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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10  
11 MARILU CALDERON, individually and  
on behalf of all others similarly situated,

12  
13 Plaintiff,

14 v.

15 KATE SPADE & COMPANY, LLC, a  
16 Delaware limited liability company, and  
DOES 1-50, inclusive,

17 Defendants.  
18  
19  
20  
21

No. **'19CV0674 JLS WVG**

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Marilu Calderon (“Plaintiff”), by and through her undersigned counsel, brings  
2 this Class Action Complaint on behalf of herself and all others similarly situated against  
3 Defendant Kate Spade & Company, LLC (“Defendant”), and alleges as follows based on  
4 personal knowledge of facts pertaining to her and on information and belief as to all other  
5 matters:

### 6 **NATURE OF THE CASE**

7 1. This is a class action arising from Defendant’s deceptive, misleading, and  
8 unlawful practice of advertising fabricated reference prices and corresponding illusory  
9 discounts on its branded and/or trademarked lines of merchandise sold at Defendant’s Kate  
10 Spade outlet stores.

11 2. Through a practice commonly known as “false reference pricing,” Defendant  
12 misrepresents the existence, nature, and amount of price discounts on merchandise sold at  
13 Defendant’s outlet stores by purporting to offer steep discounts off of fabricated market  
14 and/or former reference prices. The end result is a significant price disparity that creates the  
15 impression of considerable savings, and which ultimately induces consumers into making a  
16 purchase.

17 3. Specifically, Defendant advertises its merchandise for sale by attaching a price  
18 tag to a given product that sets forth a fabricated reference price, advertised by Defendant  
19 as “Our Price.” But Defendant’s reference price, which represents to consumers the  
20 purported market and/or former price of a given product, is a sham. Defendant’s “Our  
21 Price” or reference price advertised for a given product does not convey the bona fide price  
22 at which Defendant formerly (or ever) sold its merchandise at its outlet stores. Defendant’s  
23 reference price for a given product is a mere fictional creation designed to enable Defendant’s  
24 corresponding illusory discounts.

25 4. At Defendant’s outlet stores, Defendant displays large signposts immediately  
26 next to merchandise for sale that states, “\_\_\_% Off” (*e.g.*, “50% Off”) suggesting that  
27 merchandise is on sale for a designated percentage off of the fabricated reference price. The  
28 “\_\_\_% Off” price, or sale price, then appears to be substantially discounted from

1 Defendant's fabricated reference price. Employing Defendant's reference price as the source  
2 of comparison to the end sale price, the difference between the prices is viewed as a  
3 significant discount or purported savings.

4 5. Like Plaintiff here, consumers rely on the truth of Defendant's reference price  
5 attached to merchandise sold at its outlet stores, which expressly represents that they are  
6 getting a bargain on their purchase. In spite of this, and unbeknownst to Plaintiff, they are  
7 not receiving a bargain at all. Defendant's advertised "discounts" are completely illusory or,  
8 at best, grossly overstated.

9 6. Dishonest retailers are able to use the above-described practice of false pricing  
10 to successfully mislead customers. This is because representations regarding discounts are  
11 material; they are a fundamental representation of a product's value and, therefore, effectively  
12 motivate purchasers. Defendant markets and advertises its products in this manner,  
13 advertising false discounts to increase sales of its outlet stores.

14 7. Plaintiff relied upon Defendant's reference prices and so-called discounts  
15 when purchasing merchandise from Defendant's outlet stores. Plaintiff would not have made  
16 her purchases, or would not have paid the amounts she did, but for Defendant's fabricated  
17 reference prices and illusory discounted sales prices at which Defendant sold its merchandise.

18 8. Hundreds of thousands of consumers, including Plaintiff, were victims of  
19 Defendant's deceptive, misleading, and unlawful pricing scheme and thousands more will be  
20 so victimized if the practices continue.

21 9. As alleged herein, Defendant's conduct constitutes a violation of California's  
22 Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.* (the "CLRA"), Unfair  
23 Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.* (the "UCL"), and False Advertising  
24 Law, Cal. Bus. & Prof. Code § 17500, *et seq.* (the "FAL"). In addition, Defendant's conduct  
25 violates the Federal Trade Commission Act ("FTCA"), which prohibits "unfair or deceptive  
26 acts or practices in or affecting commerce" (15 U.S.C. § 45(a)(1)) and false advertisements  
27 (15 U.S.C. § 52(a)).

28 10. Plaintiff brings this action individually and on behalf of all others similarly

1 situated consumers who have purchased one or more merchandise items at Defendant’s  
2 outlet stores that were deceptively represented as discounted from false regular or former  
3 prices. Plaintiff seeks restitution and other equitable remedies, including declaratory relief  
4 and an injunction under the CLRA, FAL, and UCL. Plaintiff also seeks reasonable attorneys’  
5 fees pursuant to California Code of Civil Procedure § 1021.5.

6 **PARTIES**

7 11. Plaintiff Marilu Calderon is a resident of Los Angeles, California. On March 19,  
8 2017, Ms. Calderon purchased two items from the Kate Spade outlet store located at 5630  
9 Paseo Del Norte, Ste. 100 SPC 108-D, Carlsbad, California 92008. The first item, a “Flavor  
10 of the Month” item was advertised on the price tag as having an “Our Price” or reference  
11 price of \$78.00. The in-store signposts represented that the product was 60% Off of the  
12 reference price. By purchasing the “Flavor of the Month” charm pendant for \$31.20, Ms.  
13 Calderon was led to believe that she saved \$46.80, or 60% off her purchase. In reality, Ms.  
14 Calderon’s purported savings are grossly overstated, because any discount she received for  
15 the charm pendant was based off of Defendant’s fabricated reference price for that product.

16 12. On January 10, 2018, Ms. Calderon purchased seven items from the Kate Spade  
17 outlet store located at 100 Citadel Drive, Suite 539, Commerce, California 90040. The first  
18 item, a “Neda” wallet was advertised on the price tag as having an “Our Price” or reference  
19 price of \$159.99. The in-store signposts represented that the wallet was 50% Off of the  
20 reference price. The second item, a “Bradley” backpack was advertised on the price tag as  
21 having an “Our Price” or reference price of \$299.00. The in-store signposts represented that  
22 the backpack was 50% Off of the reference price. The third item, a “Neda” purse was  
23 advertised on the price tag as having an “Our Price” or reference price of \$229.00. The in-  
24 store signposts represented that the purse was 50% Off of the reference price. The fourth  
25 item, a “Charm Pendant” was advertised as having an “Our Price” or reference price of  
26 \$58.00. The in-store signposts represented that the Charm Pendant was 50% Off of the  
27 reference price. The fifth item, a “Stripe Flutter Sleeve” product was advertised on the price  
28 tag as having an “Our Price” or reference price of \$128.00. The in-store signposts

1 represented that the product was 50% Off of the reference price. The sixth item, a “Stretch  
2 Legging” was advertised on the price tag as having an “Our Price” or reference price of  
3 \$159.00. The in-store signposts represented that the Stretch Legging was 50% Off of the  
4 reference price. The final item, an “LS Jogger Set” was advertised on the price tag as having  
5 an “Our Price” or reference price of \$79.00. The in-store signposts represented that the  
6 product was 50% Off of the reference price. The seven items described above were offered  
7 at an additional 20% Off of the sale price. By purchasing the seven items for a total of  
8 \$490.16, Ms. Calderon was led to believe that she saved approximately \$451.82, and over  
9 50% on all of her individual purchases. In reality, Ms. Calderon’s purported savings are  
10 grossly overstated, because any discounts she received were based on Defendant’s fabricated  
11 reference prices.

12 13. On May 16, 2018, Ms. Calderon purchased two items from the Kate Spade  
13 outlet store located at 100 Citadel Drive, Suite 539, Commerce, California 90040. One of  
14 these items, an “Out of Office – 8 PL” phone case was advertised on the price tag as having  
15 an “Our Price” or reference price of \$45.00. The in-store signposts represented that the  
16 phone case was 50% Off of the reference price. By purchasing the phone case for \$22.50,  
17 Ms. Calderon was led to believe that she saved \$22.50 or approximately 50% on her purchase.  
18 In reality, Ms. Calderon’s savings are grossly overstated, as any purported discount she  
19 received was based off of Defendant’s fabricated reference price for that product.

20 14. Defendant Kate Spade & Company, LLC is a Delaware limited liability  
21 company with its principal place of business located at 2 Park Avenue, New York, NY 10016.  
22 Defendant maintains the Kate Spade brand, a luxury fashion brand that designs,  
23 manufactures and markets accessories, apparel, shoes, jewelry, and more. Defendant operates  
24 Kate Spade retail and outlet stores, as well as the [www.katespade.com](http://www.katespade.com) website, and advertises,  
25 markets, distributes, and/or sells clothing and fashion accessories in California and  
26 throughout the United States.

27 15. Plaintiff does not know the true names or capacities of the persons or entities  
28 sued herein as DOES 1-50, inclusive, and therefore sues such Defendants by such fictitious

1 names. Plaintiff is informed and believes, and upon such information and belief alleges, that  
2 each of the DOE Defendants is in some manner legally responsible for the damages suffered  
3 by Plaintiff and the Class members as alleged herein. Plaintiff will amend this Complaint to  
4 set forth the true names and capacities of these Defendants when they have been ascertained,  
5 along with appropriate charging allegations, as may be necessary.

## 6 **JURISDICTION AND VENUE**

7 16. This Court has subject matter jurisdiction over this action under the Class  
8 Action Fairness Act, 28 U.S.C. § 1332(d)(2). The amount in controversy exceeds \$5 million  
9 exclusive of interest and costs. Plaintiff and Defendant are citizens of different states. There  
10 are more than 100 putative Class Members.

11 17. This Court has personal jurisdiction over Defendant because Defendant is a  
12 limited liability company or other business entity authorized to conduct and regularly  
13 conducts business in the State of California. Defendant is registered with the California  
14 Secretary of State, has sufficient minimum contacts with California, and the events giving  
15 rise to this matter arose out of those contacts. Defendant intentionally availed itself of this  
16 jurisdiction through the ownership and operation of over 20 retail outlet stores throughout  
17 the State of California.

18 18. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Defendant  
19 regularly transacts substantial business in this District. In addition, a substantial part of the  
20 events giving rise to Plaintiff's causes of action arose in this District, as Plaintiff purchased  
21 Defendant's merchandise within this District.

## 22 **FACTUAL ALLEGATIONS**

23 19. As described above, Defendant markets and advertises the reference price of  
24 merchandise at artificially high levels and thereafter concocts discounts that do not exist.  
25 Defendant's practice effectively creates the appearance of a significant price discrepancy and  
26 conveys the impression of considerable savings. In reality, consumers are paying for  
27 merchandise at its market price.

28 20. By using fabricated reference prices and corresponding illusory discounts as a

1 source of comparison to the final sale price to be paid by consumers, Defendant  
2 communicates that its merchandise is substantially discounted from their normal, everyday  
3 pricing, and are less expensive than the market price. Because Plaintiff and Class members  
4 rely on these representations to make purchasing decisions, Defendant crafts its reference  
5 prices as large as possible to exaggerate the savings that are supposedly realized by  
6 consumers. Accordingly, Defendant knows, or should have known, that it misinforms its  
7 consumers regarding the discount pricing of its products.

8 21. Defendant's illusory discounts are particularly misleading because consumers  
9 often decide to make purchases based on an internal reference price – *i.e.*, consumers will  
10 often make a purchasing decision when they believe products to be less expensive than the  
11 perceived “normal” value of a given item. By featuring “discounts” from improper price  
12 comparisons, Defendant takes advantage of this well-documented behavior in hopes of  
13 influencing its customers into purchasing an item, and increasing its profits. Defendant's  
14 scheme also appeases consumers' concerns about missing a “better deal” and discourages  
15 comparison shopping by creating a false sense of urgency (an impression that the “sale”  
16 pricing is temporary and that a consumer should act quickly or lose significant savings).

17 22. By its actions, Defendant fraudulently concealed from, and intentionally failed  
18 to disclose to, Plaintiff and other similarly situated, the truth about what it described as “Our  
19 Price(s)” and advertised price discounts from those supposedly market or former prices.

20 23. Plaintiff's and Class members' reliance on Defendant's false representations is  
21 reasonable. In fact, empirical market studies provide an incentive for retailers to engage in  
22 this false and fraudulent behavior. Such false reference pricing practice is neither novel nor  
23 unique. Unscrupulous retailers have historically used the same misleading tactic. As such,  
24 both California lawmakers and federal regulators prohibit such injurious conduct.

25 24. The Federal Trade Commission (“FTC”) describes the fictitious pricing  
26 scheme employed by Defendant as deceptive:

27  
28 One of the most commonly used forms of bargain advertising is to offer a

1 reduction from the advertiser’s own former price for an article. **If the former**  
2 **price is the actual, bona fide price at which the article was offered to the**  
3 **public on a regular basis for the reasonably substantial period of time, it**  
4 **provides a legitimate basis for the advertising** of a price comparison.

5 Where the former price is genuine, the bargain being advertised is a true one. **If**  
6 **on the other hand, the former price being advertised is not bona fide but**  
7 **fictitious—for example, where an artificial inflated price was established**  
8 **for the purpose of enabling the subsequent offer of a large reduction—**  
9 **the “bargain” being advertised is a false one;** the purchaser is not receiving  
10 the unusual value he expects. In such a case, the “reduced” price is, in reality,  
11 probably just the seller’s regular price.

12 16 C.F.R. § 233.1(a) (emphases added).

13 25. Similarly, California statutory and regulatory law expressly prohibits false  
14 pricing schemes:

15 For the purpose of this article the worth or value of anything advertised is the  
16 prevailing market price, wholesale if the offer is at wholesale, retail if the offer  
17 is at retail, at the time of publication of such advertisement in the locality  
18 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 above**  
21 **defined within three months next immediately preceding the publication**  
22 **of the advertisement** or unless the date when the alleged former price did  
23 prevail is clearly, exactly and conspicuously stated in the advertisement.

24 Cal. Bus. & Prof. Code. § 17501 (emphasis added).

25 26. Defendant’s reference price is not the prevailing market price for the products  
26 sold at Kate Spade outlet stores. Merchandise sold at Kate Spade outlet stores is created  
27 specifically for Kate Spade outlet stores. Accordingly, the only market price for the Kate  
28 Spade outlet store merchandise is the price at which the merchandise is sold at Kate Spade  
outlet stores. Defendant’s “Our Price” representations are nothing but fictional creations  
designed solely to enable Defendant’s phantom markdowns.

29 27. Both California and Federal law confirm what is inherently apparent: a business  
acts improperly when it manufactures or exaggerates a discount intended to make products



1 appear more attractive.

2 **CLASS ACTION ALLEGATIONS**

3 28. Plaintiff brings this action individually and as a class action under Federal Rule  
4 of Civil Procedure 23 on behalf of a proposed Class defined as follows:

5 All persons in the United States who purchased one or more products from Kate  
6 Spade outlet stores at discounts from the reference price advertised as “Our  
7 Price” within the applicable Class Period (the “Nationwide Class”).

8 In the alternative, Plaintiff seeks to represent a Class consisting of:

9 All persons within the State of California who purchased one or more products  
10 from Kate Spade outlet stores at discounts from the reference price advertised  
11 as “Our Price” within the applicable Class Period (the “California Class”).

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

18 30. The Class meets the requirements of Federal Rules of Civil Procedure 23(a) and  
19 23(b)(1), (b)(2), and (b)(3) for all of the following reasons.

20 31. Numerosity: The Class is so numerous that joinder of all members is  
21 impracticable. On information and belief, Plaintiff alleges that there are hundreds of  
22 thousands of individuals in the Class. The parties will be able to identify each member of the  
23 Class after Defendant’s document production and/or related discovery.

24 32. Commonality: There are numerous questions of law and fact common to  
25 Plaintiff and the Class, including but not limited to the following:

- 26 • Whether Defendant utilizes fabricated reference prices and falsely advertised  
27 price discounts on its merchandise sold at its outlet stores;  
28 • Whether Defendant advertises its “discounted” merchandise in a deceptive,

1 false, or misleading manner;

- 2 • Whether Defendant’s “Our Price” or reference prices advertised were the  
3 prevailing market prices for the respective outlet store merchandise during the  
4 three months periods preceding the dissemination and/or publication of the  
5 advertised former prices;
- 6 • Whether Defendant’s alleged conduct constitutes violations of the laws  
7 asserted;
- 8 • Whether Defendant engaged in unfair, unlawful and/or fraudulent business  
9 practices under the laws asserted;
- 10 • Whether Defendant engaged in false or misleading advertising;
- 11 • Whether Plaintiff and Class members suffered legally cognizable damages as a  
12 result of Defendant’s conduct of which they are entitled and/or restitution, and  
13 the proper measure of that loss
- 14 • Whether Plaintiff and Class members are entitled to equitable relief including  
15 injunctive relief.

16 33. Typicality: All of Plaintiff’s claims are typical of the claims of the Class. Plaintiff,  
17 like all proposed Class members, has been deceived (or was likely to be deceived) by  
18 Defendant’s false and deceptive price advertising scheme, as alleged herein. Plaintiff is  
19 advancing the same claims and legal theories on behalf of herself and all members of the  
20 Class.

21 34. Adequacy: Plaintiff will fairly and adequately protect the interests of the Class.  
22 Plaintiff has no interests that are adverse to, or in conflict with, those of Class members.  
23 There are no claims or defenses that are unique to Plaintiff. Likewise, Plaintiff has retained  
24 counsel experienced in class action and complex litigation who have sufficient resources to  
25 prosecute this action vigorously.

26 35. Predominance: The proposed action meets the requirements of Federal Rule of  
27 Civil Procedure 23(b)(3) because questions of law and fact common to the Class predominate  
28 over any questions which may affect only individual Class members.

1           36.    Superiority: The proposed action also meets the requirements of Federal Rule  
2 of Civil Procedure 23(b)(3) because a class action is superior to other available methods for  
3 the fair and efficient adjudication of the controversy. Class treatment of common questions  
4 is superior to multiple individual actions or piecemeal litigation, avoids inconsistent decisions,  
5 presents far fewer management difficulties, conserves judicial resources and the parties’  
6 resources, and protects the rights of each Class member. Absent a class action, the majority  
7 of Class members would find the cost of litigating their claims prohibitively high and would  
8 have no effective remedy.

9           37.    Plaintiff’s claims also meet the requirements of Federal Rule of Civil Procedure  
10 23(b)(1) because prosecution of separate actions by individual Class members would create  
11 a risk of inconsistent or varying adjudications that would establish incompatible standards  
12 for Defendant. Varying adjudications could establish incompatible standards with respect to:  
13 whether Defendant’s ongoing conduct violates the claims alleged herein; and whether the  
14 injuries suffered by Class members are legally cognizable, among others. Prosecution of  
15 separate actions by individual Class members would also create a risk of individual  
16 adjudications that would be dispositive of the interests of other Class members not parties  
17 to the individual adjudications, or substantially impair or impede the ability of Class members  
18 to protect their interests.

19   **FIRST CAUSE OF ACTION**

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

21   **California’s Consumers Legal Remedies Act (“CLRA”)**

22           38.    Plaintiff incorporates by reference each of the preceding factual allegations.

23           39.    The CLRA has adopted a comprehensive statutory scheme prohibiting various  
24 deceptive practices in connection with the conduct of a business providing goods, property,  
25 or services to consumers primarily for personal, family, or household purposes. The self-  
26 declared purposes of the CLRA are to protect consumers against unfair and deceptive  
27 business practices and to provide efficient and economical procedures to secure such  
28 protection.

1 40. Defendant is a “person” as defined by Civil Code Section 1761(c), because  
2 Defendant is a corporation as set forth above.

3 41. Plaintiff and Class members are “consumers” within the meaning of Civil Code  
4 Section 1761(d).

5 42. The merchandise purchased by Plaintiff and the Class constitute “goods” and  
6 within the meaning of Cal. Civ. Code § 1761(a).

7 43. Defendant’s sale of merchandise at its outlet stores to Plaintiff and the Class  
8 constitute “transactions,” as defined by Cal. Civ. Code § 1761(e).

9 44. Plaintiff and Class members purchased merchandise from Kate Spade outlet  
10 stores for personal, family, and household purposes, as defined by Cal. Civ. Code § 1761(d).

11 45. Venue is proper under Cal. Civ. Code § 1780(d) because a substantial portion  
12 of the conduct at issue occurred in this District. An affidavit establishing that this Court is  
13 the proper venue for this action is attached below.

14 46. As described herein, Defendant violated the CLRA by falsely representing the  
15 nature, existence and amount of price discounts by fabricating inflated references prices.  
16 Such a pricing scheme violated the CLRA in the following manner:

17 a. In violation of Section 1770(a)(5), Defendant misrepresented that its  
18 merchandise had characteristics, benefits, or uses that they did not have (representing that  
19 merchandise was sold at a substantial discount when it was not);

20 b. In violation of Section 1770(a)(7), Defendant misrepresented that the  
21 merchandise was of a particular standard, quality, and/or grade when they were of another  
22 (representing that merchandise was worth more than its actual value);

23 c. In violation of Section 1770(a)(9), Defendant advertised merchandise  
24 with an intent not to sell them as advertised (representing the merchandise was substantially  
25 discounted when it was not); and

26 d. In violation of Section 1770(a)(13), Defendant made false or misleading  
27 statements of fact concerning the amount of a price reduction (because the advertised “Our  
28

1 Price” or reference prices were false and inflated, and thus consumers did not receive the  
2 discounts they thought they were receiving);

3 e. In violation of Section 1770(a)(16), Defendant misrepresented that the  
4 merchandise as supplied in accordance with previous representations when it was not  
5 (representing that merchandise was sold at discounts off of prevailing market prices when it  
6 was not).

7 47. Defendant’s misrepresentations regarding its reference prices and  
8 corresponding discounts off of those reference prices were material to Plaintiff and Class  
9 members because a reasonable person would have considered them important in deciding  
10 whether or not to purchase merchandise.

11 48. Plaintiff and Class members relied upon Defendant’s material  
12 misrepresentations and would have acted differently had they known the truth.

13 49. As a direct and proximate result of Defendant’s material misrepresentations,  
14 Plaintiff and Class members have been irreparably harmed.

15 50. On behalf of the Class, Plaintiff seeks injunctive relief in the form of an order  
16 enjoining Defendant from making such material misrepresentations and to engage in a  
17 corrective advertising to alert consumers of these misrepresentations. Plaintiff also seeks  
18 attorneys’ fees and costs.

19 51. In accordance with Cal. Civ. Code § 1782(a), on April 11, 2019, Plaintiff’s  
20 counsel sent Defendant notice of these CLRA violations by certified mail, return receipt  
21 requested. If Defendant fails to respond to Plaintiff’s letter or agree to rectify the problems  
22 associated with the actions detailed above and give notice to all affected consumers within  
23 30 days of receipt of written notice, as proscribed by § 1782, Plaintiff will amend her  
24 Complaint to pursue claims for actual, punitive, and statutory damages, as appropriate against  
25 Defendant.

**SECOND CAUSE OF ACTION**

**Violation of Cal. Bus. & Prof. Code § 17500, *et seq.***

**California’s False Advertising Law (“FAL”)**

52. Plaintiff incorporates by reference each of the preceding factual allegations.

53. Defendant routinely engages in a scheme of advertising that its products are subject to a discount when such discounts are illusory because they are based on Defendant’s fabricated reference prices that do not reflect the “prevailing market prices” of the products for any particular time period in a particular location, or even the prices at which the products were recently sold.

54. Defendant’s advertisement of inflated reference prices misrepresents and/or omitted the true nature of Defendant’s pricing. These advertisements are being made to consumers located within the State of California and come within the definition of advertising as contained in the FAL in that such representations are intended to induce consumers like Plaintiff and Class members to purchase products from Kate Spade outlet stores. Defendant knows, or in the exercise of reasonable care should know, that its “Our Price” representations are false, misleading, deceptive, and violated California law.

55. Defendant’s misleading and deceptive advertising practice give consumers the false impression that the products are regularly sold on the market for a substantially higher price than they actually are, and that merchandise sold at its outlet stores are subject to substantial discounts. Plaintiff necessarily and reasonably relied on Defendant’s representations regarding the pricing of its merchandise, and all members of the Class are and have been exposed to such representations. Consumers, including Plaintiff and members of the Class, are among the intended targets of Defendant’s representations.

56. As a direct and proximate result of Defendant’s misleading and false advertisements, Plaintiff and Class members have suffered injury in fact and have lost money. Had Plaintiff and Class members known that Defendant’s representations, advertisements, and other inducements misrepresents and/or omits the regular or former price of Defendant’s merchandise and the true nature of corresponding “discounts,” they would not

1 have purchased merchandise from Defendant’s outlet stores, or would have paid less for  
2 them.

3 57. Plaintiff, on behalf of herself and all other similarly situated consumers, and as  
4 appropriate, on behalf of the general public, seek restitution and injunctive relief to prohibit  
5 Defendant from continuing the unfair, unlawful, and fraudulent practices alleged herein, and  
6 any other relief deemed proper by the Court.

7 **THIRD CAUSE OF ACTION**

8 **Violation of Cal. Bus. & Prof. Code § 17200, *et seq.***

9 **California’s Unfair Competition Law (“UCL”)**

10 58. Plaintiff incorporates by reference each of the preceding factual allegations.

11 59. The UCL prohibits any “unlawful, unfair, or fraudulent” act or practice, as well  
12 as any “unfair, deceptive, untrue or misleading” advertising. Cal. Bus. & Prof. Code § 17200.

13 60. Defendant violated the “unlawful” prong of the UCL by making material  
14 misrepresentations regarding the pricing of merchandise sold at its outlet stores in violation  
15 of state and federal law.

16 61. Defendant’s acts and practices alleged above, without limitation, the CLRA,  
17 FAL, and FTCA.

18 62. Plaintiff and Class members suffered substantial injury by virtue of Defendant’s  
19 unlawful scheme of advertising that its products were subject to substantial discounts when  
20 such discounts were illusory and were not based on the prevailing market price of those  
21 products.

22 63. Defendant’s actions alleged herein violate the laws and public policies of  
23 California and the federal government.

24 64. There is no benefit to consumers in allowing Defendant to deceptively market  
25 and advertise its reference prices and corresponding discounts in violation of California law.

26 65. The gravity of the harm inflicted on Plaintiff and Class members outweighs any  
27 legitimate justification, motive or reason for marketing and advertising reference prices and  
28 accompanying discounts in a deceptive and misleading manner in violation of California law.

1 Accordingly, Defendant's actions are immoral, unethical, and unscrupulous, offend  
2 established California public policies, and cause substantial injury to Plaintiff and members  
3 of the Class.

4 66. Through its false reference pricing scheme, Defendant fraudulently concealed  
5 from, and intentionally failed to disclose to, Plaintiff and other similarly situated, the truth  
6 about what it described as "Our Price(s)" and advertised price discounts from those  
7 supposedly market or former prices.

8 67. As more fully described above, Defendant misleadingly markets and advertises  
9 its products as discounted from a fictitious reference price, referred to by Defendant as "Our  
10 Price," when such discounts are illusory and/or overstated. Defendant's misleading  
11 marketing and advertisements have deceived and continue to deceive reasonable consumers.  
12 Plaintiff and Class members were deceived about the nature of Defendant's pricing, as  
13 Defendant prominently represented fabricated reference prices on its merchandise in store  
14 and prominently displayed signposts that merchandise were on sale for a designated  
15 percentage off of the reference price, which consumers relied upon in making their  
16 purchases.

17 68. Plaintiff and Class members relied on Defendant's material misrepresentations  
18 and would not have paid for, or would not have paid as much for, the merchandise had they  
19 known the truth.

20 69. Defendant's practices, as set forth above, have misled Plaintiff, the proposed  
21 Class, and the public in the past and will continue to mislead in the future. Consequently,  
22 Defendant's practices constitute unlawful, unfair, and fraudulent business practices within  
23 the meaning of the UCL.

24 70. As a direct and proximate result of Defendant's unlawful, unfair, and fraudulent  
25 conduct, Plaintiff and Class members lost money or property.

26 71. Defendant's conduct caused substantial injury to Plaintiff and Class members.  
27 Accordingly, Plaintiff seeks an order enjoining Defendant from committing such unlawful,  
28 unfair, and fraudulent business practices, and seek monetary damages for what Plaintiff and



1 Class members paid for the merchandise and/or restitutionary disgorgement of profits from  
2 Defendant. Plaintiff also seeks attorneys' fees and costs under Cal Code Civ. Proc. § 1021.5.

3 **RELIEF REQUESTED**

4 Plaintiff, individually and on behalf of all others similarly situated, requests that the  
5 Court enter judgment against Defendant as follows:

- 6 A. An order certifying this action as a class action under Federal Rule of Civil  
7 Procedure 23, defining the Class as requested herein, appointing the  
8 undersigned as Class Counsel, and finding that Plaintiff is a proper  
9 representative of the Class requested herein;
- 10 B. Injunctive relief requiring Defendant to disseminate corrective advertising  
11 alerting consumers to its misrepresentations concerning its fabricated reference  
12 prices;
- 13 C. An order requiring Defendant to pay all costs associated with Class notice and  
14 administration of classwide relief;
- 15 D. An award to Plaintiff and all Class members of compensatory, consequential,  
16 incidental, and statutory damages, restitution, and disgorgement, in an amount  
17 to be determined at trial;
- 18 E. An award of attorneys' fees, costs, and expenses, as provided by law or equity;
- 19 F. An order requiring Defendant to pay pre-judgment and post-judgment interest,  
20 as provided by law or equity; and
- 21 G. Such other or further relief as the Court may allow.
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**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury of all issues in this action so triable of right.

Respectfully submitted,

**AHDOOT & WOLFSON, PC**

Dated: April 11, 2019

/s/ Tina Wolfson

Tina Wolfson  
*twolfson@ahdootwolfson.com*

Bradley K. King  
*bking@ahdootwolfson.com*  
10728 Lindbrook Drive

Los Angeles, CA 90024

Tel: (310) 474-9111

Fax: (310) 474-8585

*Counsel for Plaintiff and the Putative Class*

**AFFIDAVIT OF TINA WOLFSON**

I, Tina Wolfson, declare as follows:

1. I am an attorney with the law firm of Ahdoot & Wolfson, PC, counsel for Plaintiff in this action. I am admitted to practice law in California and before this Court, and am a member in good standing of the State Bar of California. This declaration is made pursuant to California Civil Code section 1780(d). I make this declaration based on my research of public records and upon personal knowledge and, if called upon to do so, could and would testify competently thereto.

2. Venue is proper in this Court because Plaintiff suffered injuries as a result of Defendant's acts in this District, many of the acts and transactions giving rise to this action occurred in this District, and Defendant (1) is authorized and registered to conduct business in this District, (2) has intentionally availed itself of the laws and markets of this District through the distribution and sale of its merchandise in this District, and (3) is subject to personal jurisdiction in this District.

3. Plaintiff Marilu Calderon is a resident of Los Angeles County, California, and Plaintiff purchased Defendant's merchandise within this District.

4. Defendant is a Delaware limited liability company registered to do business in California with a principal place of business at 2 Park Avenue, New York, New York 10116.

I declare under penalty of perjury under the laws of the United States and the State of California this 11th day of April, 2019 in Los Angeles, California that the foregoing is true and correct.

/s/ Tina Wolfson  
Tina Wolfson

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

MARILU CALDERON, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff Los Angeles (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Tina Wolfson, AHDOOT & WOLFSON, PC 10728 Lindbrook Drive, Los Angeles, CA 90024 T: 310-474-9111; F: 310-474-8585

DEFENDANTS

KATE SPADE & COMPANY, LLC, a Delaware limited liability company, and DOES 1-50, inclusive,

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

'19CV0674 JLS WVG

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U S Government Plaintiff, 2 U S Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes sub-sections like PERSONAL INJURY, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332(d)(2)

Brief description of cause:

Deceptive advertising of sale and list prices in violation of California's CLRA, FAL, and UCL

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Anthony J. Battaglia

DOCKET NUMBER 3:19-cv-00330-AJB-JLB

DATE

04/11/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Tina Wolfson

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. **Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.