), conclude that “decades of research support the
25 conclusion that advertised reference prices do indeed enhance consumers’
26 perceptions of the value of the deal.” They also conclude that “[c]onsumers
27 are influenced by comparison prices even when the stated reference prices
28 are implausibly high.” *Id.*

- 1 23. Joan Lindsey-Mullikin & Ross D. Petty, *Marketing Tactics Discouraging*
2 *Price Search: Deception and Competition*, 64 J. of Bus. Research 67
3 (January 2011), conclude that “[r]eference price ads strongly influence
4 consumer perceptions of value. . . . Consumers often make purchases not
5 based on price but because a retailer assures them that a deal is a good
6 bargain. This occurs when . . . the retailer highlights the relative savings
7 compared with the prices of competitors . . . [T]hese bargain assurances
8 (BAs) change consumers’ purchasing behavior and may deceive
9 consumers.”
- 10 24. Praveen K. Kopalle & Joan Lindsey-Mullikin, *The Impact of External*
11 *Reference Price On Consumer Price Expectations*, 79 J. of Retailing 225
12 (2003), similarly conclude that “research has shown that retailer-supplied
13 reference prices clearly enhance buyers’ perceptions of value” and “have a
14 significant impact on consumer purchasing decisions.”
- 15 25. The belief that they are paying a specific amount less than the market retail
16 price of a product, in and of itself, creates a quantifiable value to consumers,
17 including Plaintiffs. When a deceptive reference price leads a reasonable
18 consumer to mistakenly believe he or she is paying less than the market
19 retail price of a product, then the actual value of the product is less than the
20 consumer believed and less than the amount the consumer paid. Because of
21 the false or misleading reference price, the product actually has less value
22 than the consumer believes it has, and therefore the consumer paid more for
23 the product than the value he or she actually received.
- 24 26. The results of a study by Dr. Jerry B. Gotlieb & Dr. Cyndy Thomas
25 Fitzgerald, *An Investigation Into the Effects of Advertised Reference Prices*
26 *On the Price Consumers Are Willing To Pay For the Product*, 6 J. of App’d
27 Bus. Res. 1 (1990), conclude that “reference prices are important cues
28 consumers use when making the decision concerning how much they are

1 willing to pay for the product.” This study further concludes that
2 “consumers are likely to be misled into a willingness to pay a higher price
3 for a product simply because the product has a higher reference price.”

4 27. Consumers, like Plaintiffs, place a higher value on products that have
5 reference prices higher than the selling price. When those reference prices
6 are not what the consumer believed them to be, then the consumer has paid
7 an additional amount for value he or she did not actually receive.

8 28. The indisputable conclusion of decades of scholarly research concerning
9 comparative reference prices, such as the “Compare At” reference prices
10 used by Defendant, is that they matter – they are material to consumers.
11 Defendant’s “Compare At” reference prices were material to Plaintiffs.

12 **III. Defendant Has a Duty to Verify Its “Compare At” Prices:**

13 29. The FTC requires that “[a]dvertisers must have evidence to back up their
14 claims (“substantiation”). . . . Before disseminating an ad, advertisers must
15 have appropriate support for all express and implied objective claims that the
16 ad conveys to reasonable consumers. When an ad lends itself to more than
17 one reasonable interpretation, there must be substantiation for each
18 interpretation. The type of evidence needed to substantiate a claim may
19 depend on the product, the claims, and what experts in the relevant field
20 believe is necessary.”

21 30. Plaintiffs are informed and believe, and on that basis allege, that Defendant
22 does not have sufficient evidence to substantiate the validity of its “Compare
23 At” reference prices. Plaintiffs believe that further investigation and
24 discovery will reveal that Defendant does not have sufficient evidence to
25 substantiate the validity of its “Compare At” reference prices.

26 31. The FTC Pricing Guides, 16 C.F.R. §233.2, provide rules for merchants
27 such as Defendant that claim “to offer goods at prices lower than those being
28 charged by others for the same merchandise in the advertiser’s trade area.”

- 1 32. The FTC Pricing Guides require that when merchants such as Defendant use
2 advertising that compares their prices to higher comparative prices for the
3 same merchandise, “the advertised higher price must be based on fact, and
4 not be fictitious or misleading.” The FTC Pricing Guides further provide:
5 “Whenever an advertiser represents that he is selling below the prices
6 being charged in his area for a particular article, he should be
7 reasonably certain that the higher price he advertises does not
8 appreciably exceed the price at which *substantial sales* of the article
9 are being made in the area - that is, *a sufficient number of sales* so
10 that a consumer would consider a reduction from the price to
11 represent a genuine bargain or saving.” (Emphasis added).
- 12 33. Defendant thus has, and has had, a duty to provide “appropriate support” for,
13 and “evidence to back up,” its “Compare At” reference prices.
- 14 34. Defendant has, and has had, a duty to verify that its “Compare At” reference
15 prices do not “appreciably exceed the price at which substantial sales” of its
16 products have been made in the United States.
- 17 35. Plaintiffs believe that further investigation and discovery will reveal that
18 Defendant does not have such evidence and has not in fact verified that its
19 “Compare At” reference prices do not “appreciably exceed the price at
20 which substantial sales” of its products have been made in California.
- 21 36. Where the advertiser’s comparison price is purportedly based on prices
22 being charged for similar or “comparable” products, the FTC Pricing Guides
23 require that the advertiser make “clear to the consumer that a comparison is
24 being made with other merchandise and the other merchandise is, in fact, of
25 essentially similar quality and obtainable in the area.” In such a case:
26 “The advertiser should, however, be reasonably certain, just as in the
27 case of comparisons involving the same merchandise, that the price
28 advertised as being the price of comparable merchandise does not
exceed the price at which such merchandise is being offered by
representative retail outlets in the area.”

1 37. Defendant's price comparison advertising does not make clear to consumers
2 that a comparison is being made with other "similar," non-identical
3 merchandise.

4 38. Neither Plaintiff saw any sign anywhere in Defendant's stores which
5 described Defendant's "Compare At Pricing" before purchasing any of the
6 items they purchased from Ross.

7 39. Neither Plaintiff saw or read any description of Defendant's "Compare At
8 Pricing," online or anywhere else, before purchasing any of the items they
9 purchased from Ross.

10 40. Nowhere on Defendant's price tags, or in Defendants' price advertising, is it
11 made clear to consumers, including Plaintiffs, that the advertised "Compare
12 At" price is merely what Defendant believes to be the "selling price" of a
13 "similar item." The words "similar item" do not appear on any price tag of
14 any item sold at Ross. Reasonable consumers, including Plaintiffs, would
15 have to look beyond Defendant's price tags to discover that the "Compare
16 At" price might be a reference to the supposed price of a "similar item."

17 **IV. Defendant Does Not Adequately Verify Its "Compare At" Prices:**

18 41. Plaintiffs believe that further investigation and discovery will reveal that
19 when Defendant advertised prices as "Compare At" prices on the price tags
20 of items sold in its Ross stores, Defendant was not reasonably certain that
21 the higher prices it advertised did not appreciably exceed the prices at which
22 *substantial sales* of the items were being made.

23 42. Plaintiffs believe that further investigation and discovery will reveal that the
24 "Compare At" reference prices advertised by Defendant were significantly
25 in excess of the highest prices at which *substantial sales* of those products
26 were made.

27 43. Plaintiffs believe that further investigation and discovery will reveal that
28 Defendant did not ascertain whether the "Compare At" prices on its price

1 tags were in fact the prices regularly charged by a substantial number of
2 principal outlets in California, or whether its “Compare At” prices were
3 prices at which *substantial sales* of such products were made in California.

4 44. Plaintiffs believe that further investigation and discovery will reveal that
5 Defendant systematically and routinely used unverified comparative prices
6 as comparative reference prices for its products which were not, in fact,
7 prices at which those identical products sold, or are selling, in any
8 substantial volume at the “principal retail outlets” in California.

9 45. Defendant’s misrepresentation of the “Compare At” prices as actual prices at
10 which substantial sales of identical products had been made in California
11 was deceptive, misleading, unlawful, unfair, and/or fraudulent.

12 **V. Defendant’s “Compare At” Reference Prices Are Misleading, Deceptive,**
13 **and/or False:**

14 46. The result of Defendant’s use of prices of supposed “similar” products, was
15 that consumers, including Plaintiffs, were misled into believing that they
16 were receiving substantial savings on the purchase of products at Ross when
17 compared to prices charged for those same products at other retailers.
18 Plaintiffs and other Class Members were misled into paying more for
19 Defendant’s products than they would have paid for identical products sold
20 by other merchants.

21 47. Plaintiffs were confronted with ARPs on the items they purchased from
22 Defendant, accompanied by the undefined, unqualified phrase, “Compare
23 At.” Plaintiffs reasonably believed, like all reasonable consumers, that the
24 “Compare At” prices represented the prices that they would expect to pay
25 for those same products at other retailers in their general area. In other
26 words, Plaintiffs reasonably believed that the “Compare At” prices referred
27 to the then prevailing retail prices for those same items - that if they left
28 Defendant’s store and shopped around for those same products, they would

1 likely find them elsewhere at the higher “Compare At” prices advertised by
2 Defendant.

3 48. Defendant, however, had a different definition of what it meant by
4 “Compare At” - a definition not clearly or conspicuously disclosed to
5 consumers, and not consistent with the common meaning of the phrase
6 “compare at.”

7 49. Had Plaintiffs been savvy enough, and stopped their shopping to get to a
8 computer, log onto Defendant’s website, find the “Compare at Pricing”
9 hyperlink in fine print at the bottom of the page (alongside Defendant’s
10 “Terms of Use,” “Privacy Policy,” and other related hyperlinks) and click on
11 that hyperlink, Plaintiffs would have found Defendant’s definition of
12 “Compare at” as follows:

13 “Compare at Pricing

14 We want you to shop with more information, so many of our products
15 include a comparison price. The comparison price represents a recent
16 documented selling price of the same or similar product in full-price
17 department stores or specialty stores. Where identical products are not
18 available we may compare to similar products and styles. Prices
19 charged for the compared to products may change over time, but our
20 goal is to provide you with a useful comparison point of what you
21 may have paid in a competitive store, so you can be sure you are
22 getting a great bargain when you shop at Ross.”

23 **A. Reasonable Consumers Do Not Interpret Defendant’s “Compare**
24 **At” Prices to be Prices Defendant Believes to be Prices of Similar**
25 **Products:**

26 50. Reasonable consumers, including Plaintiffs, believe that ARPs are real,
27 verified comparative retail prices. Reasonable consumers, including
28 Plaintiffs, believe that ARPs are not numbers that retailers estimate or make

1 up. Reasonable consumers, including Plaintiffs, believe that an ARP
2 advertised with the phrase, “Compare At,” is a verified retail price for the
3 same, identical item.

4 51. A 2004 study in The Journal of Consumer Affairs by Larry D. Compeau,
5 Ph.D., *et al.*, has concluded that the average reasonable consumer interprets
6 the term “compare at,” when presented in comparison to a lower selling
7 price for an item, to refer to “prices found in a ‘regular price’ department
8 store.” (The Journal of Consumer Affairs, Vol. 38, No. 1, 2004, at 184).

9 52. Reasonable consumers, including Plaintiffs, believed the “Compare At”
10 reference prices on Defendant’s price tags were the prices at which other
11 merchants supposedly sold the same, identical products.

12 53. A reasonable consumer would interpret Defendant’s “Compare At” prices as
13 the prices at which a substantial number of vendors are selling the identical
14 products.

15 54. Defendant does not, and did not, make clear to consumers that a comparison
16 is, and was, being made with other “similar,” non-identical products.

17 55. Nowhere on Defendant’s price tags, or in Defendants’ price advertising, is it
18 made clear to consumers, including Plaintiffs, that the advertised “Compare
19 At” price is what Defendant believes to be the price of a “similar” product.

20 56. Nowhere on Defendant’s price tags is it made clear to consumers, or even
21 mentioned, that the “Compare At” price may be a reference to the price of a
22 “similar product” or to products with similar “styles.”

23 57. Consumers should not have to sleuth their way into Defendant’s website just
24 to find Defendant’s, ambiguous, contradictory, misleading and non-intuitive
25 interpretation of what it means by the phrase “Compare At.”

26 58. Even if a consumer were to find Defendant’s interpretation of the phrase
27 “Compare At” on its website before purchasing a product from Ross, it is
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1 still not clear from Defendant’s definition exactly what the “Compare At”
2 price actually is.

3 59. Even though one of the alternative interpretations provided by Defendant of
4 its definition of the phrase “Compare At” might include the price of a
5 “similar product,” there are other equally reasonable and plausible
6 interpretations of the same phrase and definition. One such reasonable and
7 plausible interpretation of the phrase “Compare At” read in light of
8 Defendant’s definition is that the “Compare At” price is a reference to the
9 “selling price of the same product.” This is precisely how Plaintiffs,
10 reasonable consumers, interpreted the “Compare At” prices of each of the
11 items they purchased from Ross – as the “price of the same product.”

12 60. Viewed in light of Defendant’s definition, Defendant’s “Compare At” price
13 could be the selling price of the same item at other full-price department or
14 specialty stores. Or, it could be the selling price of a “similar” product. It
15 could simply be what Defendant believes a product of similar “style” might
16 sell for. Or, it could be none of the above. It may be that the particular item,
17 or even a similar item, was never offered for sale at the “Compare At” price
18 by any other retailer. And consumers, even if they were to find Defendant’s
19 definition, would still be left to guess what a “similar” product might be, or
20 what products may have similar “styles.”

21 61. Defendant’s depiction of prices, as described herein, deceptively represented
22 to consumers, including Plaintiffs, that the “Compare At” price was the price
23 at which the same, identical product typically sold in the marketplace, from
24 which Defendant offered a discount.

25 62. Plaintiffs believe that further investigation and discovery will reveal that the
26 “Compare At” prices advertised by Defendant were not the then prevailing
27 retail prices for the products that they purchased from Ross.
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1 63. Nowhere on or near Defendant’s price tags does Defendant disclose to
2 consumers, including Plaintiffs, what the “Compare At” price is, where
3 Defendant came up with the “Compare At” price, or what Defendant means
4 by the term “Compare At.”

5 64. The Better Business Bureau (“BBB”) Code of Advertising suggests that if a
6 retailer means to compare its selling prices to higher reference prices of
7 comparable, non-identical merchandise, the retailer should use clear
8 language in its advertising such as “comparative value,” “compares with
9 merchandise selling at,” or “equal to merchandise selling for.”

10 65. Confronted with the simple phrase, “Compare At,” reasonable consumers
11 like Plaintiffs believe that the higher reference prices represent prices at
12 which the same, identical items currently sell for, or have recently sold for,
13 in the marketplace – the then-or-recent-prevailing retail or market prices.

14 66. Plaintiffs and all other Class Members reasonably relied upon Defendant’s
15 deceptive, misleading, and/or false representations of comparative prices and
16 false representations of purported savings, discounts and bargains when
17 purchasing merchandise from Defendant’s California stores.

18 67. Plaintiffs did not, and reasonable consumers would not, interpret the
19 semantic phrase “Compare At” the way Defendant interprets it.

20 68. Defendant’s use of the phrase “Compare At” in connection with its ARPs
21 was, and is, false, misleading, and/or deceptive.

22 **B. Defendant’s “Compare At” Price Advertising Omits Necessary**
23 **Information, Including Defendant’s Purported Disclosure:**

24 69. At all times relevant herein, Defendant has been under a duty to Plaintiffs
25 and all other Class Members to adequately disclose the truth about its
26 “Compare At” prices.

27 70. The FTC, in its Policy Statement on Deception (Oct. 14, 1983), requires that
28 advertisers must disclose material information to consumers if the disclosure

1 of the information would “prevent the claim, practice, or sale from being
2 misleading.”

3 71. The FTC further states that “[a] misleading omission occurs when qualifying
4 information necessary to prevent a practice, claim, representation, or
5 reasonable expectation or belief from being misleading is not disclosed.”

6 72. Defendant has used the phrase “Compare At” on the price tags of each
7 product offered for sale at Ross stores throughout California regardless of
8 whether the product was a “close-out” item (one which was previously or
9 currently sold at a full-price department store) or a “makeup” item (one that
10 was produced exclusively for Defendant and sold only at Ross stores).

11 73. Defendant’s 2014 Annual Report reveals that Defendant purchases “the vast
12 majority of [its] merchandise directly from manufacturers,” as opposed to
13 the leftover or closeout items from department stores. One buyer intern for
14 Ross has revealed that as much as 70% of the inventory at Ross stores may
15 consist of “make-up” items which means the “vast majority” of the items
16 sold at Ross advertised with “Compare At” reference prices, were never
17 offered for sale at any other store or by any other retailer at the “Compare
18 At” price.

19 74. When Defendant compares its selling price to a supposed “recent
20 documented selling price” of an identical item previously sold at a full-price
21 department store (a “close-out” item), Defendant does so by using the
22 comparative reference phrase “Compare At.” In this case, Defendant is
23 supposedly comparing apples-to-apples. That is, the phrase “Compare At”
24 supposedly instructs the consumer to compare Defendant’s selling price to
25 the price that the same exact product recently sold for at other retailers.

26 75. When Defendant compares its selling price to a supposed “recent
27 documented selling price” of a “similar product” (a “makeup” item),
28 Defendant also does so by using the same comparative reference phrase

1 “Compare At.” In this case, Defendant is supposedly comparing apples-to-
2 oranges. That is, the phrase “Compare At” in this case supposedly instructs
3 the consumer to compare Defendant’s selling price not to the same exact
4 product, but to the price that a “similar product,” or a product with a similar
5 “style,” recently sold for at other retailers.

6 76. Defendant, however, does not disclose to consumers whether they are
7 comparing the Ross price to the supposed recent price of the exact same
8 product (apples-to-apples), or whether they are comparing the Ross price to
9 the supposed price of a “similar product” (apples-to-oranges).

10 77. When Plaintiffs were exposed to Defendant’s “Compare At” reference prices
11 they, like all typical reasonable consumers, believed they were comparing
12 apples-to-apples. In reality, however, it is not clear whether they were
13 comparing Defendant’s selling price to supposed prices of identical items, or
14 “similar,” non-identical items.

15 78. Even if Plaintiffs, or any other Class Member, had seen and read
16 Defendant’s disclosure before purchasing a product from a Ross store in
17 California, they would not have known whether they were comparing the
18 Ross price to the price of an identical product, a “similar” product, or a
19 product with a similar “style.”

20 79. Thus, Defendant’s “Compare At” reference prices are deceptive, misleading,
21 and/or have a tendency or likelihood to mislead or confuse a reasonable
22 consumer, and in fact did deceive, mislead and confuse Plaintiffs.

23 80. Defendant’s “Compare At” reference prices therefore required, and continue
24 to require, a qualifying disclosure because, amongst other things, Defendant
25 defines and interprets the term “Compare At” in a way that reasonable
26 consumers do not, and would not.

27 81. Defendant has in fact provided a qualifying disclosure, but that disclosure is
28 ambiguous, unclear, and is buried on its website, or out of plain view in its

1 stores, and not clearly and conspicuously next to the “Compare At”
2 reference prices, as required by FTC rules.

3 82. Studies, such as the 2004 study in *The Journal of Consumer Affairs* by Larry
4 D. Compeau, Ph.D., *et al.*, have concluded that “about two-thirds” of
5 consumers “may be deceived by the ‘Compare At’ phrase if specific
6 information regarding the comparison is not provided.” (*The Journal of*
7 *Consumer Affairs*, Vol. 38, No. 1, 2004, at 186).

8 83. Defendant attempts to provide that additional “specific information” by way
9 of a disclosure accessible only through a hyperlink at the bottom of its web
10 page, and in small print on signs in its stores not easily seen by, or made
11 clear or conspicuous to, customers. Defendants’ disclosure is inadequate
12 and does not comply with FTC rules and/or guidelines.

13 84. Where, as here, the retailer and the consumer do not share the same meaning
14 of the comparative reference phrase (“Compare At”), and thus the term is
15 open to more than one interpretation, the use of that term is misleading and
16 deceptive. The FTC states, in its Policy Statement on Deception, that
17 “[w]hen a seller's representation conveys more than one meaning to
18 reasonable consumers, one of which is false, the seller is liable for the
19 misleading interpretation.”

20 85. Defendant’s own definition conveys more than one meaning. Either the
21 “Compare At” price refers to the supposed price of the “same” product, a
22 “similar” product, or a product with a similar “style.” For any given
23 product, one of those definitions must necessarily be false. Even if
24 Defendant’s multiple definitions were reasonable, for each and every item
25 offered for sale at Ross stores in California, at least one of those definitions
26 must be, and has been, false.

27 86. It is a deceptive marketing act and/or practice for Defendant to define its
28 reference prices as what it believes to be prices of the “same or similar”

1 products but fail to clearly and conspicuously disclose that definition to
2 consumers. If the reference prices provided by Defendant on the price tags
3 of its products are meant to be prices of similar items, those price tags
4 should say so.

5 87. Plaintiffs did not, and reasonable consumers would not, interpret the
6 semantic phrase “Compare At” the way Defendant interprets it.

7 88. Where, as here, the retailer ascribes a secret, undisclosed meaning to the
8 phrase that differs from that which reasonable consumers, including
9 Plaintiffs, would ascribe to it, the use of that term is deceptive, misleading,
10 and/or likely to mislead reasonable consumers.

11 89. It is a deceptive marketing act and/or practice for Defendant to fail to clearly
12 and conspicuously disclose its definition or interpretation of its phrase
13 “Compare At” to its customers.

14 90. Defendant’s use of the semantic term “Compare At” in connection with its
15 ARPs for its products was, and is, false, misleading, and/or deceptive.

16 91. Defendant’s definition of the term “Compare At,” which it failed to
17 adequately disclose, provides material facts that a reasonable person would
18 have considered material; i.e., facts that would contribute to a reasonable
19 person’s decision to purchase merchandise offered for sale by Defendant.
20 Defendant’s reference prices, and/or representations of discounts from its
21 comparative prices, and representations of purported savings, discounts
22 and/or bargains, are and were objectively material to reasonable consumers.

23 92. Plaintiffs and all other Class Members reasonably and justifiably acted and
24 relied to their detriment on Defendant’s failure to disclose, and concealment
25 of, the truth about its comparative prices, in purchasing merchandise at
26 Defendant’s stores throughout California.

27 ///

28 ///

1 **C. Defendant’s Failure to Adequately Disclose What Its “Compare**
2 **At” Prices Are Violates FTC Guidelines:**

3 93. The FTC provides detailed requirements concerning the use of purported
4 disclosures in their “.com Disclosures” rules.

5 94. Defendant provides a disclosure of its definition or interpretation of its
6 “Compare At” prices on its website, and that disclosure therefore is subject
7 to the FTC’s “.com Disclosures” rules. Defendant’s disclosure is also
8 subject to the FTC’s Policy Statement on Deception.

9 95. The FTC has a “clear and conspicuous requirement” for advertising
10 disclosures, which requires any such disclosures to be presented to
11 consumers “clearly and prominently.” The FTC’s “clear and conspicuous
12 requirement” requires that “disclosures must be clear and conspicuous.”

13 96. When making a disclosure related to an advertising claim, the FTC requires
14 that “[d]isclosures should be placed as close as possible to the claim they
15 qualify,” or the “triggering claim.”

16 97. The FTC requires that “[w]hen the disclosure of qualifying information is
17 necessary to prevent an ad from being deceptive, the information should be
18 presented clearly and conspicuously so that consumers can actually notice
19 and understand it. A . . . disclaimer that is easily missed on a website [is] not
20 likely to be effective. Nor can advertisers use fine print to contradict other
21 statements in an ad or to clear up misimpressions that the ad would leave
22 otherwise. . . . To ensure that disclosures are effective, advertisers should use
23 clear and unambiguous language, [and] place any qualifying information
24 close to the claim being qualified.”

25 98. Even if the advertisement is small and space-constrained, the FTC requires
26 that “[i]f a space-constrained ad contains a claim that requires qualification,
27 the advertiser disseminating it is not exempt from disclosure requirements.”

28 99. Defendant’s “Compare At” reference prices require qualification.

- 1 100. Defendant’s qualifying disclosures are not presented clearly or
2 conspicuously, nor are they presented so that consumers can notice them.
- 3 101. Defendant’s disclosures of qualifying information (i.e., that Defendants’
4 “Compare At” reference prices are what it believes to be prices of the “same
5 or similar” items) are not placed close to the “Compare At” claims. They
6 are placed on a website only accessible by linking to them through a
7 hyperlink, and on signage in Defendants’ stores that is not easily seen by,
8 nor made clear and/or conspicuous to, consumers.
- 9 102. Defendant does not, and did not, place any disclosure of qualifying
10 information regarding its “Compare At” reference prices close to the
11 “Compare At” claims themselves – i.e., close to its price tags.
- 12 103. Plaintiffs did not see, and were not aware of, Defendant’s disclosures.
- 13 104. When using a hyperlink to lead to a disclosure, the FTC requires, among
14 other things, that the advertiser make the link “obvious.”
- 15 105. Defendant’s hyperlinks to its disclosures are not obvious.
- 16 106. The FTC’s disclosure rules further provide that “[d]isclosures that are an
17 integral part of a claim or inseparable from it should not be communicated
18 through a hyperlink. Instead, they should be placed on the same page and
19 immediately next to the claim and be sufficiently prominent so that the claim
20 and the disclosure are read at the same time, without referring the consumer
21 somewhere else to obtain this important information.”
- 22 107. Defendant’s qualifying disclosures are an “integral part” of its “Compare
23 At” reference price claims. Those disclosures should not be or have been
24 communicated to consumers through a hyperlink. Those disclosures should
25 be, and should have been, placed on the price tags of Defendant’s products
26 immediately next to the “Compare At” price claims.
- 27 108. The FTC’s disclosure rules further provide that “[a]dvertisers are responsible
28 for ensuring that their messages are truthful and not deceptive. Accordingly,

1 disclosures must be communicated effectively so that consumers are likely
2 to notice and understand them in connection with the representations that the
3 disclosures modify. Simply making the disclosure available somewhere in
4 the ad, where some consumers might find it, does not meet the clear and
5 conspicuous standard.”

6 109. Defendant’s disclosures do not meet the FTC’s “clear and conspicuous
7 standard.”

8 110. Defendant’s failure to adequately disclose to Class Members, including
9 Plaintiffs, its definition or interpretation of the phrase “Compare At” violates
10 the FTC’s “clear and conspicuous standard.”

11 111. The FTC’s disclosure rules further provide that “[i]t is the advertiser’s
12 responsibility to draw attention to the required disclosures.”

13 112. Defendant does not draw attention to its disclosures.

14 113. The FTC’s disclosure rules further provide that “[d]isclosures must be
15 effectively communicated to consumers before they make a purchase or
16 incur a financial obligation.”

17 114. Defendant does not effectively communicate its disclosures concerning its
18 “Compare At” prices to consumers before they make their purchase(s) at
19 Ross stores in California.

20 115. The FTC’s Policy Statement on Deception provides that when determining
21 whether an advertiser’s disclosure is adequate, a court should consider “the
22 totality of the ad or the practice and ask questions such as: how clear is the
23 representation? how conspicuous is any qualifying information? how
24 important is the omitted information? do other sources for the omitted
25 information exist? how familiar is the public with the product or service?”

26 116. Defendant’s disclosure is not clear. The qualifying information Defendant
27 attempts to provide in its disclosure is not at all conspicuous. The
28 information provided by Defendant’s disclosure is material to consumers,

1 and thus very important to the purchasing decisions of reasonable
2 consumers, including Plaintiffs. Other than Defendant’s disclosure, there
3 are no other sources from which consumers can acquire the information
4 provided by the disclosure – i.e., that the reference price may be a reference
5 to a “similar,” non-identical product.

6 117. The FTC’s disclosure rules further provide that “[i]f the disclosure needs to
7 be in the ad itself but it does not fit, the ad should be modified so it does not
8 require such a disclosure or, if that is not possible, that space-constrained ad
9 should not be used. . . . If a disclosure is necessary to prevent an
10 advertisement from being deceptive, unfair, or otherwise violative of a
11 Commission rule, and if it is not possible to make the disclosure clear and
12 conspicuous, then either the claim should be modified so the disclosure is
13 not necessary or the ad should not be disseminated.”

14 118. Defendant was required to put a qualifying disclosure on its price tags. Or, if
15 putting a qualifying disclosure on its price tags was not possible,
16 Defendant’s “Compare At” reference prices should not have been, and
17 should not be, used.

18 **D. Defendant’s Use of Reference Prices Violates California Law:**

19 119. In advertising the “Compare At” price for a product, Defendant did not, and
20 does not actually present the prevailing market price for that product (i.e. the
21 price at which other merchants were selling the identical product). Plaintiffs
22 believe that further investigation and discovery will reveal that Defendant’s
23 “Compare At” prices are also not prices at which substantial sales of
24 identical product were made at principal retail outlets in California.

25 120. Through its deceptive, misleading, and/or false marketing, advertising and
26 pricing scheme, Defendant has violated, and continues to violate, California
27 law which prohibits advertising goods for sale at a discount when compared
28 to unsubstantiated prices at which other merchants purportedly sell the

1 goods and prohibits misleading statements about the existence and amount
2 of comparative prices. Specifically, Defendant has violated, and continues
3 to violate, the UCL, the FAL, the CLRA, and the Federal Trade Commission
4 Act (“FTCA”), which prohibits “unfair or deceptive acts or practices in or
5 affecting commerce” (15 U.S.C. §45(a)(1)), and specifically prohibits false
6 advertisements (15 U.S.C. §52(a)).

7 121. Under the FTCA, advertising must be truthful and non-deceptive, advertisers
8 such as Defendant must have evidence to back up their claims, and
9 advertisements cannot be unfair.

10 122. Defendant’s false and/or misleading comparative pricing representations
11 made it more likely consumers would purchase products from Defendant.
12 Defendant’s misleading claims of significant discounts were likely to
13 persuade consumers who were not inclined to purchase products, and did in
14 fact persuade Plaintiffs, to buy them from Defendant solely because they
15 were misled into believing that they were getting an unusually good deal.

16 123. Defendant’s misrepresentations about its pricing were likely to mislead
17 consumers, and in fact did mislead Plaintiffs, into believing that Defendant’s
18 prices would always be significantly lower than the prices offered by other
19 merchants for identical products.

20 124. Defendant misrepresented the existence, nature and amount of price
21 discounts by purporting to offer specific dollar discounts from expressly
22 referenced comparative prices, which were misrepresented as “Compare At”
23 prices. These purported discounts were false, deceptive, and/or misleading,
24 however, because the referenced comparative prices were not bona fide
25 reference prices and did not represent true comparative prices for identical
26 products sold by other merchants in California.

27 125. Defendant has engaged in a company-wide, pervasive and continuous
28 campaign of deceptively claiming that each of its products sold at a far

1 higher price by other merchants in order to induce Plaintiffs and all Class
2 Members to purchase merchandise at purportedly marked-down sale prices.
3 California law prohibits such practices.

4 126. Defendant's deceptive and misleading representations, as described herein,
5 accompanied virtually every product sold in California Ross stores each and
6 every day throughout the Class Period, and Defendant is still making such
7 deceptive and misleading comparative price claims for many of the products
8 in its California stores.

9 127. Throughout the Class Period Defendant routinely and systematically made
10 untrue, deceptive, and misleading comparative advertising claims about the
11 prices of its products, as described herein.

12 128. Throughout the Class Period, Defendant's "Compare At" prices constituted
13 material misstatements, and/or omitted material information about its
14 comparative prices, that were likely to mislead reasonable consumers.

15 129. Defendant has failed to disclose to, and/or concealed from, Plaintiffs and all
16 other Class Members the truth about its alleged comparative prices for the
17 purpose of inducing Plaintiffs and other Class Members to purchase
18 merchandise at each of its Ross stores throughout California.

19 130. Plaintiffs believe that further investigation and discovery will reveal that
20 even if and when a "Compare At" price for a product may have represented
21 an actual recent documented selling price of the same product, Defendant
22 chose the highest price at which the product was selling in the marketplace,
23 and presented that price to consumers as the "Compare At" price.

24 131. Defendant knew or should have known that its representations concerning its
25 "Compare At" prices were untrue and/or misleading.

26 132. Defendant knows and has known, should reasonably know, or should have
27 known, that its comparative price advertising is, and has been, deceptive,
28 misleading, false, fraudulent, unfair and/or unlawful.

1 133. Defendant knew or should have known that using inflated and/or unverified
2 comparative reference prices without verifying that they were prices at
3 which substantial sales of those products had been made in California, or
4 that using the selling prices of supposedly “similar” products or products
5 with similar “styles,” thereby creating either fictitious or inflated “Compare
6 At” prices and either fictitious or inflated discounts or savings, was
7 unlawful.

8 134. The use of the term “Compare At” by Defendant on the price tags of the
9 products sold in its California Ross stores constituted the dissemination of
10 untrue, deceptive and/or misleading statements to consumers about the
11 prices of the products so listed as compared with the prices offered by other
12 merchants for the same products. Defendant knew, or by the exercise of
13 reasonable care should have known, that those statements were untrue,
14 deceptive, and/or misleading. Each such statement constitutes, and has
15 constituted, a separate violation of California Business & Professions Code
16 §17500. Each such statement also violates, and has violated, California
17 Civil Code §§1750(a)(5), (7) and/or (13).

18 135. Plaintiffs, individually and on behalf of all others similarly situated, seek
19 restitution and injunctive relief under the UCL, FAL and CLRA to stop
20 Defendant’s pervasive and rampant false and misleading advertising and
21 marketing campaign.

22 **PLAINTIFFS’ PURCHASES**

23 136. Plaintiffs each purchased numerous products throughout the Class Period
24 from Defendant’s stores in Southern California, in reliance on Defendant’s
25 false, deceptive and/or misleading advertising and false, deceptive, and/or
26 misleading price comparisons, which they would not otherwise have
27 purchased but for Defendant’s false, deceptive and/or misleading
28

1 advertising, and false, deceptive and/or misleading price comparisons as
2 described herein.

3 **Plaintiff Jacobo Purchases:**

4 137. For example, and without limitation, on May 18, 2015, Jacobo purchased
5 items from Defendant's La Puente, California, Ross store for a total cost of
6 \$39.21. Among other items, Jacobo purchased a Levi's men's belt for
7 \$10.99. The Levi's belt purchased by Jacobo on May 18, 2015, was
8 advertised with a price tag which had two prices advertised on it: a "Ross
9 Price" of \$10.99 and a significantly higher "Compare At" reference price
10 advertised as \$25.00.

11 138. As a further example, and without limitation, Jacobo also purchased a Free
12 Authority Outdoors camouflage hat from Defendant for \$7.99. The hat was
13 also advertised with a price tag which had two prices advertised on it: a
14 "Ross Price" of \$7.99 and a significantly higher "Compare At" reference
15 price of \$15.00.

16 139. A pre-lawsuit investigation of other brick and mortar stores in Southern
17 California, as well as online, conducted prior to filing this lawsuit in an
18 effort to find other retailers selling a Free Authority Outdoors camouflage
19 hat, was unable to find any other retailer in the Southern California area, or
20 anywhere else, that was selling or that had sold the identical Free Authority
21 Outdoors camouflage hat Jacobo purchased at Ross.

22 140. Jacobo did, however, find a similar camouflage hat selling at Sports
23 Authority with a "Duck Dynasty" label, selling for \$14.99 – the same
24 "Compare At" reference price advertised by Defendant for the Free
25 Authority Outdoors brand.

26 141. Jacobo's pre-lawsuit investigation has led to the conclusion that the Free
27 Authority Outdoors camouflage hat he purchased from Ross is and was not
28 offered for sale at any other stores in Jacobo's area for the "Compare At"

1 reference price advertised by Defendant, but that a similar “Duck Dynasty”
2 brand hat was offered for sale by another retailer in Jacobo’s area for the
3 “Compare At” reference price advertised by Defendant.

4 142. Based on his pre-lawsuit investigation, Jacobo believes that the “Compare
5 At” reference price of \$15.00 advertised by Defendant in relation to the Free
6 Authority Outdoor camouflage hat he purchased was a reference to the
7 selling price of a “similar,” non-identical product.

8 143. Jacobo also purchased at least 2 pieces of metal wall art in the shapes of a
9 lizard and a butterfly from Ross during the Class Period and prior to filing
10 this lawsuit in June 2015. Jacobo purchased the metal lizard from Ross for
11 \$8.99, and it had a “Compare At” reference price on the price tag advertised
12 as \$18.00. Jacobo purchased the metal butterfly from Ross for \$12.99, and it
13 had a “Compare At” reference price on the price tag advertised as \$25.00.

14 144. A pre-lawsuit investigation of prices charged by other retailers for identical
15 pieces of metal wall art did not reveal any other brick and mortar, or online,
16 retailers selling the same, identical lizard or butterfly pieces purchased by
17 Jacobo from Ross.

18 145. Jacobo’s pre-lawsuit investigation of the metal wall art he purchased from
19 Ross has led to the conclusion that the metal lizard and metal butterfly he
20 purchased from Ross were not offered for sale at any other stores in Jacobo’s
21 area.

22 146. Based on his pre-lawsuit investigation, Jacobo believes that the “Compare
23 At” reference prices of \$18.00 and \$25.00 advertised by Defendant in
24 relation to the metal lizard and metal butterfly he purchased were references
25 to the selling prices of “similar,” non-identical products.

26 147. The “Compare At” prices of the Free Authority Outdoors hat, and the metal
27 lizard and butterfly, were misleading because a reasonable consumer would
28 think that the “Compare At” prices were prices at which the identical items

1 had sold at some time and at some retailer, and would not think that they
2 were references to the supposed prices of “similar” products. Jacobo was
3 misled by Defendant’s “Compare At” prices.

4 148. Defendant’s price tags were likely to confuse a reasonable consumer
5 because, among other things, the words “similar product” did not appear
6 anywhere on the price tags.

7 149. Defendant’s price tags were misleading and confusing because, among other
8 things, a reasonable consumer like Jacobo would have to look somewhere
9 other than the price tags themselves to discover that the “Compare At”
10 prices may have been references to the supposed prices of “similar” items.

11 150. Each product Jacobo purchased from Defendant was advertised with a price
12 tag which had two prices advertised on it: a sale price, and a significantly
13 higher “Compare At” reference price.

14 151. Plaintiffs believe that further investigation and discovery will reveal that the
15 “Compare At” reference prices advertised by Defendant for the Free
16 Authority Outdoors camouflage hat, the metal lizard, and the metal butterfly
17 were references to alleged selling prices of “similar,” non-identical products.

18 152. Plaintiffs believe that further investigation and discovery will also reveal
19 that the “Compare At” reference prices on the products purchased by Jacobo
20 were not true, bona fide reference prices as discussed herein – i.e., that they
21 did not represent the prices at which a substantial volume of sales of the
22 same products had sold for at other principal retail outlets in California at the
23 time Jacobo made his purchases from Ross.

24 153. When Jacobo shopped at Defendant’s California Ross stores, he was
25 exposed to, saw, believed, and relied on Defendant’s “Compare At” price
26 advertising. Jacobo purchased the products that he did from Ross because
27 he believed he was receiving added value, or saving a quantifiable amount of
28 money, equal to the difference between the “Compare At” prices, which he

1 reasonably believed to be verified market retail prices for the actual identical
2 products he purchased, and the Ross sale prices.

3 154. When Jacobo shopped at Defendant's California Ross stores, he was
4 unaware of Defendant's definition or interpretation of the "Compare At"
5 price. Defendant failed to clearly, conspicuously, or adequately disclose its
6 definition or interpretation to Jacobo or any other Class Member.

7 155. The comparison prices on the items purchased by Jacobo at Defendant's
8 California Ross stores, and the corresponding price reductions, added value,
9 and/or savings, were false, misleading and/or deceptive.

10 156. Plaintiffs believe that further investigation and discovery will reveal that the
11 prevailing retail prices for the items that Jacobo purchased from Defendant
12 were materially lower than the "Compare At" prices advertised by
13 Defendant. Jacobo reasonably believed that the "Compare At" prices
14 associated with the items that he purchased from Defendant were the then
15 prevailing retail prices for the identical items at other full-price retailers.
16 Jacobo reasonably believed that the "Compare At" prices were the prices he
17 would pay for those same identical items at other retailers in his general
18 area. Jacobo would not have purchased any such product from Defendant in
19 the absence of Defendant's false, misleading and/or deceptive advertising,
20 and/or misrepresentations as described more fully herein.

21 157. In addition to Jacobo's purchases described above, Jacobo made numerous
22 other purchases of products from Defendant's California Ross stores
23 throughout the Class Period located in City of Industry, West Covina, La
24 Habra, Brea, and Montebello. With respect to each such purchase, Jacobo
25 purchased those products from Defendant after viewing and relying on
26 Defendant's advertising which included false and/or misleading comparison
27 prices placed on the price tags of the items which he purchased. Plaintiffs
28 believe that further investigation and discovery will reveal that the

1 comparison prices, and the corresponding price reductions and/or savings,
2 were false and deceptive. Plaintiffs also believe that further investigation
3 and discovery will reveal that the prevailing retail prices for the items that
4 Jacobo purchased from Defendant were materially lower than the “Compare
5 At” prices advertised by Defendant. Jacobo would not have purchased any
6 such product from Defendant in the absence of Defendant’s false, and/or
7 deceptive, and/or misleading advertising, and/or misrepresentations.

8 **Plaintiff Metoyer’s Purchases:**

- 9 158. Plaintiff Metoyer also made numerous purchases from Ross stores in
10 Southern California throughout the Class Period. For example, and without
11 limitation, on February 11, 2015, Metoyer purchased items from
12 Defendant’s Beaumont, California, Ross store for a total cost of \$113.51.
13 Among other items, Metoyer purchased a pair of women’s Patricia Wedge
14 Pump shoes for \$17.99. The shoes purchased by Metoyer on February 11,
15 2015, were advertised with a price tag which had two prices: a “Ross Price”
16 of \$17.99 and a significantly higher “Compare At” reference price which, to
17 the best of Metoyer’s recollection, was advertised as \$65.00.
- 18 159. A pre-lawsuit investigation of other brick and mortar stores in Southern
19 California, as well as online, was conducted prior to filing this lawsuit in an
20 effort to find other retailers selling the same or similar Patricia Wedge Pump
21 shoes purchased by Metoyer from Ross. The pre-lawsuit investigation found
22 only one brick and mortar retailer, Sears, selling similar Patricia Wedge
23 Pump shoes. The selling price at Sears for similar Patricia Wedge Pump
24 shoes ranged from \$19.79 to \$21.99, approximately 65% less than the
25 “Compare At” price advertised by Defendant.
- 26 160. Metoyer’s pre-lawsuit investigation of prices for Patricia Wedge Pump shoes
27 also revealed Patricia Wedge Pump shoes similar to those she purchased
28

1 from Ross selling on Amazon.com for \$14.60 to \$28.99, again more than
2 50% less than the “Compare At” price advertised by Defendant.

3 161. Metoyer’s pre-lawsuit investigation has led to the conclusion that the
4 Patricia Wedge Pump shoes she purchased from Ross are and were not
5 offered for sale at any other stores in Metoyer’s area for the “Compare At”
6 reference price advertised by Defendant, but that similar Patricia Wedge
7 Pump shoes were offered for sale by other brick-and-mortar retailers in
8 Metoyer’s area, and online, for approximately the same amount that she paid
9 at Ross, and more than 50% less than the “Compare At” reference price
10 advertised by Defendant.

11 162. Based on her pre-lawsuit investigation, Metoyer believes that the “Compare
12 At” reference price advertised by Defendant in relation to the Patricia
13 Wedge Pump shoes she purchased was a reference to the selling price of a
14 “similar,” non-identical product.

15 163. Metoyer also purchased numerous other products from Ross stores in
16 California throughout the Class Period, many of which she now believes had
17 “Compare At” reference prices that were references to prices of “similar,”
18 non-identical items.

19 164. Metoyer believes that further investigation and discovery will reveal that
20 many of the items she purchased from Ross, some of which are set forth in
21 the pictures of Metoyer’s receipts herein below, were advertised with
22 “Compare At” reference prices that were references to alleged selling prices
23 of “similar,” non-identical products.

24 165. Each product Metoyer purchased from Defendant was advertised with a
25 price tag which had two prices advertised on it: a sale price, and a
26 significantly higher “Compare At” reference price.

27 166. Defendant knows which of the items Metoyer purchased were advertised
28 with Compare At prices that were references to the prices of supposed

1 “similar” items. Plaintiffs believe that further investigation and discovery
2 will reveal those items that Metoyer purchased which had “Compare At”
3 reference prices that were references to prices of supposed “similar” items.
4 167. The “Compare At” price of the Patricia Wedge Pump shoes was misleading
5 because a reasonable consumer would think that the “Compare At” price
6 was a price at which the identical item had sold and would not think that it
7 was a reference to the supposed price of a “similar” product. Metoyer was
8 misled by Defendant’s “Compare At” prices.

9 168. Defendant’s price tags were likely to confuse a reasonable consumer
10 because, among other things, the words “similar product” did not appear
11 anywhere on the price tags.

12 169. Defendant’s price tags were misleading and confusing because, among other
13 things, a reasonable consumer like Metoyer would have to look somewhere
14 other than the price tags themselves to discover that the “Compare At”
15 prices may have been references to the supposed prices of “similar” items.

16 170. Plaintiffs believe that further investigation and discovery will reveal that the
17 “Compare At” reference prices on the products purchased by Metoyer were
18 not true, bona fide reference prices as discussed herein – i.e., they did not
19 represent the prices at which a substantial volume of sales of the products
20 had sold for at other principal retail outlets in California at the time Metoyer
21 made her purchases.

22 171. When Metoyer shopped at Defendant’s California Ross stores, she was
23 exposed to, saw, believed, and relied on Defendant’s “Compare At” price
24 advertising. Metoyer purchased the products that she did from Ross because
25 she believed she was receiving added value, or saving a quantifiable amount
26 of money, equal to the difference between the “Compare At” prices, which
27 she reasonably believed to be verified market retail prices for the actual
28 identical products she purchased, and the Ross sale prices.

1 172. When Metoyer shopped at Defendant’s California Ross stores, she was
2 unaware of Defendant’s definition or interpretation of the “Compare At”
3 price. Defendant failed to clearly, conspicuously, or adequately disclose its
4 definition or interpretation to Metoyer or any other Class Member.

5 173. The comparison prices on the items purchased by Metoyer at Defendant’s
6 California Ross stores, and the corresponding price reductions, added value,
7 and/or savings, were false, misleading and/or deceptive.

8 174. Plaintiffs believe that further investigation and discovery will reveal that the
9 prevailing retail prices for the items that she purchased from Defendant were
10 materially lower than the “Compare At” prices advertised by Defendant.
11 Metoyer reasonably believed that the “Compare At” prices associated with
12 the items that she purchased from Defendant were the then prevailing retail
13 prices for the identical items at other full-price retailers. Metoyer reasonably
14 believed that the “Compare At” prices were the prices she would pay for
15 those same items at other retailers in her general area. Metoyer would not
16 have purchased any such product from Defendant in the absence of
17 Defendant’s false, misleading and/or deceptive advertising, and/or
18 misrepresentations as described more fully herein.

19 175. With respect to each purchase Metoyer made at Ross stores in California
20 during the Class Period, Metoyer purchased those products from Defendant
21 after viewing and relying on Defendant’s advertising which included false
22 and/or misleading comparison prices placed on the price tags of the items
23 which she purchased. Plaintiffs believe that further investigation and
24 discovery will reveal that the comparison prices, and the corresponding price
25 reductions and/or savings, were false and deceptive. Plaintiffs also believe
26 that further investigation and discovery will reveal that the prevailing retail
27 prices for the items that Metoyer purchased from Defendant were materially
28 lower than the “Compare At” prices advertised by Defendant. Metoyer

1 would not have purchased any such product from Defendant in the absence
2 of Defendant's false, and/or deceptive, and/or misleading advertising, and/or
3 misrepresentations.

4 **CLASS ACTION ALLEGATIONS**

5 176. Plaintiffs bring this action on behalf of themselves and on behalf of all other
6 persons similarly situated (the "Class" or "Class Members") against
7 Defendant, namely:

8 All persons who, while in the United States of America, and between
9 June 20, 2011, and the present (the "Class Period"), purchased from
10 Ross one or more items at any Ross store in any state in the United
11 States of America with a price tag that contained a "Compare At"
12 price which was higher than the price listed as the Ross sale price on
13 the price tag, and who have not received a refund or credit for their
14 purchase(s). Excluded from the Class are Defendants, as well as
15 Defendants' officers, employees, agents or affiliates, and any judge
16 who presides over this action, as well as all past and present
17 employees, officers and directors of any Defendant.

14 177. Plaintiffs reserve the right to expand, limit, modify, or amend this class
15 definition, including the addition of one or more subclasses, in connection
16 with their motion for class certification, or at any other time, based upon,
17 among other things, changing circumstances and/or new facts obtained
18 during discovery.

19 178. Defendant's deceptive, misleading, and/or false comparative price
20 advertising scheme, disseminated to consumers throughout the United States
21 via representations on the price tags has been rampant throughout California
22 and the United States as part of a massive, years-long, pervasive campaign
23 and has been consistent across all of Defendant's merchandise at each of its
24 stores. Defendant's pricing scheme has throughout the Class Period been
25 prominently displayed directly on the price tag of each item sold, with
26 express references to alleged comparative prices that have never existed
27 and/or do not, and/or did not then, currently constitute the prevailing market
28

1 retail prices for identical merchandise or prices at which a substantial
2 volume of sales of each such product had been made.

3 179. Plaintiffs and all other Class Members were each exposed to Defendant’s
4 deceptive, misleading, and/or false comparative price advertising.

5 180. Plaintiffs are informed and believe, and on that basis allege, that hundreds of
6 thousands of consumers have been victims of Defendant’s deceptive,
7 misleading and unlawful pricing scheme.

8 181. Plaintiffs are and have been members of the proposed Class described
9 herein.

10 182. The number of persons in the proposed Class is so numerous that joinder of
11 all such persons would be impracticable. While the exact number and
12 identities of all such persons are unknown to Plaintiffs at this time and can
13 only be obtained through appropriate discovery, Plaintiffs believe that the
14 proposed Class herein includes over 100,000 persons.

15 183. Common questions of law and/or fact exist in this case with respect to the
16 Class which predominate over any questions affecting only individual
17 members of the Class, which do not vary between members thereof, and
18 which drive the resolution of the claims of Plaintiffs and all other Class
19 Members.

20 184. The common questions of law and/or fact include, but are not limited to:
21 a. Whether products at Ross stores in California and throughout the
22 United States are and/or were during the Class Period advertised with
23 “Compare At” reference prices;
24 b. Whether a reasonable consumer would interpret the phrase “Compare
25 At” as Defendant interprets it;
26 c. How a reasonable consumer interprets the phrase “Compare At” on a
27 price tag;
28

- 1 d. Whether a reasonable consumer is likely to be deceived by
- 2 Defendant's use of its "Compare At" reference prices;
- 3 e. Whether the phrase "Compare At" is susceptible to more than one
- 4 reasonable interpretation;
- 5 f. Whether the phrase "Compare At" is misleading and/or deceptive;
- 6 g. Whether, during the Class Period, Defendant used false and/or
- 7 misleading "Compare At" prices on the price tags of items sold in its
- 8 California stores, and throughout the United States, and whether
- 9 Defendant misleadingly advertised comparative price discounts for its
- 10 merchandise;
- 11 h. Whether, during the Class Period, the "Compare At" prices advertised
- 12 by Defendant were in fact the prevailing market prices for the
- 13 respective identical items sold by other retailers in the marketplace at
- 14 the time of the dissemination and/or publication of the advertised
- 15 "Compare At" prices;
- 16 i. Whether, during the Class Period, the "Compare At" prices advertised
- 17 by Defendant were in fact prices at which substantial sales of those
- 18 same products were made at principal retail outlets in California and
- 19 the United States;
- 20 j. Whether Defendant failed to adequately disclose its interpretation of
- 21 its "Compare At" reference prices to consumers;
- 22 k. Whether Defendant's disclosures of its interpretation of its "Compare
- 23 At" reference prices comply with established legal requirements for
- 24 advertising disclosures;
- 25 l. Whether Defendant's price tags omit necessary information;
- 26 m. Whether Defendant adequately verified that its "Compare At"
- 27 reference prices meet FTC and/or other legal requirements;
- 28

- 1 n. Whether Defendant’s price-comparison advertising was false,
2 deceptive or misleading within the meaning of the UCL, FAL, CLRA
3 and/or FTCA;
- 4 o. Whether Defendant’s comparative pricing on its “Compare At” price
5 tags would be material to a reasonable consumer’s purchasing
6 decisions;
- 7 p. Whether Defendant engaged in unfair, unlawful and/or fraudulent
8 business practices under California law;
- 9 q. Whether Defendant misrepresented and/or failed to disclose material
10 facts about its product pricing and purported discounts;
- 11 r. Whether Defendant has made false or misleading statements of fact
12 concerning the reasons for, existence of, or amounts of price
13 reductions;
- 14 s. Whether Class Members are entitled to restitution; and, if so, what the
15 proper measure of restitution is; and,
- 16 t. Whether Defendant continues to use false, deceptive, misleading
17 and/or unlawful price comparisons such that an injunction is
18 necessary.

19 185. Plaintiffs’ claims and those of all other Class Members arise out of a
20 common course of conduct by Defendant.

21 186. All Class Members, including the proposed Class representatives, were
22 exposed to Defendant’s misrepresentations or omissions of material fact
23 claiming that its “Compare At” prices were accurate bona fide comparison
24 prices. Defendant’s misrepresentations or omissions of material fact were
25 uniformly made to all respective Class Members. In addition, it can be
26 reasonably presumed that all Class Members, including Plaintiffs,
27 affirmatively acted in response to the representations contained in
28

1 Defendant's false comparative price advertising scheme when purchasing
2 merchandise at each and any of Defendant's stores in California.

3 187. The common questions of law and/or fact in this case are susceptible to
4 common proof.

5 188. Resolution of the common questions of law and/or fact in this case will
6 resolve issues that are central to Plaintiffs' claims and the claims of all other
7 Class Members.

8 189. The claims of Plaintiffs and all Class Members involve the same untrue,
9 deceptive, and/or misleading representations by Defendant conveyed to each
10 Class Member by way of representations on the price tags of each product
11 sold to each Class Member.

12 190. Each Class Members' claims, including those of Plaintiffs, allege that
13 Defendant's price tags convey a deceptive, misleading, and/or untrue
14 representation that the price at which Defendant offered a product was lower
15 compared to a fictitious, deceptive, or misleading "Compare At" price.

16 191. Common proof in this case will produce a common answer as to whether
17 Defendant's use of "Compare At" reference prices complies with legal
18 requirements for the use of such reference prices, and whether Defendant's
19 price-comparison advertising resulted in false, deceptive, or misleading price
20 comparisons.

21 192. Common proof will resolve the common questions essential to resolution of
22 the Class claims in this case in one stroke for all Class Members.

23 193. The claims of the named Plaintiffs in this case are typical of, and not
24 antagonistic to, those of the other Class Members which they seek to
25 represent. Plaintiffs and the Class they seek to represent have all been
26 exposed to and deceived (or were likely to be deceived) by Defendant's false
27 comparative price advertising scheme, as alleged herein.

28

1 194. The crux of Plaintiffs' claims - that Defendant's price tags on each item in
2 each of its California stores convey false, deceptive, and/or misleading
3 comparative prices as described more fully herein - is common to all Class
4 Members.

5 195. Plaintiffs' claims, and those of all Class Members, are based on conduct
6 which is not unique to either of the named Plaintiffs.

7 196. Plaintiffs and all Class Members have been injured by the same common
8 course of conduct by Defendant, and have suffered the same or similar
9 injury, as alleged herein.

10 197. Disposition of Plaintiffs' claims in a class action will benefit all parties and
11 the Court.

12 198. A class action in this case is superior to any other available method for the
13 fair and efficient adjudication of the claims presented herein.

14 199. If individual Class Members were each required to bring his or her own
15 individual claims, any potential recovery by any such Class Member would
16 be dwarfed by the cost of litigating on an individual basis.

17 200. In this case, Plaintiffs seek to recover relatively small sums for themselves
18 and all other Class Members. Accordingly, the disparity between the cost of
19 litigating individual claims and the individual recoveries sought make
20 individual claims highly unlikely, if not impossible. Litigation costs would
21 render individual prosecution of Class Members' claims prohibitive. In
22 cases such as this, where the individual recoveries sought by each Class
23 Member are relatively small and eclipsed by the cost of litigating an
24 individual claim, a class action is the only method by which Class Members
25 may hope to resolve their claims.

26 201. The prosecution of separate actions by individual members of the proposed
27 Class herein would create a risk of inconsistent and/or varying adjudications
28 with respect to individual members of the proposed Class which would or

1 may establish incompatible standards of conduct for Defendant, and which
2 would also create a risk of adjudications with respect to individual members
3 of the proposed Class herein which would, as a practical matter, be
4 dispositive of the interests of other members of the proposed Class not
5 parties to the particular individual adjudications, and/or would or may
6 substantially impede or impair the ability of those other members to protect
7 their interests.

8 202. Plaintiffs are adequate representatives of the Class they seek to represent
9 because they are each members of the Class, and their interests do not
10 conflict with the interests of the Class Members they seek to represent.
11 Plaintiffs will fairly and adequately represent and protect the interest of the
12 Class because their interests are not antagonistic to the Class. Plaintiffs have
13 no conflict of interest with any other Class Member. Plaintiffs have retained
14 counsel who are competent and experienced in the prosecution of consumer
15 fraud and class action litigation. Plaintiffs and their counsel will prosecute
16 this action vigorously on behalf of the Class.

17 203. Plaintiffs are informed and believe, and on that basis allege, that Defendant
18 has one or more databases through which a significant majority of Class
19 Members may be identified and ascertained, and that Defendant maintains
20 contact information, including email and home mailing addresses, through
21 which notice of this action could be disseminated in accordance with due
22 process requirements.

23 204. The definition of the proposed Class herein objectively depicts who the
24 members of the Class are, making it administratively feasible to determine
25 whether a particular person is a Member of the Class described herein.
26 Because the alleged misrepresentations in this case (i.e., the false, deceptive,
27 and/or misleading comparative prices) appear on the price tags of each
28

1 product purchased, there is no concern that the Class may include
2 individuals who were not exposed to Defendant's misrepresentations.

3 **FIRST CAUSE OF ACTION**

4 **UNFAIR BUSINESS PRACTICES**

5 (California Business & Professions Code §17200 *et seq.*)

6 (By Plaintiffs on behalf of themselves and all others similarly situated, and the
7 general public, against Defendant)

8 205. Plaintiffs re-allege and incorporate by reference, as though fully set forth
9 herein, all previous paragraphs of this Complaint.

10 206. The UCL defines unfair business competition to include any "unlawful,
11 unfair or fraudulent" act or practice, as well as any "unfair, deceptive, untrue
12 or misleading" advertising. Cal. Bus. & Prof. Code §17200.

13 207. Advertising or promotional practices are unlawful under the UCL if a
14 reasonable consumer is likely to be deceived by them.

15 208. Defendant has violated the "unfair" prong of the UCL by representing false,
16 deceptive, and/or misleading comparative prices and corresponding price
17 discounts and/or savings for merchandise where Defendant, in fact, inflated,
18 estimated, or fabricated the purported "Compare At" prices for such
19 products, or based the purported savings on a comparison to "similar," non-
20 identical products and failed to adequately disclose to consumers what such
21 "Compare At" prices were, such that the promised discount and/or saving
22 was false, misleading and/or deceptive.

23 209. These acts and practices were unfair because they caused Plaintiffs, and
24 were likely to cause reasonable consumers, to falsely believe that Defendant
25 is, and has throughout the Class Period been, offering value, discounts or
26 bargains from the prevailing market price, value or worth of the products
27 sold that did not, in fact, exist. As a result, purchasers, including Plaintiffs,
28 reasonably perceived that they were receiving products that regularly sold in

1 the retail marketplace at substantially higher prices than what they paid (and
2 were, therefore, worth more or had a higher value than they actually had).

3 This perception has induced reasonable purchasers, including Plaintiffs, to
4 buy such products, which they otherwise would not have purchased.

5 210. Plaintiffs and all other Class Members were likely to be deceived by
6 Defendants' use of the term "Compare At" on the price tags of merchandise
7 at Ross stores in California.

8 211. In deciding to purchase merchandise at Ross, Plaintiffs each relied on
9 Defendant's misleading and deceptive representations regarding "Compare
10 At" prices. The comparative "Compare At" prices placed by Defendant on
11 the price tags of merchandise in its California stores played a substantial role
12 in each Plaintiff's decisions to purchase the products they purchased from
13 Defendant, and neither Plaintiff would have purchased those items in the
14 absence of Defendant's misrepresentations. Accordingly, Plaintiffs have
15 suffered monetary loss as a direct result of Defendant's unlawful practices
16 described herein.

17 212. Plaintiffs, like all other Class Members, saw Defendant's "Compare At"
18 reference prices on the products they purchased before purchasing those
19 products. The "Compare At" prices were material to Plaintiffs, as they were
20 to all other Class Members. Plaintiffs relied on the "Compare At" prices in
21 making their purchasing decisions. Plaintiffs, like all other Class members,
22 placed added value on the products they purchased from Ross because they
23 believed the "Compare At" reference prices were true, accurate, verified
24 comparative reference prices that represented the market retail prices of the
25 identical products they purchased. Because Defendant's "Compare At"
26 prices were not true, accurate, or verified comparative reference prices (as
27 described herein), the actual value of the products Plaintiffs and all other
28 Class Members purchased at Ross was less than they believed and less than

1 what they paid for those products. Plaintiffs and all other Class Members
2 therefore paid more for the products they purchased from Defendant than the
3 value they received.

4 213. The gravity of the harm to Class Members resulting from these unfair acts
5 and practices outweighed any conceivable reasons, justifications and/or
6 motives of Defendant for engaging in such deceptive acts and practices. By
7 committing the acts and practices alleged above, Defendant engaged in
8 unfair business practices within the meaning of California Business &
9 Professions Code §17200, *et seq.*

10 214. Through its unfair acts and practices, Defendant has improperly obtained
11 money from Plaintiffs and all other Class Members. As such, Plaintiffs
12 request that this Court cause Defendant to restore this money to Plaintiffs
13 and all Class Members, and to enjoin Defendant from continuing to violate
14 the UCL as discussed herein and/or from violating the UCL in the future.
15 Otherwise, Plaintiffs, the Class, and members of the general public may be
16 irreparably harmed and/or denied an effective and complete remedy if such
17 an order is not granted.

18 **SECOND CAUSE OF ACTION**

19 **FRAUDULENT BUSINESS PRACTICES**

20 (California Business & Professions Code §17200 *et seq.*)

21 (By Plaintiffs on behalf of themselves and all others similarly situated, and the
22 general public, against Defendant)

23 215. Plaintiffs re-allege and incorporate by reference, as though fully set forth
24 herein, all previous paragraphs of this Complaint.

25 216. A business act or practice is “fraudulent” under the UCL if it is likely to
26 deceive members of the consuming public.

27 217. Defendant’s false comparative prices, including, but not limited to, its
28 “Compare At” prices placed on the price tags of the products sold in its

1 California Ross stores, were “fraudulent” within the meaning of the UCL
2 because they deceived Plaintiffs, and were likely to deceive reasonable
3 consumers and Class Members, into believing that Defendant was offering
4 value, discounts or bargains from the prevailing market price, value or worth
5 of the products sold that did not, in fact, exist. As a result, purchasers,
6 including Plaintiffs, reasonably perceived that they were receiving products
7 that regularly sold in the retail marketplace at substantially higher prices
8 than what they paid (and were, therefore, worth more and had a higher value
9 than they actually had). This perception induced reasonable purchasers,
10 including Plaintiffs, to buy such products from Defendant’s stores in
11 California, which they otherwise would not have purchased.

12 218. Defendant’s acts and practices as described herein have deceived Plaintiffs
13 and were highly likely to deceive reasonable members of the consuming
14 public. In deciding to purchase merchandise at Ross, each Plaintiff relied on
15 Defendant’s misleading and deceptive representations regarding its
16 “Compare At” prices. The comparative “Compare At” prices placed by
17 Defendant on the price tags of merchandise at Ross stores in California
18 played a substantial role in each Plaintiff’s decisions to purchase those
19 products, and Plaintiffs would not have purchased those items in the absence
20 of Defendant’s misrepresentations. Accordingly, Plaintiffs have suffered
21 monetary loss as a direct result of Defendant’s unlawful practices, and did
22 not receive the value they thought they were getting, as described herein.

23 219. As a result of the conduct described above, Defendant has been unjustly
24 enriched at the expense of Plaintiffs and all other Class Members.
25 Specifically, Defendant has been unjustly enriched by obtaining revenues
26 and profits that it would not otherwise have obtained absent its false,
27 misleading and/or deceptive conduct.

28

1 220. Through its fraudulent acts and practices, Defendant has improperly
2 obtained money from Plaintiffs and all other Class Members. As such,
3 Plaintiffs request that this Court cause Defendant to restore this money to
4 Plaintiffs and all Class Members, and to enjoin Defendant from continuing
5 to violate the UCL as discussed herein and/or from violating the UCL in the
6 future. Otherwise, Plaintiffs, the Class, and members of the general public
7 may be irreparably harmed and/or denied an effective and complete remedy
8 if such an order is not granted.

9 **THIRD CAUSE OF ACTION**

10 **FALSE ADVERTISING**

11 (California Business & Professions Code §17500 *et seq.*)

12 (By Plaintiffs on behalf of themselves and all others similarly situated, and the
13 general public, against Defendant)

14 221. Plaintiffs re-allege and incorporate by reference, as though fully set forth
15 herein, all previous paragraphs of this Complaint.

16 222. The FAL prohibits unfair, deceptive, untrue, or misleading advertising,
17 including, but not limited to, false statements as to worth and/or value.

18 223. The FAL makes it unlawful for a business to disseminate any statement
19 which is untrue or misleading, and which is known, or which by the exercise
20 of reasonable care should be known, to be untrue or misleading.

21 224. Defendant's practice of disseminating allegedly comparative "Compare At"
22 prices associated with its merchandise, which were materially greater than
23 the true prevailing prices of identical products, and/or not true or verified
24 comparative prices for identical products, as alleged more fully herein, was
25 an unfair, deceptive and/or misleading advertising practice because it gave
26 the false impression that the products sold by Defendant regularly sold in the
27 retail marketplace at substantially higher prices than they actually did (and
28

1 were, therefore, worth more than they actually were, and had greater value
2 than they actually did).

3 225. Defendant’s practice of failing to adequately disclose to consumers what the
4 phrase “Compare At” means on the price tags of the merchandise in
5 California Ross stores, was misleading to Plaintiffs and all other Class
6 Members. Defendant knew, or by the exercise of reasonable care should
7 have known, that reasonable consumers, such as Plaintiffs, would not
8 interpret the phrase “Compare At” the way Defendant interprets it.

9 226. On each day throughout the Class Period, Defendant, with the intent to
10 induce members of the public to purchase products offered at its California
11 stores, made or caused to be made each of the untrue and/or misleading
12 statements, claims, and/or representations described herein.

13 227. On each day throughout the Class Period, Defendant, with the intent to
14 induce members of the public to purchase products offered at its California
15 stores, made or caused to be made untrue and/or misleading claims to
16 consumers throughout California including, but not limited to, the following
17 claims with respect to products offered for sale at California Ross stores:

- 18 a. That when other merchants offered an identical product for sale,
19 Defendant had previously ascertained and/or determined the price at
20 which substantial sales of that product had been made by principal
21 retail outlets in California.
- 22 b. That the “Compare At” price for a product was the price at which
23 other principal retail outlets in California regularly sold that identical
24 product.
- 25 c. That Defendant’s sale price for a product was lower than the price at
26 which other principal retail outlets in California regularly sold that
27 identical product.

28

1 d. That Defendant’s sale price for a product was a discount from the
2 price at which other principal retail outlets in California regularly sold
3 that identical product.

4 228. Defendant knew, or by the exercise of reasonable care should have known,
5 that these claims were untrue, deceptive, and/or misleading.

6 229. In addition to the allegations made above, each of Defendant’s statements,
7 claims, and/or representations described herein were untrue, deceptive,
8 and/or misleading because, among other things:

9 a. Defendant set “Compare At” prices without ascertaining and/or
10 determining the prices at which other principal retail outlets in
11 California regularly sold the identical products;

12 b. Defendant’s “Compare At” prices were fictitious, having been based
13 on something other than the prices at which other principal retail
14 outlets in California regularly sold the identical products;

15 c. Defendant’s “Compare At” prices were calculated by using the
16 highest sales price at which another merchant was offering, or had
17 offered, the identical product for sale, instead of the price at which
18 other principal retail outlets in California regularly sold the identical
19 products;

20 d. A reasonable consumer would not interpret the phrase “Compare At”
21 the way Defendant interprets it; and/or

22 e. Defendant’s “Compare At” prices were higher than the lowest price at
23 which a consumer would commonly be able to purchase the identical
24 product at a retail establishment in the consumer’s area, and:

25 i. Defendant knew that the “Compare At” price was higher than
26 the lowest price at which a consumer would commonly be able
27 to purchase the identical product at other retail establishments
28 in the consumer’s area; or

1 price amounts to a misleading statement of material fact concerning the
2 existence of or amount of a price reduction.

3 235. Defendant's representations in its advertising higher "Compare At" prices in
4 comparison to its lower selling prices and using "Compare At" reference
5 prices that are not actual prices at which identical items sold for, but are
6 references to prices of "similar," non-identical items, were false and
7 misleading statements of fact concerning the existence of and/or amounts of
8 price reductions.

9 236. Defendant had no reasonable grounds for believing such material
10 representations to be true during the time period it made such
11 misrepresentations;

12 237. As a result of Defendant's negligent misrepresentations, Defendant has been
13 unjustly enriched by obtaining revenues and profits and has improperly
14 obtained money from Plaintiffs and all other Class Members.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of all Class
17 Members, pray for judgment against Defendant as follows:

18 **CLASS CERTIFICATION**

19 1. That the Court certify the Class herein to proceed as a class action pursuant
20 to Fed. R. Civ. Proc. 23(b)(1), 23(b)(2) and/or 23(b)(3), adjudge Plaintiffs to
21 be adequate representatives of the Class, and appoint Plaintiffs' counsel as
22 counsel for the Class.

23 **VIOLATION OF BUSINESS & PROFESSIONS CODE §§17200 et seq.,**
24 **17500 et seq. and NEGLIGENT MISREPRESENTATION:**

25 2. A judgment awarding Plaintiffs and all Class Members restitution and/or
26 other equitable relief, including, without limitation, restitutionary
27 disgorgement of all profits, or some portion of profits, and/or unjust
28

- 1 enrichment that Defendant obtained from Plaintiffs and the Class as a result
2 of the unlawful, unfair and/or fraudulent business practices described herein.
- 3 3. An order enjoining Defendant from continuing to violate the UCL and/or
4 FAL as described herein, and/or an order enjoining Defendant from violating
5 the UCL and/or FAL in the future.
- 6 4. A judgment awarding Plaintiffs their costs of suit, including reasonable
7 attorneys' fees pursuant to California C.C.P. §1021.5 and as otherwise
8 permitted by statute or law, and pre- and post-judgment interest; and,
9 5. For such other and further relief as the Court may deem proper.

10
11 **DEMAND FOR JURY TRIAL**

12 Plaintiffs hereby demand a trial by jury for all claims so triable.

13
14
15 Dated: September 17, 2018 DOUGLAS CAIAFA, A PROF. LAW CORP.

16 By: /s/ Douglas Caiafa
17 Douglas Caiafa, Attorneys for Plaintiffs
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