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CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

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11 **IN THE UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13

14 ANTONIO S. HINOJOS,
15 individually, and DARREN
16 DROUIN and CHERYL LONG,
17 individually and On Behalf of All
Others Similarly Situated,

18 Plaintiffs,

19 v.

20 KOHL'S CORP., a Wisconsin
21 Corporation; and KOHL'S
22 DEPARTMENT STORES, INC., a
23 Delaware Corporation,

24 Defendants.

CASE NO. CV10 7590 ODW(AGR~~x~~)

CLASS ACTION

SECOND AMENDED COMPLAINT

JUDGE: Honorable Otis D. Wright II
CTRM: 11

JURY TRIAL DEMANDED

1 Plaintiff, Antonio S. Hinojos, on his own behalf, and Plaintiffs Darren Drouin
2 and Cheryl Long on their own behalf and on behalf of all others similarly situated,¹
3 by and through their attorneys, bring this action against Defendants Kohl's
4 Corporation and Kohl's Department Stores, Inc. (collectively "Kohl's" or
5 "Defendants"), and allege as follows based upon personal knowledge and the
6 investigation of counsel:

7 **NATURE OF THE ACTION**

8 1. This is a class action against Kohl's for falsely advertising price
9 discounts for its private and exclusive branded products, which are advertised as
10 being available "only at Kohl's." In its direct marketing to consumers via in-store
11 advertising displays, print advertising and via its Internet Web site
12 (www.kohls.com), Kohl's advertises false former prices and false price discounts for
13 its private and exclusive branded products.

14 2. During the "Class Period" (defined below), Kohl's has misrepresented
15 the nature and amount of price discounts by purporting to offer specific dollar
16 discounts from its own former retail prices, which are misrepresented as "*regular*"
17 or "*original*" retail prices. These purported discounts are false, however, because
18 the referenced former retail prices are fabricated and inflated and do not represent
19 Kohl's true "*regular*" or "*original*" retail prices for its private and exclusive branded
20 products. In fact, Kohl's did not sell any meaningful quantity of such products, and
21 it had no intention of selling any meaningful quantity of such products, at the former
22 retail prices. Furthermore, the advertised "*regular*" or "*original*" prices for Kohl's
23 private and exclusive branded products are not the prevailing retail market prices
24 within three months next immediately preceding the publication and dissemination
25 of the advertised former prices, as required by California law.

26 3. The Federal Trade Commission (FTC) describes false former pricing

27
28 ¹ Plaintiffs Hinojos, Long and Drouin are sometimes collectively referred to herein
as "Plaintiffs."

1 schemes, similar to Kohl's in all material respects, as deceptive:

2 One of the most commonly used forms of bargain advertising is to
 3 offer a reduction from the advertiser's own former price for an article.
 4 If the former price is the actual, bona fide price at which the article
 5 was offered to the public on a regular basis for a reasonably substantial
 6 period of time, it provides a legitimate basis for the advertising of a
 7 price comparison. Where the former price is genuine, the bargain
 8 being advertised is a true one. If, on the other hand, the former price
 9 being advertised is not bona fide but fictitious – for example, where an
 10 artificial price, inflated price was established for the purpose of
 enabling the subsequent offer of a large reduction – the “bargain”
 being advertised is a false one; the purchaser is not receiving the
 unusual value he expects.

11 16 C.F.R. § 233.1(a).

12 4. California statutory and regulatory law also expressly prohibits false
 13 former pricing schemes. Cal. Bus. & Prof. Code § 17501, entitled “*Value*
 14 *determinations; Former price advertisements,*” states:

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

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

24 5. Upon information and belief, Kohl's false price advertising scheme,
 25 disseminated to California consumers via in-store display advertising, internet
 26 advertising and print advertising, has been rampant throughout California as part of
 27 a massive, years-long, pervasive campaign and has been consistent across all of
 28 Kohl's private and exclusive branded product lines. For example, Kohl's in-store

1 pricing scheme is prominently displayed directly above its products, with express
2 references to Kohl's former "*regular*" or "*original*" retail prices that have never
3 existed and/or do not constitute the prevailing retail market prices for such products.
4 Furthermore, upon check-out in stores, California consumers, including Plaintiffs
5 Hinojos and Drouin, have received sales receipts continuing the misrepresentations
6 regarding false former prices and price reductions. For example, the false former
7 price is listed on the left-hand margin of the sales receipt as the "*Item Price*" with
8 the purported sale price listed on the right-hand margin of the sales receipt. In the
9 middle of the sales receipt, between the false and misleading former price and
10 purported sale price, Kohl's continues its campaign to mislead consumers about the
11 amount purportedly saved ("*You Save*") on each product. Below the total amount
12 purchased at the bottom of the sales receipt, Kohl's misrepresents to consumers the
13 total amount purportedly saved ("*You Save*") on the entire purchase transaction.

14 6. Upon information and belief, hundreds of thousands of California
15 consumers have been victims of Kohl's deceptive, misleading and unlawful pricing
16 scheme. Kohl's false advertising focuses reasonable purchasers' attention on
17 fictitious discounts from Kohl's former prices. As a result, purchasers, including
18 Plaintiffs, have reasonably perceived that they are receiving valuable price
19 reductions on their purchases of Kohl's private and exclusive branded products.
20 This perception has induced reasonable purchasers, including Plaintiffs, to buy such
21 products from Kohl's and to refrain from shopping for the same or similar products
22 from competitors of Kohl's.

23 7. Kohl's knows or should reasonably know that its comparative price
24 advertising is false, deceptive, misleading and unlawful.

25 8. Kohl's has fraudulently concealed from and intentionally failed to
26 disclose to Plaintiffs and others similarly situated the truth about its advertised price
27 discounts and former prices.

28 9. At all relevant times, Kohl's has been under a duty to Plaintiffs and

1 others similarly situated to disclose the truth about its “former” and “original”
2 prices.

3 10. The facts which Kohl’s misrepresented or failed to disclose are
4 material facts that a reasonable person would have considered material, i.e., facts
5 which would contribute to a reasonable person’s decision to purchase products from
6 Kohl’s. Kohl’s false representations of discounts from former “regular” or
7 “original” prices and false representations of purported savings, discounts and
8 bargains are objectively material to the reasonable consumer, and therefore reliance
9 upon such representations may be presumed as a matter of law.

10 11. Plaintiffs each relied upon such false representations of discounts from
11 former “regular” or “original” prices and false representations of purported savings,
12 discounts and bargains when purchasing private and/or exclusive branded products
13 at Kohl’s.

14 12. Plaintiffs and others similarly situated reasonably and justifiably acted
15 and relied to their detriment on Kohl’s failure to disclose, and concealment of, the
16 truth about Kohl’s false former price advertising scheme.

17 13. Kohl’s intentionally concealed and failed to disclose the truth about its
18 misrepresentations and false former price advertising scheme for the purpose of
19 inducing Plaintiffs and others similarly situated to purchase its private and exclusive
20 branded products.

21 14. Through its false and deceptive marketing, advertising and pricing
22 scheme, Kohl’s has violated California law prohibiting advertising goods for sale as
23 discounted from former prices which are false, and prohibiting misleading
24 statements about the existence and amount of price reductions. Specifically, Kohl’s
25 has violated, and continues to violate, California’s Business & Professions Code §§
26 17200, *et seq.* (the “UCL”), California’s Business & Professions Code §§ 17500, *et*
27 *seq.* (the “FAL”), as well as the California Consumers’ Legal Remedies Act,
28 California Civil Code §§ 1750, *et seq.* (the “CLRA”). Kohl’s has also violated the

1 Federal Trade Commission Act ("FTCA") and its guidelines, which are incorporated
2 herein under Plaintiffs' claim under the "unlawful" prong of the UCL.

3 15. The claims and issues asserted herein are governed by Federal and
4 California state law. The State of California has the greatest interest in policing
5 corporate conduct occurring within the State that affects the rights and interests of
6 its citizens.

7 16. Plaintiff Hinojos, individually, and Plaintiffs Long and Drouin,
8 individually and on behalf of all others similarly situated, seek restitution and
9 injunctive relief to stop Kohl's rampant false advertising.

10 PARTIES

11 17. Plaintiff Antonio S. Hinojos is a resident of West Covina, California in
12 Los Angeles County who, in reliance on Defendants' false and deceptive
13 advertising, marketing and pricing schemes, purchased private and/or exclusive
14 branded products from Kohl's that he would not otherwise have purchased absent
15 Kohl's false advertising and was damaged thereby. Plaintiff Hinojos is pursuing this
16 action in his individual capacity only and does not seek to be appointed as a class
17 representative.

18 18. Plaintiff Darren Drouin is a resident of Santa Clarita, California who,
19 in reliance on Defendants' false and deceptive advertising, marketing and pricing
20 scheme, purchased private and/or exclusive branded products from Kohl's that he
21 would not otherwise have purchased absent Kohl's false advertising and was
22 damaged thereby. Plaintiff Drouin seeks to be appointed as a class representative.

23 19. Plaintiff Cheryl Long is a resident of Seal Beach, California who, in
24 reliance on Defendants' false and deceptive advertising, marketing and pricing
25 scheme, purchased private and/or exclusive branded products from Kohl's that she
26 would not otherwise have purchased absent Kohl's false advertising and was
27 damaged thereby. Plaintiff Long seeks to be appointed as a class representative.

28 20. Defendant Kohl's Corporation is a publicly traded Wisconsin

1 Corporation (NYSE: KSS) with its principal executive offices in Menomonee Falls,
2 Wisconsin. According to its Form 10-K for the fiscal year ending February 2,
3 10313, Kohl's Corp. "operate[s] family-oriented department stores that sell
4 moderately priced apparel, footwear and accessories for women, men and children;
5 soft home products such as sheets and pillows; and housewares." The 10-K further
6 states that "our product offerings include quality private and exclusive brands which
7 are found 'Only at Kohl's'" According to the 10-K, these private and exclusive
8 branded products represented 52% of the Company's sales over the last three years.

9 21. Defendant Kohl's Department Stores, Inc. is a Delaware Corporation
10 registered to do business in the State of California, with its principal executive
11 offices in Menomonee Falls, Wisconsin. Kohl's Department Stores, Inc. is a wholly
12 owned subsidiary of Kohl's Corporation and operates 121 retail Kohl's stores in the
13 State of California.

14 22. Plaintiffs are informed and believe, and thereon allege, that at all times
15 mentioned herein, all defendants, and each of them, were acting as the agent and/or
16 employee of each remaining co-defendant, and were acting with permission and
17 consent of each other, and within the course and scope of said agency and/or
18 employment. Plaintiffs are further informed and believe that each co-defendant, by
19 and through its officers, directors or managing agents ratified, authorized and
20 approved, expressly or implicitly, all of the conduct alleged herein.

21 23. When in this Second Amended Complaint reference is made to any act
22 of "Kohl's" or "Defendants," such shall be deemed to mean that officers, directors,
23 agents, employees, or representatives of the Defendants named in this lawsuit
24 committed or authorized such acts, or failed and omitted to adequately supervise or
25 properly control or direct their employees while engaged in the management,
26 direction, operation or control of the affairs of the Defendants and did so while
27 acting within the scope of their employment or agency.

28 24. When in this Second Amended Complaint reference is made to any act

1 by "Kohl's" or "Defendants," such allegations and reference shall also be deemed to
2 mean the acts and failures to act of each of the named Defendants acting
3 individually, jointly and severally.

4 JURISDICTION AND VENUE

5 25. Plaintiffs reallege by reference, as if fully set forth herein, all of the
6 above Paragraphs.

7 26. This Court has original jurisdiction over this action under the Class
8 Action Fairness Act, 28 U.S.C. § 1332(d), because this is a class action in which: (1)
9 at least some members of the proposed Class have a different citizenship from
10 Defendant; and (2) the claims of the proposed Class members exceed \$5,000,000.00
11 (Five Million U.S. Dollars) in the aggregate.

12 27. This Court has jurisdiction over Defendants because each co-defendant
13 is a corporation or other business entity authorized to do business in the State of
14 California and registered with the California Secretary of State to do sufficient
15 business with sufficient minimum contacts in California, and/or otherwise
16 intentionally avail itself of the California market through the ownership and
17 operation of more than a hundred retail stores within the State of California, to
18 render the exercise of jurisdiction by the California courts consistent with traditional
19 notions of fair play and substantial justice.

20 28. Venue as to each Defendant is proper in this judicial district, pursuant
21 to 28 U.S.C. § 1391 because Defendants transact business, or are found within this
22 District, and a substantial part of the events giving rise to the claims of Plaintiffs
23 Hinojos and Drouin, as well as numerous other class members, arose here.

24 FACTUAL ALLEGATIONS

25 **Plaintiff Antonio Hinojos**

26 29. On May 6, 2010, Plaintiff Hinojos used his Kohl's credit card to
27 purchase numerous items at a Kohl's retail store in Los Angeles County located at
28 1225 S. Lone Hill Ave., Glendora, California 91740. Mr. Hinojos purchased such

1 items after viewing and relying on KOHL'S advertising that included false discounts
2 and false "Regular" and "Original" former prices for such products. Relying upon
3 Kohl's misrepresentations and false and deceptive advertising, Plaintiff Hinojos
4 purchased a *Samsonite Drive Dual-Wheel Spinner Collection 21* Carry-on Upright
5 luggage item that Kohl's falsely represented as being "50% off" with a "Sale" price
6 of \$149.99 and having a former "Regular" price of \$299.99. Upon information and
7 belief, these purported price reductions and savings were false and deceptive, as the
8 prevailing retail price for the *Samsonite* luggage item during the three months
9 immediately prior to Plaintiff's purchase of such item was materially lower than
10 \$299.99. Plaintiff Hinojos would not have purchased that product at Kohl's in the
11 absence of Kohl's misrepresentations. As a result, Plaintiff Hinojos has been
12 victimized by Defendants' unlawful, unfair and fraudulent conduct.

13 30. Furthermore, upon check-out on May 6, 2010 at the Kohl's Glendora,
14 California location, Kohl's provided Plaintiff Hinojos with a sales receipt containing
15 the same misrepresentations regarding false former prices and price reductions on
16 the *Samsonite* luggage item. The false former price of \$299.99 was listed on the
17 left-hand margin of the sales receipt as the "*Item Price*" with the purported sale price
18 of \$149.99 listed on the right-hand margin of the sales receipt. In the middle of the
19 sales receipt, between the false former price and purported sale price, Kohl's
20 continued its misrepresentations to Plaintiff Hinojos with a false and deceptive
21 amount of \$150.00 in savings ("*You Save*") on the *Samsonite* luggage item.

22 31. Similar acts of false advertising were committed by Kohl's with
23 respect to Mr. Hinojos's purchase of several items of Kohl's private or exclusive
24 branded apparel. For instance, on May 6, 2010 at the Kohl's Glendora, California
25 location, relying upon Kohl's misrepresentations and false and deceptive
26 advertising, Plaintiff Hinojos also purchased *Chaps Solid Pique Polo* shirts that
27 Kohl's falsely represented to Plaintiff Hinojos as having a "Sale" price of \$21.99
28 and a former "Original" price of \$36.00. These purported price reductions and

1 savings were also false and deceptive, as the prevailing retail price for the *Chaps*
2 *Solid Pique Polo* shirts during the three months prior to Plaintiff Hinojos's purchase
3 of such items was materially lower than \$36.00. Plaintiff Hinojos would not have
4 purchased that product at Kohl's in the absence of Kohl's misrepresentations. As a
5 result, Plaintiff Hinojos has been victimized by Defendants' unlawful, unfair and
6 fraudulent conduct.

7 32. On May 6, 2010, relying upon Kohl's misrepresentations and false and
8 deceptive advertising, Plaintiff Hinojos also purchased *Chaps Sportswear Flat Front*
9 shorts that Kohl's falsely represented to Plaintiff Hinojos as having a "Sale" price of
10 \$26.99 and a former "Original" price of \$39.50. The purported price reduction and
11 savings were also false and deceptive, as the prevailing retail price for the *Chaps*
12 *Sportswear Flat Front* shorts during the three months prior to Plaintiff Hinojos's
13 purchase of such items was materially lower than \$39.50. Plaintiff Hinojos would
14 not have purchased that product at Kohl's in the absence of Kohl's
15 misrepresentations. As a result, Plaintiff Hinojos has been victimized by
16 Defendants' unlawful, unfair and fraudulent conduct.

17 33. On May 6, 2010, relying upon Kohl's misrepresentations and false and
18 deceptive advertising, Plaintiff Hinojos also purchased *Chaps Jersey Pocket Tee*
19 shirts that Kohl's falsely represented to Plaintiff Hinojos as having a "Sale" price of
20 \$15.60 and a former "Original" price of \$26.00. The purported price reduction and
21 savings were also false and deceptive, as the prevailing retail price for the *Chaps*
22 *Jersey Pocket Tee* shirts during the three months prior to Plaintiff Hinojos's
23 purchase of such items was materially lower than \$26.00. Plaintiff Hinojos would
24 not have purchased that product at Kohl's in the absence of Kohl's
25 misrepresentations. As a result, Plaintiff Hinojos has been victimized by
26 Defendants' unlawful, unfair and fraudulent conduct.

27 34. On May 6, 2010, relying upon Kohl's misrepresentations and false and
28 deceptive advertising, Plaintiff Hinojos also purchased *Sonoma Life & Style Henley*

1 *Tops* shirts that Kohl's falsely represented to Plaintiff Hinojos as having a "Sale"
2 price of \$13.20 and a former "Original" price of \$22.00. The purported price
3 reduction and savings were also false and deceptive, as the prevailing retail price for
4 the *Sonoma Life & Style Henley Tops* shirts during the three months prior to Plaintiff
5 Hinojos's purchase of such items was materially lower than \$22.00. Plaintiff
6 Hinojos would not have purchased that product at Kohl's in the absence of Kohl's
7 misrepresentations. As a result, Plaintiff Hinojos has been victimized by
8 Defendants' unlawful, unfair and fraudulent conduct.

9 35. Upon check-out on May 6, 2010, Kohl's continued its deception by
10 including on the sales receipt, the false representation to Plaintiff Hinojos that he
11 received \$298.07 in savings ("*You Save*") on his entire May 6, 2010 Kohl's credit
12 card purchase transaction. These savings never existed, as they were unlawfully,
13 unfairly and fraudulently based upon Kohl's false former price advertising schemes.
14 Plaintiff therefore never received the actual value of the \$298.07 in price discounts
15 Kohl's promised him. As a result, Plaintiff Hinojos has been damaged by
16 Defendants' unlawful, unfair and fraudulent conduct.

17 **Plaintiff Darren Drouin**

18 36. During the Class Period, Plaintiff Drouin relied on Kohl's false price
19 comparisons and purchased numerous products, including Kohl's private or
20 exclusive branded products, that he would not otherwise have purchased absent
21 Kohl's false price comparison scheme.

22 37. For example, on January 3, 2013, Plaintiff Drouin visited the Kohl's
23 store in Santa Clarita, California. Relying on Kohl's false price comparisons, he
24 purchased the following items:
25
26
27
28

ITEM	ITEM NO.	STATED REGULAR PRICE	PURPORTED "SALE" PRICE	PURPORTED DISCOUNT
CANDLES	644124543915	\$10.99	\$2.19	\$8.80
SONOMA	754870780325	\$19.99	\$11.99	\$8.00
SONOMA	754870798894	\$19.99	\$11.99	\$8.00
SONOMA	754870834622	\$19.99	\$11.99	\$8.00
SONOMA	754870762017	\$19.99	\$11.99	\$8.00
CANDLES	754870790539	\$19.99	\$5.99	\$14.00
YANKEE CANDLE	609032793968	\$26.99	\$8.09	\$18.90
YANKEE CANDLE	609032793968	\$26.99	\$8.09 PLUS "ITEM MARKDOWN" OF \$4.09	\$4.00
CANDLES	644124543915	\$10.99	\$2.19	\$8.80

38. Similarly, on August 22, 2013, Plaintiff Drouin visited the Kohl's store in Santa Clarita, California. Relying on Kohl's false price comparisons, he purchased the following items:

ITEM	ITEM NO.	STATED REGULAR PRICE	PURPORTED "SALE" PRICE	PURPORTED DISCOUNT
Mens Dress Pant	760925051548	\$60.00	\$32.99	\$27.01
Mens Denim	690742327246	\$88.00	\$17.60	\$70.40

39. Similarly, on September 27, 2013, Plaintiff Drouin visited the Kohl's store in Santa Clarita, California. Relying on Kohl's false price comparisons, he

1 purchased the following items:

2 ITEM	3 ITEM NO.	4 STATED REGULAR PRICE	5 PURPORTED "SALE" PRICE	6 PURPORTED DISCOUNT
7 Mens 8 Running 9 Shoe	887225403416	\$75.00	\$68.99	\$6.01
10 Young Mens 11 Flip Flop	400936819248	\$22.00	\$14.99	\$7.01

12 40. Upon information and belief, some or all of the purchased items were
13 private or exclusive branded products. Upon information and belief, each of the
14 stated "Regular" or "Original" prices for those items were not used in Kohl's recent
15 and regular course of business or, if they were used, they were not used for a
16 reasonable period of time, they did not result in a reasonable number of transactions
17 at that price, and they were not used with a bona fide and good faith intention of
18 selling a reasonable quantity of units at those prices. In all cases, the stated
19 "Regular" or "Original" prices did not constitute the prevailing market price for each
20 item during the three months preceding Plaintiff Drouin's purchases. Absent Kohl's
21 false representations of a price discount, Plaintiff Drouin would not have purchased
22 any of the items that he purchased from Kohl's.

23 **Plaintiff Cheryl Long**

24 41. During the Class Period, Plaintiff Long relied on Kohl's false price
25 comparisons and purchased numerous products in stores and through the Kohl's
26 website, including Kohl's private or exclusive branded products, that she would not
27 otherwise have purchased absent Kohl's false price comparison scheme.

28 42. For example, on or about March 18, 2012, Plaintiff Long visited
Kohl's website and, relying on Kohl's false price comparisons, purchased a Croft &
Barrow Herringbone wool coat, SKU No. 91750068. The coat is a private or

1 exclusive branded product of Kohl's and was represented as having a "regular" or
2 "original" price of \$220.00 but was offered at the discounted "sale" price of \$88.00.

3 43. Upon information and belief, the stated "Regular" or "Original" price
4 of \$220.00 was not used in Kohl's recent and regular course of business or, if it was
5 used, it was not used for a reasonable period of time, it did not result in a reasonable
6 number of transactions at that price, and it was not used with a bona fide and good
7 faith intention of selling a reasonable quantity of units at that price. The stated
8 Regular" or "Original" price did not constitute the prevailing market price for that
9 item during the three months preceding Plaintiff Long's purchases. Absent Kohl's
10 false representations of a price discount, Plaintiff Long would not have purchased
11 the coat or any other items that she purchased from Kohl's.

12 CLASS ALLEGATIONS

13 44. Plaintiffs reallege by reference, as if fully set forth herein, all of the
14 above Paragraphs.

15 45. Plaintiffs Long and Drouin bring this action on their own behalf and
16 on behalf of all other persons similarly situated. The class Plaintiffs Long and
17 Drouin seek to represent is defined as:

18 All persons who, while in the State of California and between August
19 5, 2006 and the present (the "Class Period"), purchased from
20 Defendants one or more of Defendants' private or exclusive branded
21 items at a discount of at least 30% off of the stated "original" or
22 "regular" price.

23 Excluded from the Class are Defendants, as well as their officers,
24 employees, agents or affiliates, and any judge who presides over this
25 action, as well as all past and present employees, officers and directors
26 of Kohl's. Also excluded from the Class are any persons who would
27 only be included in the Class description as a result of using one or
28 more coupons. Plaintiffs Long and Drouin reserve the right to expand,
limit, modify, or amend this class definition, including the addition of
one or more subclasses, in connection with his motion for class
certification, or at any other time, based upon, inter alia, changing
circumstances and/or new facts obtained during discovery.

1 46. **Numerosity:** Upon information and belief, the Class is composed of
2 hundreds of thousands of California individuals, whose joinder of this action would
3 be impracticable. The disposition of their claims through this class action will
4 benefit Class members, the parties, and the courts.

5 47. **Existence and Predominance of Common Questions of Fact and**
6 **Law:** There is a well-defined community of interest in questions of law and fact
7 affecting the Class. These questions of law and fact predominate over individual
8 questions affecting individual Class members, including, but not limited to, the
9 following:

10 a. Whether Kohl's falsely advertises price discounts from its former
11 "regular" and "original" prices on its private or exclusive branded products;

12 b. Whether the "regular" and/or "original" prices advertised by Kohl's
13 were the prevailing market prices on its private or exclusive branded products during
14 the three month periods preceding the dissemination and/or publication of the
15 advertised former prices;

16 c. Whether Kohl's use of false or deceptive price advertising constitute
17 false advertising under California law;

18 d. Whether Kohl's engaged in unfair, unlawful and/or fraudulent business
19 practices under California law;

20 e. Whether Kohl's failed to disclose material facts about its product
21 pricing and discounts;

22 f. Whether Kohl's has made false or misleading statements of fact
23 concerning the reasons for, existence of, or amounts of price reductions;

24 g. Whether Kohl's conduct, as alleged herein, is intentional and knowing;

25 h. Whether Class members are entitled to damages and/or restitution;
26 and, if so, what is the amount of revenues and profits Kohl's received and/or was
27 lost by Class members as a result of the conduct alleged herein;

28 i. Whether Class members are threatened with irreparable harm or are

1 otherwise entitled to injunctive and other equitable relief; and, if so, what is the
2 nature of such relief;

3 j. Whether a backward-reaching injunction is required to remedy the past
4 effects of the unlawful, unfair and fraudulent conduct alleged herein; and if so, what
5 steps are required of Kohl's to correct the consequences of its past wrongful acts
6 alleged herein;

7 k. Whether Plaintiffs and Class members are entitled to an award of
8 reasonable attorneys' fees, pre-judgment interest and costs of suit.

9 48. **Typicality:** The claims of Plaintiffs Long and Drouin are typical of,
10 and are not antagonistic to, the claims of all Class members. Plaintiffs Long and
11 Drouin, and the Class they seek to represent, have all been deceived (or were likely
12 to be deceived) and damaged by Kohl's false former price advertising schemes, as
13 alleged herein. Plaintiffs Long and Drouin, and all Class members, have similarly
14 suffered injury, including the loss of money, arising from Kohl's unfair, unlawful
15 and deceptive conduct, as described herein.

16 49. **Adequacy:** Plaintiffs Long and Drouin are adequate representatives of
17 the Class because their interests do not conflict with the interests of the Class
18 members they seek to represent. Plaintiffs Long and Drouin will fairly and
19 adequately represent and protect the interest of the Class because they are not
20 antagonistic to the Class. Plaintiffs Long and Drouin have retained counsel who are
21 competent and experienced in the prosecution of consumer fraud and class action
22 litigation.

23 50. **Superiority:** A class action is superior to other available means for
24 the fair and efficient adjudication of Plaintiffs' and Class members' claims.
25 Plaintiffs and members of the Class have suffered monetary harm as a result of
26 Kohl's unfair, unlawful and fraudulent conduct. Because of the relatively modest
27 size of individual Class members' claims, few, if any, Class members could afford
28 to seek legal redress of the wrongs complained of herein on an individual basis.

1 Absent the class action, Class members and the general public will likely continue to
2 be deceived and suffer monetary losses, and the violations of law described herein
3 will continue without remedy, and Kohl's will be permitted to retain the proceeds of
4 its misdeeds.

5 51. All Class members, including Plaintiffs, were exposed to one or more
6 of Kohl's misrepresentations or omissions of material fact claiming that former
7 "regular" and "original" advertised prices were in existence. Due to the scope and
8 extent of Kohl's consistent false price advertising scheme, disseminated in a
9 massive, years-long campaign to California consumers via in-store display
10 advertising, internet advertising and print advertising, it can be reasonably inferred
11 that such misrepresentations or omissions of material fact were uniformly made to
12 all members of the Class. In addition, it can be reasonably presumed that all Class
13 members, including Plaintiffs, affirmatively acted in response to the representations
14 contained in Kohl's false advertising scheme when purchasing private or exclusive
15 branded products at Kohl's stores in California.

16 **FIRST CAUSE OF ACTION**
17 **(Violation of the "Unfair" Prong of the UCL)**

18 52. Plaintiffs reallege by reference, as if fully set forth herein, all of the
19 above Paragraphs.

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

23 54. A business act or practice is "unfair" under the Unfair Competition
24 Law if the reasons, justifications and motives of the alleged wrongdoer are
25 outweighed by the gravity of the harm to the alleged victims.

26 55. Kohl's has violated and continues to violate the "unfair" prong of the
27 UCL by falsely representing that its California consumers are receiving a price
28 discount from a referenced "regular" or "original" former price of its private and

1 exclusive branded products where Kohl's, in fact, has inflated the purported
2 "regular" or "original" prices for such products such that the promised discount is
3 false, misleading and deceptive.

4 56. These acts and practices are unfair because they are likely to cause
5 consumers to falsely believe that Kohl's is offering value, discounts or bargains
6 from the prevailing market value or worth of the products sold that do not, in fact,
7 exist. As a result, purchasers, including Plaintiffs, have reasonably (but falsely)
8 perceived that they are receiving valuable price reductions on purchases at Kohl's.
9 This perception has induced reasonable purchasers, including Plaintiffs, to buy such
10 products from Kohl's.

11 57. The gravity of the harm to members of the Class resulting from these
12 unfair acts and practices outweighs any conceivable reasons, justifications and/or
13 motives of Kohl's for engaging in such deceptive acts and practices. By committing
14 the acts and practices alleged above, Kohl's has engaged, and continues to engage,
15 in unfair business practices within the meaning of California Business & Professions
16 Code §§ 17200, *et seq.*

17 58. Through its unfair acts and practices, Kohl's has improperly obtained
18 money from Plaintiffs and the Class, and continues to improperly obtain money
19 from the general public. As such, Plaintiffs request that this Court cause Kohl's to
20 restore this money to Plaintiffs and all Class members, and to enjoin Kohl's from
21 continuing to violate the UCL as discussed herein. Otherwise, Plaintiffs, the Class
22 and members of the general public may be irreparably harmed and/or denied an
23 effective and complete remedy if such an order is not granted. Plaintiffs also
24 requests that this Court order a backward-reaching injunction in order to remedy the
25 past effects of the unfair conduct alleged herein.

26 **SECOND CAUSE OF ACTION**
27 **(Violation of the "Fraudulent" Prong of the UCL)**

28 59. Plaintiffs reallege by reference, as if fully set forth herein, all of the

1 above Paragraphs.

2 60. The UCL defines unfair business competition to include any
3 “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive,
4 untrue or misleading” advertising. Cal. Bus. & Prof. Code § 17200.

5 61. A business act or practice is “fraudulent” under the UCL if it is likely
6 to deceive members of the consuming public.

7 62. Kohl’s marketing and advertising materials concerning false “regular”
8 or “original” former prices, including, but not limited to, its in-store advertising
9 displays, print advertising, and internet website advertising are “fraudulent” within
10 the meaning of the UCL because they have deceived Plaintiffs, and are likely to
11 deceive members of the general public, into believing that Kohl’s is offering value,
12 discounts or bargains from the prevailing market value or worth of the products sold
13 that do not, in fact, exist. As a result, purchasers, including Plaintiffs, have
14 reasonably (but falsely) perceived that they are receiving valuable price reductions
15 on purchases at Kohl’s. This perception has induced reasonable purchasers,
16 including Plaintiffs, to buy such products from Kohl’s.

17 63. Kohl’s acts and practices as described herein have deceived Plaintiffs
18 and are highly likely to deceive members of the consuming public. Specifically, in
19 deciding to purchase private and exclusive branded products at Kohl’s, Plaintiffs
20 relied on Kohl’s misleading and deceptive representations regarding its “regular,”
21 “original,” and “sale” price. Each of these factors played a substantial role in each
22 Plaintiffs’ decision to purchase those products at Kohl’s, and Plaintiffs would not
23 have purchased those items at Kohl’s in the absence of Kohl’s misrepresentations.
24 Accordingly, Plaintiffs suffered monetary loss as a direct result of Kohl’s practices
25 described herein.

26 64. As a result of the conduct described above, Kohl’s has been, and will
27 continue to be, unjustly enriched at the expense of Plaintiffs and members of the
28 proposed Class. Specifically, Kohl’s has been unjustly enriched by obtaining

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

3 65. Through its unfair acts and practices, Kohl's has improperly obtained
4 money from Plaintiffs and the Class, and continues to improperly obtain money
5 from the general public. As such, Plaintiffs request that this Court cause Kohl's to
6 restore this money to Plaintiffs and all Class members, and to enjoin Kohl's from
7 continuing to violate the UCL as discussed herein. Otherwise, Plaintiffs, the Class
8 and members of the general public may be irreparably harmed and/or denied an
9 effective and complete remedy if such an order is not granted. Plaintiffs also request
10 that this Court order a backward-reaching injunction in order to remedy the past
11 effects of the unfair conduct alleged herein.

12 **THIRD CAUSE OF ACTION**
13 **(Violation of the "Unlawful" Prong of the UCL)**

14 66. Plaintiffs realleges by reference, as if fully set forth herein, all of the
15 above Paragraphs.

16 67. The UCL defines unfair business competition to include any
17 "unlawful, unfair or fraudulent" act or practice, as well as any "unfair, deceptive,
18 untrue or misleading" advertising. Cal. Bus. & Prof. Code § 17200.

19 68. A business act or practice is "unlawful" under the UCL if it violates
20 any other law or regulation.

21 69. The Federal Trade Commission (FTC) describes false former pricing
22 schemes, similar to Kohl's in all material respects, as deceptive:

23 (a) One of the most commonly used forms of bargain
24 advertising is to offer a reduction from the advertiser's own
25 former price for an article. If the former price is the actual, bona
26 fide price at which the article was offered to the public on a
27 regular basis for a reasonably substantial period of time, it
28 provides a legitimate basis for the advertising of a price
comparison. Where the former price is genuine, the bargain
being advertised is a true one. If, on the other hand, the former

price being advertised is not bona fide but fictitious – for example, where an artificial price, inflated price was established for the purpose of enabling the subsequent offer of a large reduction – the “bargain” being advertised is a false one; the purchaser is not receiving the unusual value he expects.

(b) A former price is not necessarily fictitious merely because no sales at the advertised price were made. The advertiser should be especially careful, however, in such a case, that the price is one at which the product was openly and actively offered for sale, for a reasonably substantial period of time, in the recent, regular course of his business, honestly and in good faith – and, of course, not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based.

16 C.F.R. § 233.1.

70. California statutory and regulatory law also expressly prohibits false former pricing schemes. Cal. Bus. & Prof. Code § 17501, entitled “*Value determinations; Former price advertisements*,” states:

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

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

71. As detailed in Plaintiffs’ Fifth Cause of Action below, Cal. Civ. Code § 1770, subsection (a)(9), prohibits a business from “[a]dvertising goods or services with intent not to sell them as advertised”, and subsection (a)(13) prohibits a business from “[m]aking false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.”

72. Kohl’s use of and reference to a “regular” or “original” price, or

1 purported discounts of “__% off,” in connection with its marketing and
2 advertisements concerning its private and exclusive branded products violates Title
3 16, Code of Federal Regulations, Section 233, Cal. Bus. & Prof. Code § 17501, and
4 Cal. Civ. Code § 1770, sections (a)(9) and (a)(13) by advertising false discounts
5 from purported former prices that were, in fact, not the prevailing market prices
6 within three months next preceding the publication and dissemination of
7 advertisements containing the false former prices.

8 73. As a result of the conduct described above, Kohl’s has been, and will
9 continue to be, unjustly enriched at the expense of Plaintiffs and members of the
10 proposed Class. Specifically, Kohl’s has been unjustly enriched by obtaining
11 revenues and profits that it would not otherwise have obtained absent its false,
12 misleading and deceptive conduct.

13 74. Through its unfair acts and practices, Kohl’s has improperly obtained
14 money from Plaintiffs and the Class, and continues to improperly obtain money
15 from the general public. As such, Plaintiffs request that this Court cause Kohl’s to
16 restore this money to Plaintiffs and all Class members, and to enjoin Kohl’s from
17 continuing to violate the UCL as discussed herein. Otherwise, Plaintiffs, the Class
18 and members of the general public may be irreparably harmed and/or denied an
19 effective and complete remedy if such an order is not granted. Plaintiffs also request
20 that this Court order a backward-reaching injunction in order to remedy the past
21 effects of the unfair conduct alleged herein.

22 **FOURTH CAUSE OF ACTION**

23 **(Violation of the California False Advertising Law, California Business &**
24 **Professions Code Sections 17500, *et seq.*)**

25 75. Plaintiffs reallege by reference, as if fully set forth herein, all of the
26 above Paragraphs.

27 76. The California False Advertising Law, prohibits unfair, deceptive,
28 untrue, or misleading advertising, including, but not limited to, false statements as to
worth, value and former price.

1 77. Kohl's practice of advertising "regular" or "original" sales prices
 2 associated with its private and exclusive branded products, which are materially
 3 greater than the true prevailing prices of those products is an unfair, deceptive and
 4 misleading advertising practice because it gives the false impression that the
 5 products sold at Kohl's are of a higher quality, value and worth than they actually
 6 are. In fact, the private and exclusive branded products sold at Kohl's do not have a
 7 prevailing market price anywhere close to the "regular" or "original" price
 8 advertised by Kohl's.

9 78. Through its unfair acts and practices, Kohl's has improperly obtained
 10 money from Plaintiffs and the Class, and continues to improperly obtain money
 11 from the general public. As such, Plaintiffs request that this Court cause Kohl's to
 12 restore this money to Plaintiffs and all Class members, and to enjoin Kohl's from
 13 continuing to violate the UCL as discussed herein. Otherwise, Plaintiffs, the Class
 14 and members of the general public may be irreparably harmed and/or denied an
 15 effective and complete remedy if such an order is not granted. Plaintiffs also
 16 requests that this Court order a backward-reaching injunction in order to remedy the
 17 past effects of the unfair conduct alleged herein.

18 **FIFTH CAUSE OF ACTION**
 19 **(Violation of the Consumers Legal Remedies Act, California Civil Code**
 20 **Sections 1750, *et seq.*)**

21 79. Plaintiffs reallege by reference, as if fully set forth herein, all of the
 22 above Paragraphs.

23 80. This cause of action is brought pursuant to the Consumers Legal
 24 Remedies Act, California Civil Code §§ 1750, *et seq.* (the "CLRA").

25 81. Plaintiffs and each member of the proposed Class are "consumers"
 26 within the meaning of Civil Code § 1761(d).

27 82. Kohl's sale of private and exclusive branded items to Plaintiffs and the
 28 Class are "transactions" within the meaning of Civil Code § 1761(e). The private

1 and exclusive branded products purchased by Plaintiffs and the Class are “goods”
2 within the meaning of Civil Code § 1761(a).

3 83. Kohl’s has engaged in unfair methods of competition and unfair and/or
4 deceptive acts or practices against Plaintiffs and the members of the Class, in
5 violation of the CLRA, by falsely representing that consumers, including Plaintiffs,
6 were receiving a price discount from Kohl’s “regular” or “original” sales prices of
7 private and exclusive branded products where Kohl’s inflated the purported
8 “regular” and “original” prices such that the promised discount, value and bargain
9 were false, in violation of Cal. Civ. Code § 1770, subsection (a)(9) (“[a]dvertising
10 goods or services with intent not to sell them as advertised”) and subsection (a)(13)
11 (“[m]aking false or misleading statements of fact concerning reasons for, existence
12 of, or amounts of price reductions”).

13 84. As a result of these acts and practices, Plaintiffs and the Class were
14 damaged in that Kohl’s unlawful and misleading acts and practices alleged herein
15 played a substantial and material role in Plaintiffs’ and the Class’ decision to
16 purchase products at Kohl’s. Absent these acts and practices, Plaintiffs and, upon in
17 formation and belief, the Class would not have purchased the products that they did
18 from Kohl’s.

19 85. Pursuant to California Civil Code § 1780(a)(2), Plaintiffs, on behalf of
20 themselves and the Class, requests that this Court enjoin Kohl’s from continuing to
21 engage in the unlawful and deceptive methods, acts and practices alleged above.
22 Unless Kohl’s is permanently enjoined from continuing to engage in such violations
23 of the CLRA, future consumers will be damaged by its acts and practices in the
24 same way as have Plaintiffs and the members of the proposed Class. Plaintiffs also
25 request that this Court order a backward-reaching injunction in order to remedy the
26 past effects of the unfair conduct alleged herein.

27 86. Pursuant to Section 1782(a) of the CLRA, on July 27, 2010, Plaintiffs’
28 counsel, on behalf of Plaintiff Antonio S. Hinojos, served Defendants by United

1 States certified mail, return receipt requested, with notice of Defendants' violations
2 of the CLRA. Defendants acknowledged receipt of the CLRA demand notice on
3 July 28, 2010 (Kohl's Department Stores, Inc.) and July 31, 2010 (Kohl's Corp.).

4 87. Defendants have refused or failed to timely respond to the CLRA
5 demand notice.

6 88. Defendants have failed to provide appropriate relief for their violations
7 of the CLRA within 30 days of receiving the demand notice. Accordingly, pursuant
8 to Sections 1780 and 1782(b) of the CLRA, Plaintiffs are entitled to recover and
9 seek actual damages, punitive damages, attorneys' fees and costs, and any other
10 relief the Court deems proper.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the other
13 members of the Class, requests that this Court award relief as follows:

14 A. An order certifying that this action may be maintained as a class
15 action, that Plaintiffs Long and Drouin be appointed Class Representatives and
16 Plaintiffs' counsel be appointed Class Counsel;

17 B. An Order that Kohl's be permanently enjoined from its improper
18 activities and practices described herein;

19 C. An Order that Kohl's be subject to a backward-reaching injunction in
20 order to remedy the past effects of the improper activities and practices described
21 herein;

22 D. Pursuant to Plaintiffs' first four causes of action, a judgment awarding
23 Plaintiffs and all members of the Class restitution and/or other equitable relief,
24 including, without limitation, disgorgement of all profits and unjust enrichment
25 obtained by Kohl's as a result of its unlawful, unfair and fraudulent business
26 practices described herein;

27 E. A judgment awarding Plaintiffs and members of the Class actual and
28 compensatory damages in an amount according to proof for Defendants' conduct

1 alleged under all causes of action herein entitling Plaintiffs and members of the
2 Class to actual and compensatory damages;

3 F. A judgment awarding Plaintiffs their costs of suit; including
4 reasonable attorneys' fees pursuant to Civil Code Section 1780(d), Code of Civil
5 Procedure Section 1021.5 and as otherwise permitted by statute; and pre and post-
6 judgment interest; and

7 G. Such other and further relief as may be deemed necessary or
8 appropriate.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiffs hereby demand a trial by jury on the Fifth Cause of Action.

11 DATED: October 30, 2013

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26 Attorneys for Plaintiffs
27
28

PROOF OF SERVICE*Antonio S. Hinojos, et al. v. Kohl's Corp., et al.*

CASE NO: CV10 7590 ODW(AGRx)

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to this action. I am employed in the County of San Diego, State of California. My business address is: 225 Broadway, Suite 1350, San Diego, CA 92101.

That on October 30, 2013, I served the following document(s) entitled: **SECOND AMENDED COMPLAINT** on ALL INTERESTED PARTIES in this action:

Angel A Garganta
ARNOLD AND PORTER LLP
Three Embarcadero Center, 7th Floor
San Francisco, CA 94111

Gabriel J Padilla
James F. Speyer
ARNOLD & PORTER LLP
777 S Figueroa Street, 44th Floor
Los Angeles, CA 90017



BY MAIL: By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence, pleadings, and other matters for mailing with the United States Postal Service. The correspondence, pleadings and other matters are deposited with the United States Postal Service with postage thereon fully prepaid in San Diego, California, on the same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.



BY OVERNIGHT COURIER: I caused the above-referenced document(s) to be contained in an overnight envelope and to be deposited in a **Federal Express/Overnite Express** box located at 225 Broadway, Suite 1350, San Diego, California, for delivery to the above address(es).



BY CM/ECF Electronic Service: I caused such document to be served via the Court's (NEF) electronic filing system on all registered parties.



BY FAX: I transmitted a copy of the foregoing document(s) this date via telecopier, pursuant to California Rules of Court, Rule 2008, to the facsimile numbers shown on the attached service list. The facsimile machine I used complied with Rule 2003 and no error was reported by the machine. Pursuant to Rule 2008, I caused the machine to print a transmission record of the transmission.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 30, 2013, at San Diego, California.


ANITA VILLANUEVA