

**CARLSON LYNCH SWEET  
KILPELA & CARPENTER, LLP**

Todd D. Carpenter (CA 234464)  
Brittany C. Casola (CA 306561)  
1350 Columbia Street, Ste. 603  
San Diego, California 92101  
Telephone: 619.762.1900  
Facsimile: 619.756.6991  
tcarpenter@carlsonlynch.com  
bcasola@carlsonlynch.com

Edwin J. Kilpela (To be admitted *Pro Hac Vice*)  
1133 Penn Avenue, 5th Floor  
Pittsburgh, Pennsylvania 15222  
Telephone: 412.322.9243  
Facsimile: 412.231.0246  
ekilpela@carlsonlynch.com

*Attorneys for Plaintiffs and  
Proposed Class Counsel*

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO**

MIGUEL OLMEDO, and SIOBHAN  
MORROW on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

PVH RETAIL STORES, LLC, a Delaware  
Limited Liability Company, and DOES 1-20,

Defendant.

Case No: 37-2018-00019565-CU-MC-CTL

[E-FILE]

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

1. Violation of California's Unfair Competition Laws ("UCL"); California Business & Professions Code Sections 17200, *et seq.*
2. Violation of California's False Advertising Laws ("FAL"); California Business & Professions Code Sections 17500, *et seq.*
3. Violations of California Consumer Legal Remedies Act ("CLRA"); Civ. Code § 1750, *et seq.*

[DEMAND FOR JURY TRIAL]

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**05/21/2018** at 11:19:00 AM

Clerk of the Superior Court  
By Richard Day, Deputy Clerk

1 Plaintiffs SIOBHAN MORROW and MIGUEL OLMEDO (collectively, "Plaintiffs") bring this  
2 action on behalf of themselves and all others similarly situated against Defendant PVH RETAIL  
3 STORES, LLC ("Defendant") and state:

4 **NATURE OF THE CASE**

5 1. This is a class action regarding Defendant's misleading advertisement of false price  
6 discounts from its regularly priced merchandise and corresponding phantom savings on clothing,  
7 accessories, and other fashion apparel sold in their "outlet," "factory," or "company" stores.

8 2. During the Class Period (defined below), Defendant continually advertised its  
9 merchandise as on sale or discounted from an original or market price (hereinafter the "Reference  
10 Price"). Defendant would compare the advertised Reference Price to a substantially lower "sale" or  
11 "discounted" price (hereinafter the "Sale Price"). Defendant advertised the difference between the  
12 Reference Price and Sale Price as a savings discount the consumer would enjoy by purchasing  
13 Defendant's merchandise. The advertised discounts, however, were nothing more than phantom  
14 markdowns because the Reference Price was an artificially inflated number and was **never** the original or  
15 market price for the merchandise sold in Defendant's outlet stores. Additionally, Defendant did not sell  
16 its products at the advertised Reference Prices within the three months immediately preceding the  
17 publication of the Sale Prices, as required by California law.

18 3. Defendant conveys its deceptive pricing scheme to consumers through promotional  
19 materials, in-store displays, print advertisements and price tags and related in-store signage.

20 4. By way of example, at Defendant's outlet stores in California, Defendant's prominently  
21 advertise false Reference Prices and false savings discounts through in-store signage and merchandise  
22 price tags. *See* Exhibit "A," Price tag advertising a "Reference Price" of \$49.50; in-store signage  
23 advertising 40% off.

24 5. Defendant sells its own, exclusive Tommy Hilfiger products, specifically and exclusively  
25 designed merchandise for sale at their outlet, factory and company stores. The only original price for the  
26 products sold at Defendant's outlet, factory and company stores is the price Defendant sets at these  
27 stores. Defendant's merchandise is **never** sold at the Reference Price listed on the price tag **at any store**,  
28 including Defendant's outlet stores.

6. The Reference Price is a fictional number utilized by Defendant to lure customers into believing they are getting a good deal when they purchase merchandise at the "Sale Price". The Sale Price purportedly offers the customers a substantial discount or percentage off from the Reference Price. However, the difference between Defendant's Reference Prices and Sale Prices is a false savings percentage used to lure consumers into purchasing products they believe are significantly discounted. The Reference Price is never a real price or the market price of the merchandise.

7. Through their false and misleading marketing, advertising and pricing scheme, Defendant violated, and continues to violate California law prohibiting advertising goods for sale as discounted from former prices, which are false, and prohibiting misleading statements about the existence and amount of price reductions. Specifically, Defendant violated, and continues to violate, California's Business & Professions Code §§ 17200, *et seq* (the "UCL"), California's Business & Professions Code §§ 17500, *et seq* (the "FAL"), the California Consumers' Legal Remedies Act, California Civil Code §§ 1750, *et seq* (the "CLRA"), and the Federal Trade Commission Act ("FTCA"), which prohibits "unfair or deceptive acts or practices in or affecting commerce" (15 U.S.C. § 45(a)(1)) and false advertisements (15 U.S.C. § 52(a)).

8. Plaintiffs bring this action on behalf of themselves and other similarly situated consumers who have purchased one or more items at Defendant's outlet, factory or company stores that were deceptively represented as discounted from a false Reference Price. Plaintiffs bring this action to end this false, misleading, and deceptive pricing scheme, correct the false and misleading perception it has created in the minds of consumers, and obtain redress for those who have purchased deceptively priced products. Plaintiffs seek restitution and other equitable remedies, including an injunction under the UCL and FAL; and restitution, actual and punitive damages, attorneys' fees, and an injunction under the CLRA.

## JURISDICTION AND VENUE

9. This Court has jurisdiction over Defendant and the claims set forth below pursuant to Code of Civil Procedure §410.10 and the California Constitution, Article VI §10, because this case is a cause not given by statute to other trial courts.

10. Venue is proper in the Superior Court for the County of San Diego, State of California,

1 because Plaintiff Morrow resides in this County, the acts and transactions giving rise to her cause of  
2 action occurred in this County, and Defendant has accepted credit cards for the transaction of business  
3 throughout California, including the County of San Diego, which has caused both obligations of liability  
4 of Defendant to arise in the County of San Diego.

5 11. The amount in controversy exceeds the jurisdictional minimum of this Court.

6 **PARTIES**

7 **Plaintiffs**

8 12. SIOBHAN MORROW resides in San Diego, California. Plaintiff Morrow visited a  
9 Tommy Hilfiger outlet store located in San Ysidro, California on November 13, 2015, and, in reliance on  
10 Defendant's false and deceptive advertising, marketing, and "discount" pricing scheme, purchased a  
11 black men's Nantucket tee shirt (SKU No. 468851501099) for \$16.99, and a black tommy knit polo shirt  
12 (SKU No. 471916300575) for approximately \$29.70, totaling for both \$46.69 (\$50.43 with tax).  
13 Defendant, through price tags and related in-store signage, advertised the black tee shirt as having a  
14 Reference Price of approximately \$27.00 to \$29.00 and the black polo shirt as having a Reference Price  
15 of approximately \$49.50. Both shirts, through price tags and related in-store signage, were advertised as  
16 being on sale with a Sale Price of approximately 40% off of the listed Reference Prices. These products,  
17 however, were never offered for sale at their Reference Prices in Defendant's outlet stores, nor were they  
18 offered for sale at their advertised Reference Prices within the 90-day time period immediately preceding  
19 Plaintiff Morrow's purchase anywhere within the relevant market. At all times during the 90 days  
20 preceding Ms. Morrow's purchase, the shirts were offered for sale at a substantial discount from their  
21 advertised "Reference Prices".

22 13. Ms. Morrow believed the higher Reference Prices represented by the shirts' advertised  
23 Reference Price was an actual and legitimate price at which Defendant had previously sold the shirts.  
24 Had she known the Reference Prices were fictitious and that Defendant never sold the items at those  
25 prices, she would not have purchased the shirts or would have paid less for each item.

26 14. MIGUEL OLMEDO resides in Simi Valley, California. In reliance on Defendant's false  
27 and deceptive advertising, marketing, and "discount" pricing scheme, he purchased a Tommy Hilfiger,  
28 Polo style, "Jerome" short-sleeve, knit, collared shirt. Mr. Olmedo paid approximately \$32.99 for the



shirt at a Tommy Hilfiger outlet store located at 100 Citadel Drive, Suite 519, Commerce, California, 90040. Defendant, through price tags and related in-store signage, advertised the shirt as having a Reference Price of approximately \$49.99, on the shirt's price tag, similar to the price tag depicted in Exhibit "A". Defendant advertised the shirt at a Sale Price of 40% off and/or \$29.99. This shirt, however, was never offered for sale at the Reference Price in Defendant's outlet stores, nor was it offered for sale at its advertised Reference Price within the 90-day time period immediately preceding Plaintiff Olmedo's purchase anywhere within the relevant market. At all times during the 90 days preceding Mr. Olmedo's purchase, the shirt was offered for sale at a substantial discount from the advertised "Reference Price".

**Defendant**

15. Plaintiffs are informed and believe, and upon such information and belief allege, Defendant PVH Retail Stores, LLC is a Delaware limited liability company with its principal place of business in New York, New York. PVH Retail Stores, LLC owns and operates Tommy Hilfiger factory or outlet stores, and advertises, markets, distributes, and/or sells clothing and clothing accessories in the State of California and throughout the United States. Plaintiffs believe Tommy Hilfiger factory or outlet stores carry specially designed merchandise that is sold exclusively at Defendant's Tommy Hilfiger factory or outlet stores.

16. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 20, inclusive, are currently unknown to Plaintiffs, who therefore sue these defendants by such fictitious names under Code of Civil Procedure section 474.

17. Plaintiffs are informed and believe, and based thereon allege, that each of the defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of Court to amend this Complaint to reflect the true names and capacities of the defendants designated hereinafter as DOES when such identities become known.

18. Plaintiffs are informed and believe, and thereon allege, that at all times material hereto and mentioned herein, each defendant sued herein, was the agent, servant, employer, joint-venturer, partner, subsidiary, parent, division, alias, and/or alter ego of each of the remaining defendants and were, at all times, acting within the purpose and scope of such agency, servitude, employment, ownership,

1 subsidiary, alias, and/or alter ego and with the authority, consent, approval, control, influence, and  
2 ratification of each remaining defendant sued herein.

### 3 FACTUAL BACKGROUND

4 19. The advertised Reference Prices for the items purchased by Plaintiffs were false because  
5 Defendant never sold those items at their advertised Reference Prices, and the prevailing retail prices for  
6 those items during the three months immediately prior to Plaintiffs' purchases were not Defendant's  
7 advertised Reference Prices. Defendant holds the Reference Price out as the original or former price for  
8 its merchandise. The Reference Price is the price listed on what appears to be the original price tag  
9 affixed to the new merchandise. By listing this false "Reference Price" on the price tag, Defendant  
10 misleads consumers into believing that the "Reference Price" is a former price at which the merchandise  
11 was once offered for sale.

12 20. The "Sale Price" is the price at which the merchandise is actually sold in outlet stores and  
13 in the relevant market. Defendant advertised Sale Prices for the items purchased by Plaintiffs were the  
14 products' actual "original" or "market" prices, and the discounts advertised by Defendants were a false,  
15 non-existent savings percentage.

16 21. Plaintiffs believed Defendant's advertised Former and Sale Prices were accurate  
17 representations regarding the value of Defendant's products and the savings related to Plaintiffs'  
18 purchasing decisions. Plaintiffs would not have purchased the products, or would not have paid the full  
19 Sale Price they did, if they had known they were not truly receiving the savings off a true Reference  
20 Price (or former or original price), as Defendant led them to believe.

21 22. Defendant's pricing scheme creates an artificial and exaggerated market price for their  
22 products. Consumers, including Plaintiffs have been damaged in the amount of the difference between  
23 the false market price that is created by Defendant's improper pricing scheme and the actual market price  
24 of the items purchased absent the effects of that scheme.

25 23. Tommy Hilfiger's outlet stores sell goods that are specifically produced for outlet malls.  
26 Tommy Hilfiger's outlet stores "carry specially designed merchandise that is sold at a lower price point  
27 than merchandise sold in [their] specialty stores." PVH Corp., Annual Report (Form 10-K), at 5 (Mar.  
28 25, 2016). Contrast these product markets from one where the same exact merchandise is sold

1 concurrently in both its regular retail stores and its retail outlet stores in the same capacity of quality.  
2 Thus, because Tommy Hilfiger's retail outlet stores sell merchandise separate and apart from the  
3 merchandise sold at their regular retail stores, there is no other "market price" for the products being sold  
4 other than the price set at Defendant's Tommy Hilfiger retail outlet stores.

5 24. The merchandise offered for sale at Tommy Hilfiger outlet stores is continuously  
6 discounted. The merchandise is not offered for sale at the Reference Price. By way of example, each item  
7 is priced with a false, "Reference Price" listed on the product's price tag. The Reference Price is intended  
8 to communicate to consumers that the item being offered for sale at one time was offered at this  
9 exaggerated, "Reference Price". However, as Plaintiffs' counsel's investigation revealed, all items sold at  
10 the outlet store were only offered for sale at the substantially discounted "Sale Price" – at all times,  
11 including from November 29, 2017 through the present. *See* Exhibit "B", index of Plaintiff's Counsel's  
12 investigation into Defendant's pricing practices.

13 25. Defendant knows their comparative price advertising is false, deceptive, misleading and  
14 unlawful under California law.

15 26. Defendant fraudulently concealed from and intentionally failed to disclose to Plaintiffs  
16 and other members of the proposed class the truth about the advertised Reference and Sale Prices.

17 27. At all relevant times, Defendant has been under a duty to Plaintiffs and the proposed class  
18 to disclose the truth about the false discounts.

19 28. Plaintiffs relied upon Defendant's artificially inflated Reference Prices and false discounts  
20 when purchasing the items described herein. Plaintiffs would not have made such purchases but for  
21 Defendant's representations of fabricated "Reference" prices and false pricing discounts.

22 29. Plaintiffs and the Class reasonably and justifiably acted and relied on the substantial price  
23 differences that Defendant advertised, and made purchases believing that they were receiving a  
24 substantial discount on an item of greater value than it actually was. Plaintiffs, like other class members,  
25 relied on, and were damaged by Defendant's fraudulent and deceptive pricing scheme.

26 30. Defendant intentionally concealed and failed to disclose material facts regarding the truth  
27 about their false former price advertising in order to induce Plaintiffs and the proposed class to purchase  
28 Tommy Hilfiger branded products in their retail outlet stores.

1 CLASS ALLEGATIONS

2 31. Plaintiffs bring this action on behalf of themselves and all other similarly situated Class  
3 members pursuant to Code of Civil Procedure section 382, which Class is defined as follows:

4 All California residents who, within the applicable statute of limitations and going  
5 forward from the date of filing this Complaint ("Class Period"), purchased any product  
6 bearing a false Reference Price at one of Tommy Hilfiger's outlet or factory stores located  
in the State of California.

7 32. Excluded from the Classes are Defendant, as well as its officers, employees, agents or  
8 affiliates, and any judge who presides over this action, as well as all past and present employees, officers  
9 and directors of Defendant. Plaintiffs reserve the right to expand, limit, modify, or amend this class  
10 definition, including the addition of one or more subclasses, in connection with their motion for class  
11 certification, or at any other time, based upon, *inter alia*, changing circumstances and/or new facts  
12 obtained during discovery.

13 33. The members of this Class are so numerous that joinder of all members is impractical.  
14 While the exact number of Class members is unknown to Plaintiffs at this time, such information can be  
15 ascertained through appropriate discovery from records obtained from Defendant and its agents.

16 34. A class action is superior to other available methods for the fair and efficient  
17 adjudication of this controversy because the likelihood of individual Class members prosecuting separate  
18 claims is remote and individual Class members do not have a significant interest in individually  
19 controlling the prosecution of separate actions.

20 35. The disposition of Plaintiffs' and Class Members' claims through the class action  
21 device will provide substantial judicial economy and benefits both the parties and the Court. Further, the  
22 statutory damages for which the individual class members are entitled are relatively small and the burden  
23 and expense of individual litigation makes it substantially difficult and unlikely that Class Members will  
24 individually seek redress of Defendant's wrongs. Without the class action procedural device, Defendant's  
25 unlawful conduct will continue unabated.

26 36. This action will promote an orderly and expeditious adjudication of the Class claims,  
27 and will promote and foster the uniformity of decision.

28 37. The Class is ascertainable and there is a well-defined community of interest among the



1 members of the Class because common questions of law and fact predominate, Plaintiffs' claims are  
2 typical of the members of the Class, and Plaintiffs can fairly and adequately represent the interests of the  
3 Class.

4 38. The common questions of law and fact, which arise from Defendant's uniform pattern  
5 and practice of prohibited conduct, predominate over any individual issues affecting the members of the  
6 Class. Thus, among the questions of law and fact common to the Class are as follows:

- 7 a. Whether, during the Class Period, Defendant used false "Reference" or "original"  
8 price labels and falsely advertised price discounts on their Tommy Hilfiger  
9 branded products sold in their outlet, factory or company stores;
- 10 b. Whether, during the Class Period, the "Reference" or "original" prices advertised  
11 by Defendant were the prevailing market prices for the respective Tommy Hilfiger  
12 branded products during the three months period preceding the dissemination  
13 and/or publication of the advertised "original" or "Reference" prices;
- 14 c. Whether Defendant's alleged conduct constitutes violations of the laws asserted  
15 herein;
- 16 d. Whether Defendant engaged in unfair, unlawful and/or fraudulent business  
17 practices under the laws asserted;
- 18 e. Whether Defendant engaged in false or misleading advertising;
- 19 f. Whether Plaintiffs and Class members are entitled to damages and/or restitution  
20 and the proper measure of that loss; and
- 21 g. Whether an injunction is necessary to prevent Defendant from continuing to use  
22 false, misleading or illegal price comparisons.

23 39. **Typicality:** Plaintiffs' claims are typical of the claims of the members of the Classes  
24 because, *inter alia*, all Class members purchased products advertised with a false Reference Price and a  
25 fictitious discount from Defendant.

26 40. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of the members of the  
27 Class. Plaintiffs have retained counsel experienced in complex consumer class action litigation, and  
28 Plaintiffs intend to prosecute this action vigorously. Plaintiffs have no antagonistic or adverse interest to

1 those of the Class.

2 41. The nature of this action and the nature of laws available to Plaintiffs and the Class make  
3 the use of the class action format a particularly efficient and appropriate procedure to afford relief to  
4 Plaintiffs and the class for the wrongs alleged. The damages and other financial detriment suffered by  
5 individual Class members is relatively modest compared to the burden and expense that would be  
6 entailed by individual litigation of their claims against Defendant. It would thus be virtually impossible  
7 for Plaintiffs and Class members, on an individual basis, to obtain effective redress for the wrongs done  
8 to them. Absent the class action, Class members and the general public would not likely recover, or  
9 would not likely have the chance to recover, damages or restitution, and Defendant would be permitted to  
10 retain the proceeds of their fraudulent and deceptive misdeeds.

11 42. All Class members, including Plaintiffs, were exposed to one or more of Defendant's  
12 misrepresentations or omissions of material fact regarding the existence and amount of Reference Prices  
13 and advertised sales discounts. Due to the scope and extent of Defendant's consistent false discount  
14 price advertising scheme, disseminated in a years-long campaign to California consumers via a number  
15 of different platforms—price tags and related in-store signage, in-store displays, print advertisements,  
16 etc.—it reasonably can be inferred that such misrepresentations or omissions of material fact were  
17 uniformly made to all members of the Classes. In addition, it reasonably can be presumed that all Class  
18 members, including, Plaintiffs, affirmatively acted in response to the representations and omissions  
19 contained in Defendant's false advertising scheme when purchasing Tommy Hilfiger branded  
20 merchandise at Defendant's outlet, factory and company stores.

21 43. Upon information and belief, Defendant keeps extensive computerized records of its  
22 customers through, customer loyalty program(s) and general marketing programs. Defendant has one or  
23 more databases through which a significant majority of Class members may be identified and  
24 ascertained, and they maintain contact information, including email and home addresses, through which  
25 notice of this action could be disseminated in accordance with due process requirements.

26 **CAUSES OF ACTION**

27 **FIRST CAUSE OF ACTION**

28 **Violation Unfair Competition Law  
Business and Professions Code § 17200 et seq.**

1           44. Plaintiffs repeat and re-allege the allegations contained in every preceding paragraph as if  
2 fully set forth herein.

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

6           46. The UCL imposes strict liability. Plaintiffs need not prove that Defendant intentionally or  
7 negligently engaged in unlawful, unfair, or fraudulent business practices – but only that such practices  
8 occurred.

9           47. A business act or practice is “unfair” under the UCL if it offends an established public  
10 policy or is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers, and  
11 that unfairness is determined by weighing the reasons, justifications and motives of the practice against  
12 the gravity of the harm to the alleged victims.

13           48. Defendant’s actions constitute “unfair” business acts or practices because, as alleged  
14 above, Defendant engaged in misleading and deceptive price comparison advertising that represented  
15 false “reference” prices and “sale” prices that were nothing more than fabricated “regular” prices with  
16 phantom markdowns. Defendant’s acts and practices offended an established public policy and reflect  
17 immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to consumers.

18           49. The harm to Plaintiffs and Class members outweighs the utility of Defendant’s practices.  
19 There were reasonably available alternatives to further Defendant’s legitimate business interests, other  
20 than the misleading and deceptive conduct described herein.

21           50. A business act or practice is “fraudulent” under the UCL if it is likely to deceive members  
22 of the consuming public.

23           51. Defendant’s acts and practices alleged above have deceived Plaintiffs and are highly  
24 likely to deceive members of the consuming public. Plaintiffs relied on Defendant’s fraudulent and  
25 deceptive representations and omissions regarding its false Reference Prices and the corresponding sales  
26 discounts for the Tommy Hilfiger branded merchandise that Defendant sells at its outlet stores. These  
27 misrepresentations and omissions played a substantial role in Plaintiffs’ decisions and that of the  
28



1 proposed class to purchase the products at steep discounts, and Plaintiffs would not have purchased  
2 Defendant's products without Defendant's misrepresentations.

3 52. A business act or practice is "unlawful" under the UCL if it violates any other law or  
4 regulation. Defendant's conduct alleged herein is unlawful under the UCL because it violates the FTCA,  
5 California's false advertising law, and the Consumers Legal Remedies Act.

6 53. The FTCA prohibits "unfair or deceptive acts or practices in or affecting commerce" (15  
7 U.S.C. § 45(a)(1)) and prohibits the dissemination of any false advertisements (15 U.S.C. § 52(a)).  
8 Under the FTC, false former pricing schemes, similar to the ones implemented by Defendant, are  
9 described as deceptive practices that would violate the FTCA:

10 (a) One of the most commonly used forms of bargain advertising is to offer a reduction  
11 from the advertiser's own former price for an article. If the former price is the actual,  
12 bona fide price at which the article was offered to the public on a regular basis for a  
13 reasonably substantial period of time, it provides a legitimate basis for the advertising of a  
14 price comparison. Where the former price is genuine, the bargain being advertised is a  
15 true one. If, on the other hand, the former price being advertised is not bona fide but  
fictitious – for example, where an article 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.

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

20 54. California law also expressly prohibits false former pricing schemes. Cal. Bus. & Prof.  
21 Code §17501, entitled "*Value determinations; Former price advertisement*," states:

22 For the purpose of this article the worth or value of any thing advertised is the prevailing  
23 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.

24 **No price shall be advertised as a former price of any advertised thing, unless the**  
25 **alleged former price was the prevailing market price as above defined within three**  
26 **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.]

27 55. As detailed in Plaintiffs' Third Cause of Action below, the Consumers Legal Remedies  
28



1 Act (CLRA), Cal. Civ. Code § 1770(a)(9), prohibits a business from “[a]dvertising goods or services  
2 with intent not to sell them as advertised,” and subsection (a)(13) prohibits a business from “[m]aking  
3 false or misleading statements of fact concerning reasons for, existence of, or amounts of price  
4 reductions.” Because Defendant’s conduct violates the CLRA, it also violates the unlawful prong of the  
5 UCL.

6 56. Defendant’s practices, as set forth above, have misled Plaintiffs, the proposed classes, and  
7 the general public in the past and will continue to mislead in the future. Consequently, Defendant’s  
8 practices constitute an unlawful an unfair business practice within the meaning of the UCL.

9 57. Defendant’s violation of the UCL through its unlawful, unfair and fraudulent business  
10 practices are ongoing and present a continuing threat that members of the public will be deceived into  
11 purchasing products based on price comparisons between Defendant’s false former Reference Prices and  
12 Sale Prices. Defendant’s false, arbitrary and inflated Reference Prices create phantom price markdowns  
13 and lead to financial damage for consumers, like Plaintiffs and the proposed Classes.

14 58. Pursuant to the UCL, Plaintiffs are entitled to preliminary and permanent injunctive relief  
15 ordering Defendants to cease this unfair competition, as well as disgorgement and restitution to Plaintiffs  
16 and the Classes of all of Defendant’s revenues associated with its unfair competition, or such portion of  
17 those revenues as the Court may find equitable.

## 18 **SECOND CAUSE OF ACTION**

### 19 **Violation of the California False Advertising Law, California Business & Professions Code § 17500, *et seq.***

20 59. Plaintiffs repeat and re-allege the preceding paragraphs as if fully set forth herein.

21 60. Cal. Bus. & Prof. Code § 17500 provides that “[i]t is unlawful for  
22 any...corporation...with intent...to dispose of...personal property...to induce the public to enter into any  
23 obligation relating thereto, to make or disseminate or cause to be made or disseminated...from this state  
24 before the public in any state, in any newspaper or other publication, or any advertising device, or by  
25 public outcry or proclamation, or in any other manner or means whatever, including over the Internet,  
26 any statement...which is untrue or misleading, and which is known, or which by the exercise of  
27 reasonable care should be known, to be untrue or misleading...” [Emphasis added].

28 61. The “intent” required by Cal. Bus. & Prof. Code § 17500 is the intent to dispose of

property, and not the intent to mislead the public in the disposition of such property.

62. Similarly, this section provides, “no price shall be advertised as a former price of any advertised thing, unless the alleged former price was the prevailing market price...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.” Cal Bus. & Prof. Code § 17501.

63. Defendant’s practice of advertising discounted “sale” prices from false purportedly “original” or Reference Prices, which were never the true prevailing “market” prices of Defendant’s products, and were materially greater than the true prevailing “market” prices, was an unfair, untrue and misleading practice. This deceptive marketing practice gave consumers the false impression that Defendant regularly sold its products for a substantially higher price than Defendant’s advertised “sale” prices. Therefore, leading to the false impression that the Tommy Hilfiger branded products were worth more than they actually were.

64. Defendant misled consumers by making untrue and misleading statements and failing to disclose what is required as stated in the Code, as alleged above.

65. As a direct and proximate result of Defendant’s misleading and false advertisements, Plaintiffs and Class members have suffered injury in fact and have lost money. As such, Plaintiffs request that this Court order Defendant to restore this money to Plaintiffs and all Class members, and to enjoin Defendant from continuing these unfair practices in violation of the UCL in the future. Otherwise, Plaintiffs, Class members and the broader general public will be irreparably harmed and/or denied an effective and complete remedy.

**THIRD CAUSE OF ACTION**  
**Violation of the Consumers Legal Remedies Act (“CLRA”),**  
**California Civil Code § 1750, *et seq.***

66. Plaintiffs repeat and re-allege the allegations contained in every preceding paragraph as if fully set forth herein.

67. This cause of action is brought pursuant to the Consumers Legal Remedies Act (CLRA), California Civil Code § 1750, *et seq.* Plaintiffs and each member of the proposed classes are “consumers” as defined by California Civil Code § 1761(d). Defendant’s sale of its Tommy Hilfiger

1 branded products at their outlet, factory, or company stores to Plaintiffs and the Class were “transactions”  
2 within the meaning of California Civil Code § 1761(e). The products purchased by Plaintiffs and the  
3 Class are “goods” within the meaning of California Civil Code § 1761(a).

4 68. Defendant violated and continues to violate the CLRA by engaging in the following  
5 practices proscribed by California Civil Code § 1770(a) in transactions with Plaintiffs and the Class that  
6 were intended to result in, and did result in, the sale of Tommy Hilfiger branded products:

- 7 a. Advertising goods or services with intent not to sell them as advertised;
- 8 b. Making false or misleading statements of fact concerning reasons for, existence of,  
9 or amounts of price reductions.

10 69. Pursuant to § 1782(a) of the CLRA, on May 21, 2018, Plaintiffs’ counsel notified  
11 Defendant in writing by certified mail of the particular violations of § 1770 of the CLRA and demanded  
12 that it rectify the problems associated with the actions detailed above and give notice to all affected  
13 consumers of Defendant’s intent to act. If Defendant fails to respond to Plaintiffs’ letter or agree to  
14 rectify the problems associated with the actions detailed above and give notice to all affected consumers  
15 within 30 days of the date of written notice, as proscribed by § 1782, Plaintiffs will move to amend their  
16 Complaint to pursue claims for actual, punitive, and statutory damages, as appropriate against Defendant.  
17 As to this cause of action, at this time, Plaintiffs seek only injunctive relief.

### 18 **III. PRAYER FOR RELIEF**

19 70. Wherefore, Plaintiffs, on behalf of themselves and all Class members, requests that this  
20 Court award relief against Defendant, as follows:

- 21 a. An order certifying the classes and designating SIOBHAN MORROW and  
22 MIGUEL OLMEDO as the Class Representatives and their counsel as Class  
23 Counsel;
- 24 b. Awarding Plaintiffs and the proposed Class members damages;
- 25 c. Awarding restitution and disgorgement of all profits and unjust enrichment that  
26 Defendant’s obtained from Plaintiffs and the Class members as a result of its  
27 unlawful, unfair and fraudulent business practices described herein;
- 28 d. Awarding declaratory and injunctive relief as permitted by law or equity,

1 including: enjoining Defendant from continuing the unlawful practices as set forth  
2 herein, and directing Defendant to identify, with Court supervision, victims of  
3 their misconduct and pay them all money they are required to pay;

4 e. Order Defendant to engage in a corrective advertising campaign;

5 f. Awarding attorneys' fees and costs; and

6 g. For such other and further relief as the Court may deem necessary or appropriate.

7 **VIII. DEMAND FOR JURY TRIAL**

8 71. Plaintiffs hereby demand a jury trial for all of the claims so triable.

9  
10 Dated: May 21, 2018

**CARLSON LYNCH SWEET  
KILPELA & CARPENTER, LLP**

11  
12 

13 Todd D. Carpenter (CA 234464)  
14 Brittany C. Casola (CA 306561)  
15 1350 Columbia Street, Ste. 603  
16 San Diego, California 92101  
17 Telephone: (619) 762-1900  
18 Facsimile: (619) 756-6991  
19 tcarpenter@carlsonlynch.com  
20 bcasola@carlsonlynch.com

21 Edwin J. Kilpela (to be admitted *Pro Hac*  
22 *Vice*)

23 1133 Penn Avenue, 5th Floor  
24 Pittsburgh, Pennsylvania 15222  
25 Telephone: (412) 322-9243  
26 Facsimile: (412) 231-0246  
27 ekilpela@carlsonlynch.com

28 *Attorneys for Plaintiffs and  
Proposed Class Counsel*



# Exhibit A

OUT  
C817857318 612  
COR



XL/TG/XG

\$49.50

  
tommy.com

XL  
TG/XG



# THE TOMMY POLO

Comfortable & easy fit in 100% cotton



sale 40% off

# Exhibit B



Tommy Hilfiger



Item:		Women's Carigans	Women's Vneck Tee	Women's Polo	Boy's Thin Stripped Polo	The Tommy Polo	Men's Straight Denim	The Slim Chino Pant	The Tommy Chino Pant	Our Favorite Shirt
Original Price:		\$69.99		\$22	\$44.99	\$29.99	\$49.50	\$59.99	\$59.99	\$54.50
Sale Price:		40% Off	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off
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12/2/17	Las Americas	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off
12/3/17	Las Americas	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off
12/4/17	Las Americas	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off
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12/6/17	Las Americas	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off
12/7/17	Las Americas	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off
12/8/17	Las Americas	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off
12/9/17	Las Americas	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off
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Tommy Hilfiger



Women's Cardigans



Women's Vneck Tee



Women's Polo



Boy's Thin Stripped Polo



The Tommy Polo



Men's Straight Denim



The Slim Chino Pant



The Tommy Chino Pant



Our Favorite Shirt

Item:	Women's Cardigans	Women's Vneck Tee	Women's Polo	Boy's Thin Stripped Polo	The Tommy Polo	Men's Straight Denim	The Slim Chino Pant	The Tommy Chino Pant	Our Favorite Shirt
Original Price:	\$69.99	\$22	\$44.99	\$29.99	\$49.50	\$59.99	\$59.99	\$54.50	\$64.99
Sale Price:	40% Off	40% Off	40% off	40% Off	40% Off	40% Off	40% Off	40% Off	40% Off

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