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21 **SUPERIOR COURT OF CALIFORNIA**

22 **COUNTY OF SACRAMENTO**

23 **34-2018-00234829**

24 MARIA RAMOS, on behalf of herself and all
25 others similarly situated,

26 Plaintiff,

27 vs.

28 PVH CORPORATION, a DELAWARE
Corporation; and DOES 1-100, inclusive,

Defendants.

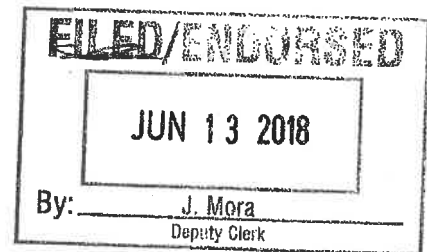
CASE NO.

CLASS ACTION COMPLAINT FOR:

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]

BY FAX



1 Plaintiff Maria Ramos, on behalf of herself and all others similarly situated, complains
2 and alleges upon information and belief based, among other things, upon the investigation made
3 by Plaintiff and by and through her attorneys against Defendants PVH Corporation and Does 1-
4 100 ("Defendants") as follows:

5 I.

6 **INTRODUCTION**

7 1. This is a class action regarding Defendants' false and misleading advertisement of
8 "market" prices, and corresponding phantom "savings" on fashion apparel sold in their "Outlet"
9 or "Factory" stores; specifically, Defendant's Van Heusen brand outlets.

10 2. According to Defendants, Van Heusen is "The #1 Dress Shirt Brand in America."
11 Van Heusen is the nation's top dress shirt brand and a name that has come to be synonymous
12 with men's style. Van Heusen has been associated with stylish, affordable and high-quality shirts
13 since introducing the patented soft-folding collar in 1921."

14 3. For the most part, Defendants' sell their Van Heusen brand through various
15 department store partners including JC Penney, Kohl's and Macys. However, as part of its retail
16 operations, Defendants also operate several "outlet" style Van Heusen brand stores throughout
17 the State of California, as well as the rest of the United States.

18 4. "Outlet" stores, also known as "factory outlets", are commonly understood by the
19 public to be selling the same merchandise that the manufacturer typically sells at its retail stores,
20 but at a discount. According to the Business Insider, "[t]he common assumption about outlet
21 stores is that you're getting the same goods that are in a regular retail store without the big price
22 tag." See <http://www.businessinsider.com/outlet-stores-arent-a-good-deal-2014-5>.

23 5. But today, outlet stores typically sell *different* merchandise than their retail
24 counterparts, without informing customers that this is the case. The Federal Trade Commission
25 ("FTC") felt that the practice needed to be brought to the attention of consumers, issuing a
26 warning in March 2014 that the merchandise sold at outlet stores can be manufactured
27 exclusively for the outlet and be of inferior quality than that sold in the manufacturer's non-
28 outlet or non-factory store locations. See <https://www.ftc.gov/news-events/press->

1 *releases/2014/03/ftc-advice-how-shop-wisely-outlet-malls.*

2 6. Alternatively, other companies, aware that consumers expect to receive a discount
3 when shopping at the outlet stores, prey on consumers' expectations by artificially marking up
4 their products and then offering "discounts" off of the artificially high prices to induce the
5 bargain-seeking outlet shoppers to purchase their products.

6 7. In this case, Defendants have misled consumers by advertising items at
7 discounted prices ("savings") by placing tags on its products sold at its California outlet locations
8 that provide consumers with an item's alleged "retail price" and then selling the items at a price
9 lower than the represented "retail price." The reality, however, is that the represented "retail
10 price" on items sold at Defendants' outlet locations is not reflective of the price at which the item
11 at the outlet store has been or is being sold. Rather, the represented "retail price" is an inflated
12 price, either reflective of different, superior products, or simply designed to create the illusion of
13 a discount.

14 8. Defendants' practice has been specifically addressed by the FTC. In the Code of
15 Federal Regulations, under Title 16, which addresses Commercial Practices ("Guide Against
16 Deceptive Pricing"), the FTC specifically states:

17 One of the most commonly used forms of bargain advertising is to offer a
18 reduction from the advertiser's own former price for an article. If the former price
19 is the actual, bona fide price at which the article was offered to the public on a
20 regular basis for a reasonably substantial period of time, it provides a legitimate
21 basis for the advertising of a price comparison. Where the former price is genuine,
22 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,
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. In such a case, the "reduced" price is,
in reality, probably just the seller's regular price..

23 16 C.F.R. 233.1(a). The FTC continues:

24 A former price is not necessarily fictitious merely because no sales at the
25 advertised price were made. The advertiser should be especially careful, however,
26 in such a case, that the price is one at which the product was openly and actively
27 offered for sale, for a reasonably substantial period of time, in the recent, regular
28 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. And the advertiser should scrupulously avoid any implication that
a former price is a selling, not an asking price (for example, by use of such
language as, "Formerly sold at \$ ____"), unless substantial sales at that price were

actually made.

The following is an example of a price comparison based on a fictitious former price. John Doe is a retailer of Brand X fountain pens, which cost him \$5 each. His usual markup is 50 percent over cost; that is, his regular retail price is \$7.50. In order subsequently to offer an unusual “bargain”, Doe begins offering Brand X at \$10 per pen. He realizes that he will be able to sell no, or very few, pens at this inflated price. But he doesn't care, for he maintains that price for only a few days. Then he “cuts” the price to its usual level - \$7.50 - and advertises: “Terrific Bargain: X Pens, Were \$10, Now Only \$7.50!” This is obviously a false claim. The advertised “bargain” is not genuine.

16 C.F.R. 233.1(b) & (c)

9. In addition, under California law, specifically California Business and Professions Code Section 17501, entitled “*Value determinations; Former price advertisement*,” when a retailer presents purported reduced “sale” prices and compares those prices to former, “original” prices, the purported “original” or “market” price must have been the prevailing market retail price of the article so advertised within the three months next immediately preceding the publication of the advertised former prices. Specifically, California Business and Professions Code Section 17501 states: “[N]o price shall be advertised as a former price of any advertised thing, unless the alleged former prices 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.

10. The unlawful practice described above, utilized by Defendants and others, has created a growing concern for consumer watchdogs. In early 2014, four members of Congress wrote a letter to the FTC requesting that the agency look into claims that merchants may be selling lower quality items produced specifically for their outlet stores without properly informing consumers about the difference between those items and the higher-quality products found in regular retail stores. See www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-stores-may-be-misleading-consumers.

11. Plaintiff herein alleges that under California law, the purported “retail price” advertised in Defendants’ California outlet store locations never existed and/or did not constitute the prevailing market retail prices for such products within the three months next immediately

1 preceding the publication of the sales tag. By representing that there is a difference between the
2 “sale price” and the “retail price,” Defendants are engaging in a false advertising campaign
3 calculated to lure consumers into purchasing products they believe are significantly discounted.

4 12. Through its false and misleading marketing, advertising and pricing scheme
5 Defendants have violated, and continue to violate, California law prohibiting advertising goods
6 for sale as discounted from former prices, when in fact, such representations are false and
7 misleading. Specifically, Defendants violated, and continue to violate, California’s Business &
8 Professions Code §§ 17200, *et seq* (the “UCL”), California’s Business & Professions Code §§
9 17500, *et seq* (the “FAL”), and the California Consumers’ Legal Remedies Act, California Civil
10 Code §§1750, *et seq* (the “CLRA”).

11 13. Plaintiff brings this action on behalf of herself and other similarly situated
12 consumers who have purchased one or more items at Defendants’ outlet stores that were
13 deceptively represented as discounted from false prices. Plaintiff, on behalf of herself and all
14 other similarly situated individuals, seeks to stop the practice of falsely giving the public the
15 impression that “outlets” are providing them with significant savings, when, in fact, the outlets
16 are really just selling a company’s own “knock-off”, inferior products that truly are worth less
17 than the original, higher-quality retail items offered for sale by the company. By comparing the
18 low quality products to the price of the higher-quality originals, Defendants are deceiving the
19 public and are breaking the law. Plaintiff seeks an order certifying this as a class action, giving
20 restitution and damages to the Class, and enjoining Defendants from continuing with their false-
21 information campaign.

22 II.

23 JURISDICTION AND VENUE

24 14. Defendant PVH Corporation has conducted business in the County of
25 Sacramento, and Plaintiff’s contact with Defendant that gave rise to this lawsuit occurred in the
26 County of Sacramento.

27 15. The amount of controversy exceeds the jurisdictional minimum of this Court.

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III.

THE PARTIES

A. Plaintiff Maria Ramos

16. Plaintiff resides in El Dorado Hills, California.

B. Defendant PVH Corporation

17. Defendant PVH Corporation is a Delaware corporation with its principal executive offices in New York.

C. Doe Defendants

18. Plaintiff does not know the true names or capacities of the persons or entities sued herein as DOES 1-100, inclusive, and therefore sues such Defendants by such fictitious names. Plaintiff is informed and believes, and upon such information and belief alleges, that each of the DOE Defendants is in some manner legally responsible for the damages suffered by Plaintiff and the Class members as alleged herein. All Defendants were at all relevant times acting as actual agents, conspirators, aiders and abettors who provided substantial assistance with knowledge of the wrongful conduct, ostensible agents, partners and/or joint venturers and employees of all other Defendants, and that all acts alleged herein occurred within the course and scope of said agency, employment, partnership, joint venture, conspiracy and/or enterprise, and with the express and/or implied permission, knowledge, consent, authorization and ratification of their Co-Defendants; however, this allegation is pleaded as an "alternative" theory wherever not doing so would result in a contradiction with other allegations. Plaintiff will amend this Complaint to set forth the true names and capacities of these Defendants when they have been ascertained, along with appropriate charging allegations, as may be necessary.

IV.

FACTUAL BACKGROUND

19. On April 13, 2016, Plaintiff went shopping at the outlet stores in Folsom, California. Plaintiff shopped at Defendant's outlet store in Folsom, California to purchase clothing and related apparel for herself.

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1 20. Plaintiff purchased a number of items from Defendant, including: A shirt, item
2 number 604900085688 with a price tag of “58.00”, a shirt item number 759819559000 with a
3 price tag of “39.00”, a top item number 759819558669 with a price tag of “46.00”, a top item
4 number 099617323909 with a price tag of “42.00”, socks, item number 476128200224 with a
5 price tag of “\$26.00”, socks item number 645404561698 with a price tag of “\$26.00”, socks item
6 number 645404892495 with a price tag “\$26.00”, socks item number 759813548738 with a price
7 tag “\$26.00”, and a shirt item number 759819558904 with a price tag “39.00”.

8 21. Plaintiff observed signage adjacent and above to these items that advertised
9 percentage discounts off of the purchase price, ranging from offers of approximately “60% off”
10 to “70% off”. The signs are located near the items being offered for sale, clearly indicating that
11 the near items are being sold at significant discounts off of their tagged prices. Accordingly, for
12 the items, the actual price was as follows: A shirt, item number 604900085688 with a price tag
13 of “58.00” real price \$23.20, a shirt item number 759819559000 with a price tag of “39.00” real
14 price \$13.99, a top item number 759819558669 with a price tag of “46.00” real price \$18.40, a
15 top item number 099617323909 with a price tag of “42.00” real price \$16.80, socks, item
16 number 476128200224 with a price tag of “\$26.00” real price \$9.10, socks item number
17 645404561698 with a price tag of “\$26.00” real price \$9.10, socks item number 645404892495
18 with a price tag “\$26.00” real price \$9.10, socks item number 759813548738 with a price tag
19 “\$26.00” real price \$9.10, and a shirt item number 759819558904 with a price tag “39.00” real
20 price \$13.99

21 22. Relying upon Defendant’s misrepresentations and false and deceptive advertising
22 and, believing that she was receiving a significant value by purchasing the items at substantial
23 discounts from their typical price, Plaintiff did in fact purchase these items.

24 23. Plaintiff would not have made these purchases without the misrepresentations of
25 significant price discounts that were made by Defendant in writing on their racks in their store.

26 24. As a result of Plaintiff’s reliance on Defendant’s representation to her and the
27 public that Defendant was selling items in its outlet stores at a substantial discount, Plaintiff has
28 been personally victimized by and suffered economic injury as a direct result of Defendant’s

1 unlawful, unfair and fraudulent conduct.

2 25. Defendant knows that its purported “sale” advertising is false, deceptive,
3 misleading and unlawful under California law.

4 26. Defendant fraudulently concealed from and intentionally failed to disclose to
5 Plaintiff and other members of the proposed Class that the items it was claiming were on “sale”
6 were in fact being sold at the same price that the items are always sold at. At all relevant times,
7 Defendant has been under a duty to Plaintiff and the proposed Class to disclose the truth about
8 the false discounts. Defendant knew that it had not been selling the products listed above, and
9 other products in its stores, for the artificially inflated prices indicated on the price tags in its
10 stores.

11 27. Subsequent to Plaintiff’s purchase, an investigation conducted on behalf of
12 Plaintiff confirmed that the “real prices” listed above were not “sale” prices but were prices that
13 these products are always sold at and that the store has a perpetual sale. When a sales associate
14 at Defendant’s store was asked whether or not the sales were temporary or are available all of the
15 time, the associate stated unequivocally that the “sale” price was not a limited time offer and that
16 the “sale” price was the price at which the items were always sold. The name of the sales
17 associate is unknown. The associate works at the Folsom outlet.

18 28. In addition, Defendant’s website identifies 7 “partners” or third parties that sell
19 Defendant’s products. These “partners” are: Amazon; JCPenny; Kohls; Macys; Bon-Ton;
20 Boscov’s; and Belk. Searching the websites of the partners for the shirts bought by Plaintiff as
21 item number 759819559000 with a price tag of “39.00”, and item number 759819558904 with a
22 price tag “39.00” (these two items appearing to be the same T-shirt offered in different colors),
23 reveals that identical appearing shirts are offered as of August 26, 2016 as follows:

24 (a) Amazon for a price of “\$7.45-\$19.99” (this page does not have any “captures” on
25 internet archive website “waybackmachine.com”, nor does price tracking work on
26 “camelcamelcamel.com”, a popular website for tracking prices for products from Amazon.com)

27 (b) JCPenny sells the shirt along with an advertisement stating that it is for sale at
28 “16.00 Clearance; \$40 Original; 60% off”. Internet tracking website

1 “www.waybackmachine.com” has 9 archived dates for this shirt, going back as far as May of
2 2015 through November 2015. The highest price shown on waybackmaching is \$19.99, with the
3 most common price point exactly at \$13.99, the “sale” price Plaintiff purchased this shirt at. The
4 shirt always claims to be on “sale” from \$40.00.

5 (c) Kohls does not currently have this shirt on its website.

6 (d) Macys does not currently offer any Van Heusen T-shirts on its website.

7 (e) Bon-Ton does not currently offer any Van Heusen T-shirts on its website.

8 (f) Boscov’s has this shirt currently for a “sale”: “Price: \$40.00 Now! \$9.99”.

9 waybackmachine.com does not have any achieves of this webpage.

10 (g) Belk does not currently offer any Van Heusen T-shirts on its website.

11 In summary, of the 7 partners, the data shows that this shirt does not sell at or near the \$40
12 regular price advertised, and instead, this shirt is always on “sale” to drive sales.

13 29. Plaintiff relied upon Defendant’s misrepresentations as to the products’ actual
14 prices and false discounts when making her purchases. Plaintiff would not have purchased these
15 items but for Defendant’s representations of a significant savings from regular price.

16 30. Plaintiff and the Class reasonably and justifiably acted and relied on the
17 substantial price differences that Defendant advertised, and made purchases believing that they
18 were receiving substantial discounts on items of greater value than Plaintiff and the Class
19 actually received. Plaintiff, like other Class members, was lured in, relied on, and was damaged
20 by these pricing schemes that Defendant carried out.

21 31. Defendant intentionally concealed and failed to disclose material facts regarding
22 the truth about its “retail price” advertising in order to entice Plaintiff and the proposed Class to
23 purchase products in its California outlet locations.

24 32. The signage representing false and misleading price discounts were not limited to
25 only the racks that contain the products that Plaintiff purchased. Indeed, the signs are located
26 throughout the store on all of the products sold by Defendant. Plaintiff’s purchases identified
27 above include men’s and women’s clothing as well as socks. As such, all products offered for

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1 sale in Defendant's outlet store are subject to the same false price comparisons complained of
2 herein.

3 V.

4 **CLASS ALLEGATIONS**

5 33. Plaintiff brings this action on behalf of herself, and all others similarly situated,
6 pursuant to Section 382 of the California Code of Civil Procedure and seeks certification of the
7 following Class and Subclass against Defendants for violations of California state laws:

8 Class: All individuals who, in the State of California, purchased any item at one
9 of Defendants' outlet or factory stores located in the State of California during the
10 four (4) year period preceding the filing of this Class Action Complaint, and who
did not subsequently return the purchased item to Defendants (the "Class").

11 CLRA Subclass: All individuals who, in the State of California, purchased any
12 item at one of Defendants' outlet or factory stores located in the State of
13 California during the three (3) year period preceding the filing of this Class
Action Complaint through the present, and who did not subsequently return the
purchased item to Defendants (the "CLRA Subclass").¹

14 Excluded from the Class are Defendants, as well as its officers, employees, agents or affiliates,
15 and any judge who presides over this action, as well as all past and present employees, officers
16 and directors of Defendants. Plaintiff reserves the right to expand, limit, modify, or amend these
17 class definitions, including the addition of one or more subclasses, in connection with her motion
18 for class certification, or at any other time, based upon, *inter alia*, changing circumstances and/or
19 new facts obtained during discovery.

20 34. The members of the Class are so numerous that joinder of all members is
21 impracticable. While the exact number of Class members is unknown to Plaintiff at this time,
22 such information can be ascertained through appropriate discovery and from records maintained
23 by Defendant and its agents. Specifically, Defendants keep extensive computerized records of
24 its customers through, *inter alia*, customer loyalty programs, co-branded credit cards and general
25 marketing programs. Defendants have one or more databases through which a significant
26 majority of Class members may be identified and ascertained, and they maintain contact

27
28 ¹ Plaintiff is a representative and member of both the Class and the CLRA Subclass. Because all members of the
CLRA Subclass are also members of the Class, both will be referred to as the "Class" unless otherwise noted.

1 information, including email and home addresses, through which notice of this action could be
2 disseminated in accordance with due process requirements.

3 35. There is a well-defined community of interest among the Class because common
4 questions of law and fact predominate, Plaintiff's claims are typical of the members of the Class,
5 and Plaintiff can fairly and adequately represent the interests of the Class.

6 36. Common questions of law and fact exist as to all members of the Class and
7 predominate over any questions affecting solely individual members of the Class. Among the
8 questions of law and fact common to the class are, but not limited to, the following:

9 a. Whether, during the Class Period, Defendants' used false "retail prices" or
10 misleading price labels and falsely advertised price discounts on the products sold in their
11 California retail outlet stores;

12 b. Whether, during the Class Period, the "retail prices" advertised by
13 Defendants were the prevailing market prices for the respective products during the three month
14 period preceding the dissemination and/or publication of the advertised "retail prices";

15 c. Whether Defendants engaged in unfair, unlawful and/or fraudulent
16 business practices in violation of California Business and Professions Code Section 17200;

17 d. Whether Defendants engaged in false or misleading advertising in
18 violation of California Business and Professions Code Section 17500;

19 e. Whether Defendants engaged in unfair competition or deceptive acts or
20 practices in violation of the Consumers' Legal Remedies Act;

21 f. Whether Plaintiff and Class members are entitled to damages and/or
22 restitution and the proper measure of that loss; and

23 g. Whether an injunction is necessary to prevent Defendants from continuing
24 to use false, misleading or illegal price comparisons, discounts, or fabricated "retail prices".

25 37. **Numerosity:** The Class is so numerous that the individual joinder of all
26 Members is impractical under the circumstances of this case. While the exact number of
27 Members of the Class is unknown to Plaintiff at this time, Plaintiff is informed and believes the
28 Class consists of at least hundreds of persons. Individual joinder of Members of the Class is also

1 impracticable because the individual Members are disbursed throughout California.

2 38. **Typicality:** Plaintiff and the Class Members' claims for restitution and damages
3 arise from and were caused by Defendant's wrongful conduct. Because Plaintiff was deceived
4 by the same deceptive false pricing scheme as all other Class Members, and because Defendant
5 knowingly put false price discounts on the products in its stores, Plaintiff is asserting claims that
6 are typical of the claims of each Member of the Class. Plaintiff is like all other Class Members
7 because Plaintiff suffered the same injuries as those suffered by the Class. Since Plaintiff's
8 claims and the claims of Class Members all derive from a common nucleus of operative facts,
9 Plaintiff is asserting claims that are typical of the claims of the entire Class.

10 39. **Adequacy:** Plaintiff will fairly and adequately represent and protect the interests
11 of the Class in that they have no disabling conflicts of interest that would be antagonistic to those
12 of the other Members of the Class. Plaintiff seeks no relief that is antagonistic or adverse to the
13 Members of the Class and the infringement of the rights and the damages Plaintiff has suffered
14 are typical of all other Members of the Class. Plaintiff has retained competent counsel,
15 experienced in class action litigation and employment law and intend to prosecute this action
16 vigorously.

17 40. **Superiority:** The nature of this action and the nature of laws available to Plaintiff
18 and the Class make the use of the class action format a particularly efficient and appropriate
19 procedure to afford relief to Plaintiff and the Class for the wrongs alleged because:

20 a. The individual amounts of damages involved, while not insubstantial, are
21 such that individual actions or other individual remedies are impracticable and litigating
22 individual actions would be too costly;

23 b. If each Class member was required to file an individual lawsuit, the
24 Defendant would necessarily gain an unconscionable advantage since it would be able to exploit
25 and overwhelm the limited resources of each individual Class member with vastly superior
26 financial and legal resources;

27 c. The costs of individual suits could unreasonably consume the amounts that
28 would be recovered;

d. Proof of a common factual pattern that Plaintiff experienced is representative of that experienced by the Class and will establish the right of each member of the Class to recover on the cause of action alleged; and

e. Individual actions would create a risk of inconsistent results and would be unnecessary and duplicative of this litigation.

41. Plaintiff and Class members have all similarly suffered irreparable harm and damages as a result of Defendant's unlawful and wrongful conduct. This action will provide substantial benefits to Plaintiff, the Class and the public because, absent this action, Plaintiff and Class members will continue to suffer losses, thereby allowing Defendant's violations of law to proceed without remedy, and allowing Defendant to retain proceeds of its ill-gotten gains.

42. All Class members, including Plaintiff, were exposed to one or more of Defendant's misrepresentations or omissions of material fact claiming that the represented "retail prices" were in existence. Due to the scope and extent of Defendant's consistent false price advertising scheme, disseminated in a years-long campaign to California consumers via a number of different platforms – in-store displays, print advertisements, and the like – it can be reasonably inferred that such misrepresentations or omissions of material fact were uniformly made to all members of the Class. In addition, it can be reasonably presumed that all Class members, including, Plaintiff, affirmatively acted in response to the representations contained in Defendant's false advertising scheme when purchasing merchandise at Defendant's outlet stores.

VI.

FIRST CAUSE OF ACTION **Violation Unfair Competition Law** **Business and Professions Code § 17200 *et seq.*** **(On Behalf of the Class Against Defendants)**

43. Plaintiff and the Class incorporate by reference each and every paragraph of this Class Action Complaint as if fully set forth herein.

44. The UCL prohibits any business practice that is "unlawful, unfair or fraudulent", as well as any "unfair, deceptive, untrue or misleading" advertising.

45. A business act or practice is "unfair" under the UCL if it offends an established

1 public policy or is immoral, unethical, oppressive, unscrupulous or substantially injurious to
2 consumers, and that unfairness is determined by weighing the reasons, justifications and motives
3 of the practice against the gravity of the harm to the alleged victims.

4 46. Defendants' actions constitute "unfair" business acts or practices because, as
5 alleged above, Defendants engaged in misleading and deceptive price comparison advertising
6 that represented false "retail prices" that were fabricated so that Defendants could represent
7 phantom markdowns. Defendants' acts and practices offended an established public policy, and
8 engaged in immoral, unethical, oppressive, and unscrupulous activities that are substantially
9 injurious to consumers.

10 47. The harm to Plaintiff and Class members outweighs the utility of Defendants'
11 practices. There were reasonably available alternatives to further Defendants' legitimate
12 business interests, other than the misleading and deceptive conduct described herein. Thus,
13 Defendants' conduct, as alleged herein, is unfair under the UCL.

14 48. A business act or practice is "fraudulent" under the UCL if it is likely to deceive
15 members of the consuming public.

16 49. Defendants' acts and practices alleged above have deceived Plaintiff and are
17 likely to deceive members of the public. 16 C.F.R. 233.3 explains the use of a MSRP as follows:

18 Many members of the purchasing public believe that a manufacturer's list price,
19 or suggested retail price, is the price at which an article is generally sold.
20 Therefore, if a reduction from this price is advertised, many people will believe
21 that they are being offered a genuine bargain. To the extent that list or suggested
22 retail prices do not in fact correspond to prices at which a substantial number of
23 sales of the article in question are made, the advertisement of a reduction may
24 mislead the consumer.

25 16 C.F.R. 233.3(a). It concludes:

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

Id.

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1 50. California law also expressly prohibits false pricing schemes. California Business
2 and Professions Code Section 17501 entitled “*Value determinations; Former price*
3 *advertisement*,” states:

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

7 ***No price shall be advertised as a former price of any advertised thing, unless the***
8 ***alleged former price was the prevailing market price as above defined within***
9 ***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.]

10 51. Plaintiff relied on Defendants’ fraudulent and deceptive representations regarding
11 the “retail prices” it represented and the corresponding “discounts” for the items that Defendants
12 sell at their retail outlet stores. Plaintiff relied upon these misrepresentations to her detriment,
13 they were a substantial cause in influencing Plaintiff’s decision to purchase her product, and
14 Plaintiff would not have purchased the product but for Defendants’ misrepresentations.

15 52. Thus, Defendants’ conduct, as alleged herein, is “fraudulent” under the UCL.

16 53. A business act or practice is “unlawful” under the UCL if it violates any other law
17 or regulation.

18 54. As detailed in Plaintiff’s Third Cause of Action, California Civil Code Section
19 1770(a)(9), prohibits a business from “[a]dvertising goods or services with intent not to sell them
20 as advertised,” and subsection (a)(13) prohibits a business from “[m]aking false or misleading
21 statements of fact concerning reasons for, existence of, or amounts of price reductions.”

22 55. Defendants’ practices, as set forth herein, are misleading and will continue to
23 mislead in the future. Consequently, Defendants’ practices constitute an unlawful business
24 practices within the meaning of the UCL.

25 56. Defendants’ violation of the UCL through their unlawful, unfair and fraudulent
26 business practices are ongoing and present a continuing threat that members of the public will be
27 deceived into purchasing products based on price comparisons of arbitrary and inflated “retail
28 prices” to “sale” prices. Plaintiff and the class are entitled to preliminary and permanent

1 injunctive relief ordering Defendants to cease this unfair competition, as well as restitution to
2 Plaintiff and the Class of all of monies spent associated with the unfair competition, or such
3 portion of those monies as the Court may find equitable.

4 **VII.**

5 **SECOND CAUSE OF ACTION**
6 **Violation of the California False Advertising Law,**
7 **California Business & Professions Code § 17500, *et seq.***
8 **(On Behalf of the Class Against Defendants)**

9 57. Plaintiff and the Class incorporate by reference each and every paragraph of this
10 Class Action Complaint as if fully set forth herein.

11 58. California Business and Professions Code section 17500 (the “FAL”) provides
12 that “[i]t is unlawful for any...corporation...with intent...to dispose of...personal property...to
13 induce the public to enter into any obligation relating thereto, to make or disseminate or cause to
14 be made or disseminated...from this state before the public in any state, in any newspaper or
15 other publication, or any advertising device, or by public outcry or proclamation, or in any other
16 manner or means whatever, including over the Internet, any statement...which is untrue or
17 misleading, and which is known, or which by the exercise of reasonable care should be known,
18 to be untrue or misleading....”

19 59. The “intent” required by the FAL is the intent to dispose of property, and not the
20 intent to mislead the public in the disposition of such property.

21 60. As stated above, the FAL provides: “[N]o price shall be advertised as a former
22 price of any advertised thing, unless the alleged former prices was the prevailing market
23 price...within three months next immediately preceding the publication of the advertisement or
24 unless the date when the alleged former price did prevail is clearly, exactly, and conspicuously
25 stated in the advertisement.” Cal. Bus. & Prof. Code § 17501.

26 61. Defendants’ advertising of discounted prices based upon “retail prices” as to their
27 outlet store products were false and misleading misrepresentations as such purported “retail
28 prices” were never the true prevailing prices for the goods sold by Defendants at its California
outlet locations. Therefore, this advertising was, and is, an unfair, untrue and misleading

1 practice. This deceptive marketing practice gave consumers the false impression that the
2 products were regularly sold on the market for a substantially higher price than they actually
3 were and were worth more than they actually were.

4 62. Defendants misled consumers by making untrue and misleading statements and
5 failing to disclose what is required as stated in California Business and Professions Code Section
6 17500 *et seq.*, as alleged herein.

7 63. As a direct and proximate result of Defendants' misleading and false
8 advertisements, Plaintiff has suffered injury in fact and has lost money. As such, Plaintiff
9 requests that this Court order Defendants to restore to Plaintiff and all members of the Class all
10 monies Defendants wrongfully received, and to enjoin Defendants from continuing these unfair
11 practices in violation of the FAL in the future. Otherwise, Plaintiff, Class members and the
12 broader general public will be irreparably harmed and/or denied an effective and complete
13 remedy.

14 VIII.

15 THIRD CAUSE OF ACTION

16 **Violation of the Consumers Legal Remedies Act ("CLRA"), California Civil Code § 1750, *et seq.* (On Behalf of the CLRA Subclass Against Defendants)**

17 64. Plaintiff and the CLRA Subclass incorporate by reference each and every
18 preceding paragraph of this Class Action Complaint as if fully set forth herein.

19 65. This cause of action is brought pursuant to the Consumers Legal Remedies Act
20 ("CLRA"), codified in California Civil Code Section 1750, *et seq.* Plaintiff and each member of
21 the proposed CLRA Subclass are "consumers" as defined by California Civil Code § 1761(d).

22 66. Defendants' sale of the products at its factory outlet stores to Plaintiff and the
23 Class were "transactions" within the meaning of California Civil Code § 1761(e).

24 67. The products purchased by Plaintiff and the Class are "goods" within the meaning
25 of California Civil Code § 1761(a).

26 68. Defendants violated, and continue to violate, the CLRA by engaging in the
27 following practices proscribed by California Civil Code § 1770(a) in transactions with Plaintiff
28 and the CLRA Subclass which were intended to result in, and did result in, the sale products:

b. Making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions (Cal. Civ. Code Section 1770(a)(13)).

69. Pursuant to Section 1782(a) of the CLRA, on May 26, 2016, Plaintiff's counsel notified Defendant in writing by certified mail of the particular violations of Section 1770 of the CLRA and demanded that they rectify the problems associated with the actions detailed above and gives notice to all affected consumers of Defendant's intent to act. Defendant has failed to respond to Plaintiff's letter or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of receipt of written notice, as proscribed by Section 1782, therefore Plaintiff is pursuing claims for actual, punitive and statutory damages, as appropriate against Defendant.

70. Defendants' actions in violating the CLRA were done with oppression, fraud, or malice because Defendant knew that its false price discounts were false when Defendant made the statements.

IX.

PRAYER FOR RELIEF

18 Wherefore, Plaintiff, on behalf of herself and on behalf of the other members of the Class
19 and CLRA Subclass, requests that this Court award relief against Defendants as follows:

20 a. An order certifying the Class and CLRA Subclass and designating
21 Plaintiff as the Class Representative and her counsel as Class Counsel;

22 b. Awarding Plaintiff and the proposed CLRA Subclass damages;

c. Awarding restitution of all monies that Defendants' obtained from Plaintiff and the Class that may have resulted from its unlawful, unfair and fraudulent business practices described herein;

d. Awarding declaratory and injunctive relief as permitted by law or equity, including: (i) enjoining Defendants from continuing the unlawful practices as set forth herein; and (ii) directing Defendants to identify, with Court supervision, victims of their misconduct and

1 pay them all money they are required to pay;

2 e. Order Defendants to engage in a corrective advertising campaign;

3 f. Awarding punitive damages;

4 g. Awarding attorneys' fees and costs pursuant to the CLRA (Cal. Civ. Code
5 § 1780(e)) and Cal. Civ. Proc. Code § 1021.5; and

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

8 **X.**

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands a jury trial for all of the claims so triable.

11 Dated: June 13, 2018

12 STONEBARGER LAW, APC

13 KEARNEY LITTLEFIELD, LLP

14 By: 

15 Gene J. Stonebarger

16 Richard D. Lambert

17 *Attorneys for the Plaintiff and the Class*