

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

LAURIE MUNNING,
for Herself and On Behalf Of
All Others Similarly Situated,

Plaintiff,

v.

NORDSTROM, INC.,
And DOES 1-20, inclusive,

Defendants.

No. _____

CLASS ACTION COMPLAINT FOR
DAMAGES, INJUNCTIVE, AND
DECLARATORY RELIEF UNDER
THE NEW JERSEY CONSUMER
FRAUD ACT, THE NEW JERSEY
TRUTH IN CONSUMER CONTRACT,
WARRANTY AND NOTICE ACT,
THE NEW JERSEY DECLARATORY
JUDGMENT ACT, AND NEW JERSEY
COMMON LAW

Plaintiff LAURIE MUNNING, demanding trial by jury as to all issues so triable in a separate document to be filed, alleges as follows, on personal knowledge and/or on the investigation of her counsel, against Defendant Nordstrom, Inc., and Defendants Does 1 through 20, inclusive (collectively, "Defendant" or "Nordstrom"):

I. INTRODUCTION

1. This is a class action brought on behalf of a proposed class of New Jersey citizens who purchased purportedly-discounted consumer goods at Defendant's physical Nordstrom Rack stores located in New Jersey, and who were the victims of Defendant's

1 unlawful uniform sales and marketing practices described in greater detail herein.

2 2. Specifically, with respect to most items offered for sale in its physical
3 Nordstrom Rack stores, Defendant has a uniform policy of attaching a price tag that bears at
4 least two prices—a higher “reference” price and a lower “sale” price.

5 3. The higher “reference” price listed on Defendant’s tags is typically identified
6 with a “strikethrough” (*e.g.*, “\$90.00”) and purports to be either (a) a comparison price for the
7 item (*i.e.*, the price at which other retailer(s) have regularly offered the item), or (b) a former
8 price (*i.e.*, a price at which Defendant itself previously offered the item).

9 4. The lower “sale” price listed on Defendant’s tags is the item’s actual selling
10 price.

11 5. Defendant’s price tags also expressly quantify, in terms of percentage, the
12 difference between the two prices, explicitly representing the “% Savings” it purportedly is
13 providing to the consumer. For example, a product with a listed reference price of \$90.00 and a
14 sale price of \$69.97 will state “22% Savings” on the tag. *See, e.g., Exhibit A*, Photograph of
15 Sperry Top-Sider boat shoes purchased by Plaintiff Munning at Defendant’s Nordstrom Rack
16 store, with a price tag affixed by Defendant to one shoe stating:

17 **COMPARE AT \$90.00**

18 **\$69.97**

19 **22% Savings**

20 6. As a matter of law and fact, the typical consumer seeing such a price tag on an
21 item in a New Jersey store would understand it to be a representation by Defendant that either
22 Defendant or some other retailer was previously in the recent past—or is currently—offering to
23 sell that particular item at the stated higher reference price for a reasonable length of time in
24 New Jersey, and that Defendant is currently offering to sell that item at a discounted sale price,
25 resulting in the specified “% Savings” to the consumer.

26 7. The typical consumer would also understand the reference price set forth on
27 Defendant’s tags to be a representation by Defendant that the true value of the item in question
28 is equal to that higher reference price, and that Defendant is offering to sell the item to

1 consumers at a lower sale price that is less than what the item is actually worth.

2 8. Thus, the average consumer would believe that he or she was “getting a deal” in
3 purchasing the item from Defendant’s Nordstrom Rack store, based on the representations
4 placed on the item’s tag and/or other advertising by Defendant.

5 9. The reference prices listed on Defendant’s price tags under this uniform policy,
6 however, do not represent actual prices at which the same item, or even comparable items, were
7 ever sold or offered for sale for a substantial period of time by anyone; whether in New Jersey
8 or elsewhere.

9 10. Rather, the reference prices listed on Defendant’s tags are wholly fictitious and
10 inflated prices, created by Defendant as a marketing tool according to a standardized formula,
11 or in some cases blindly adopted by Defendant from a suggested retail price provided by the
12 manufacturer and/or set by Defendant in coordination with the manufacturer, intended
13 specifically to induce the false and misleading impression in the minds of consumers that the
14 consumer goods bearing such tags are being offered for sale at a discounted price that is lower
15 than their usual selling price in the market place, and that the goods are of such quality that
16 they are actually worth that higher price.

17 11. In actuality, each item in Defendant’s Nordstrom Rack stores in New Jersey that
18 bears a higher reference price on its tag is *not* being discounted by Defendant from the
19 reference price, and the lower, purportedly-discounted sale price listed on the tag is—or is very
20 close to—the true, every-day, regular price at which the item is typically sold by Defendant
21 and/or other retailers in New Jersey.

22 12. Thus, the “% Savings” represented by Defendant on each such price tag is also
23 false, because consumers are not actually saving the promised amount, and in most cases are
24 not saving anything at all.

25 13. Defendant’s policies described herein are unlawful. Both federal and New
26 Jersey law specifically prohibit a seller from making any representations regarding purported
27 comparison or former prices unless such prices are in fact real prices at which items were
28 actually sold or offered for sale for a substantial period of time by either the seller or a

competitor in the recent past in the same area. These laws also prohibit “phantom” price reductions and claims of discounts and “**Savings**” off reference prices that never actually existed. *See* 16 C.F.R. § 233.1-2; N.J.A.C. § 13:45A-9.6.

14. By advertising fake reference prices and phantom percentage-off discounts in connection with the sale of consumer goods in New Jersey, Defendant has violated federal regulations and New Jersey consumer protection laws, as alleged herein.

15. Plaintiff’s complaint seeks injunctive, declaratory, monetary and statutory relief for herself and the proposed classes to end these false discount policies and obtain redress for the classes, bringing:

a. A claim under the New Jersey Consumer Fraud Act (“CFA”), in that Defendant’s uniform policies as described herein constitute an unconscionable commercial practice and regulatory violation that violates N.J.S.A. § 56:8-2;

b. A claim under the New Jersey Truth in Consumer Contract Warranty and Notice Act (“TCCWNA”), in that Defendant has presented, shown, offered, and submitted consumer notices, signs, and warranties to Plaintiff and the classes that violated their clearly established rights arising under state law, as prohibited by N.J.S.A. § 56:12-15;

c. A claim for an order for declaratory relief under the New Jersey Declaratory Judgment Act, N.J.S.A. § 2A:16-51, *et seq.*, and injunctive relief to end Defendant’s ongoing unlawful uniform policies; and

d. A claim under New Jersey common law for breach of implied contract based on the violation of the implied covenant of good faith and fair dealing.

II. PARTIES

16. Laurie Munning is an individual and citizen of New Jersey. During the class period, Plaintiff Munning purchased consumer goods on numerous occasions from Defendant’s physical Nordstrom Rack stores including in Cherry Hill, New Jersey on July 12, 2017. Plaintiff Munning was subjected to the practices alleged herein and suffered an ascertainable loss as a result of Defendant’s unlawful conduct.

17. Defendant Nordstrom, Inc., (“Nordstrom”) is a Washington corporation and

1 citizen with its headquarters and primary offices located at 1617 Sixth Avenue, Seattle, WA
 2 98101. Defendant owns and operates at least four physical Nordstrom Rack stores in New
 3 Jersey, and did so at all times during the relevant class period.

4 18. Defendant created the policies and procedures described herein in its corporate
 5 headquarters located at 1617 Sixth Avenue, Seattle, WA 98101, and directed that these policies
 6 and procedures be followed by all physical Nordstrom Rack stores in New Jersey. Moreover,
 7 Defendant created or adopted the fictitious reference prices and set and/or calculated the false
 8 percentage-off at its corporate headquarters, and directed that these misrepresentations be
 9 affixed to merchandise sold in all Nordstrom Rack stores in New Jersey.

10 19. Defendants Doe 1 through Doe 20, inclusive, aided and/or abetted Nordstrom,
 11 Inc., in such a manner that Doe 1 through Doe 20, inclusive, are each directly, contributorily,
 12 vicariously, derivatively, and/or otherwise liable for the acts or omissions of Defendant
 13 Nordstrom, Inc. Plaintiff is currently unaware of the true identities of Doe 1 through Doe 20,
 14 inclusive; Plaintiff anticipates that, upon learning the true identities of any of Doe 1 through
 15 Doe 20, inclusive, Plaintiff will either freely amend the operative complaint or request leave
 16 from the Court to amend the operative complaint.

17 **III. JURISDICTION AND VENUE**

18 20. This Court has subject matter jurisdiction over this civil action pursuant to,
 19 without limitation, Section 6 of Article IV of the Washington State Constitution (Superior
 20 Court jurisdiction, generally).

21 21. This Court has personal jurisdiction over Defendant because, *inter alia*,
 22 Defendant Nordstrom, Inc.: (a) is headquartered in the State of Washington; (b) is authorized to
 23 do business and regularly conducts business in this state; (c) maintained continuous and
 24 systematic contacts in this state prior to and during the class period; and (d) purposefully
 25 availed itself of the benefits of doing business in Washington.

26 22. Venue is proper in King County Superior Court because, without limitation,
 27 Defendant Nordstrom, Inc., is headquartered in King County. Moreover, Defendant regularly
 28 transacted and continues to transact business in King County, in that Defendant operates its

1 Nordstrom Rack stores and created and implemented the pricing policies complained of herein
2 from King County.

3 23. Within the jurisdiction of King County Superior Court, this civil action is
4 assigned to the Seattle Case Assignment Area because, without limitation, Defendant
5 Nordstrom, Inc., is headquartered in the City of Seattle, King County.

6 **IV. REFERENCE PRICING OVERVIEW**

7 24. One of the most effective techniques in advertising is for a seller to offer
8 customers a reduction from either the seller's own former price for an item or the price at
9 which the item is typically sold by a competitor in the marketplace.

10 25. This technique is widely used because sellers know the truth of the old adage
11 "everyone loves a bargain" and understand that a product's "regular" price—the price at which
12 a product is typically sold in the marketplace—matters to consumers.

13 26. Over the past forty years, a substantial body of research on the effects of
14 reference prices (also referred to in the relevant literature as "advertised reference prices,"
15 "advertised former prices," and "external reference prices") shows that reference prices: (i)
16 cause consumers to believe that the higher reference reflects the value of the product; (ii)
17 increase consumers' willingness to make the purchase; (iii) decrease consumers' intentions to
18 search for a lower price; and (iv) enable sellers that utilize reference prices to charge higher
19 prices and make increased sales.

20 27. Consumers form an "internal reference price," also known as an "expected
21 price," an "aspirational price" (a price the consumer would like to pay) or a "normative price"
22 (a price that is "fair"). Consumers store and retrieve the "internal reference price" from memory
23 to judge the merits of a specific price offer. Even where an advertised reference price is
24 exaggerated and not itself completely believed, perceptions of value increase in comparison to
25 a promotion with no advertised reference price. Thus, retailers' use of reference prices
26 influences consumers' "internal reference price" and subsequently, increases consumers'

1 willingness to purchase the product.¹

2 28. When a reference price is bona fide and truthful, it may help consumers in
3 making informed purchasing decisions. In contrast, consumers are harmed when retailers
4 advertise their products with inflated and false reference prices, because the false reference
5 prices deceive consumers, deprive consumers of a fair opportunity to accurately evaluate the
6 offer, and result in purchasing decisions based on false pretenses.

7 29. False reference pricing causes consumers to pay more than they otherwise
8 would have paid for products. False reference pricing also fraudulently increases consumer
9 demand for products, enabling retailers to charge higher prices than they otherwise could have
10 charged.

11 30. Beyond the adverse impact upon consumers' welfare, the practice of employing
12 false reference pricing also negatively affects the integrity of competition in retail markets. A
13 retailer's use of false reference prices constitutes an unfair method of competition, injuring
14 honest competitors that sell the same or similar products, or otherwise compete in the same
15 market, using valid and accurate reference prices. Businesses who play by the rules—and the
16 investors in those businesses—are penalized if the unlawful advertising practices of their
17 competitors go unchecked.

18 31. Where the reference prices listed by the seller are genuine—where the buyer

19
20 ¹ See, e.g., Rajesh Chandrashekar & Dhruv Grewal, *Assimilation of Advertised Reference*
21 *Prices: The Moderating Role of Involvement*, 79 J. Retailing 53 (2003); Pilsik Choi & Keith S.
22 *Coulter, It's Not All Relative: The Effects of Mental and Physical Positioning of Comparative*
23 *Prices on Absolute Versus Relative Discount Assessment*, 88 J. Retailing 512 (2012); Larry D.
24 *Compeau & Dhruv Grewal, Comparative Price Advertising: An Integrative Review*, 17 J. Pub.
25 *Pol'y & Mktg.* 257 (1998); Larry D. Compeau, Dhruv Grewal & Rajesh Chandrashekar,
26 *Comparative Price Advertising: Believe It or Not*, 36 J. Consumer Aff. 284 (2002); David
27 *Friedman, Reconsidering Fictitious Pricing*, 100 Minn. L. Rev. 921 (2016); Dhruv Grewal &
28 *Larry D. Compeau, Consumer Responses to Price and its Contextual Information Cues: A*
Synthesis of Past Research, a Conceptual Framework, and Avenues for Further Research, in 3
Rev. of Mktg. Res. 109 (Naresh K. Malhotra ed., 2007); Daniel J. Howard & Roger A. Kerin,
Broadening the Scope of Reference Price Advertising Research: A Field Study of Consumer
Shopping Involvement, 70 J. Mktg. 185 (2006); Aradhna Krishna, Richard Briesch, Donald R.
Lehmann & Hong Yuan, *A Meta-Analysis of the Impact of Price Presentation on Perceived*
Savings, 78 J. Retailing 101 (2002); Balaji C. Krishnan, Sujay Dutta & Subhash Jha,
Effectiveness of Exaggerated Advertised Reference Prices: The Role of Decision Time
Pressure, 89 J. Retailing 105 (2013); and Tridib Mazumdar, S. P. Raj & Indrahit Sinha,
Reference Price Research: Review and Propositions, 69 J. Mktg. 84 (2005).

1 really is getting an item for a lower price than the one at which it was typically sold or offered
2 for sale in the recent past—then the “bargain” promised in a seller’s advertising may be real.

3 32. Unfortunately, the case at bar is not such a case.

4 33. The case at bar involves a tactic designed to trick consumers into thinking they
5 are getting a “bargain,” based on the use of fictitious, inflated reference prices that do not
6 reflect the actual price at which the items in question have been sold or offered for sale for a
7 substantial period of time by either Defendant or its competitors in the marketplace.
8 Defendant’s primary purpose in perpetrating this false reference price scheme is to convince
9 consumers that Defendant’s current price for the item is so far below the price ordinarily or
10 previously charged by Defendant or in the marketplace for such an item, such that the
11 consumer cannot pass up the “bargain.”

12 V. LAWS PROHIBITING FALSE REFERENCE PRICING

13 34. The law recognizes the abuses that can flow from the use of such fictitious
14 reference prices.

15 35. For example, 16 C.F.R. § 233.2, entitled “**Retail price/comparisons;**
16 **comparable value comparisons**” prohibits the advertisement of fictitious price comparisons
17 by sellers.

18 36. 16 C.F.R. § 233.2 makes clear that a direct price comparison (e.g., a “Compare
19 At” claim, which phrase Defendant uses on many of its price tags) is deceptive unless the
20 reference price used is a real price at which *that particular item* in question is or was actually
21 sold in a sufficient number of sales in the seller’s area. *See* 16 C.F.R. § 233.2(a):

22 (a) Another commonly used form of bargain advertising is to offer
23 goods at prices lower than those being charged by others for the same
24 merchandise in the advertiser’s trade area (the area in which he does
25 business). This may be done either on a temporary or a permanent
26 basis, but in either case the advertised higher price must be based upon
27 fact, and not be fictitious or misleading. Whenever an advertiser
28 represents that he is selling below the prices being charged in his area
for a particular article, he should be reasonably certain that the higher
price he advertises does not appreciably exceed the price at which
substantial sales of the article are being made in the area – that is, a
sufficient number of sales so that a consumer would consider a
reduction from the price to represent a genuine bargain or saving.

(emphasis added).

37. Where the seller presents the purported price comparison using the term “Comparable Value”—another phrase used by Defendant on many of its tags—16 C.F.R. § 233.2(c) makes clear that the listed “Comparable Value” price must also be a real price at which comparable merchandise of like quality is actually being sold by representative retail outlets in the area. *See* 16 C.F.R. § 233.2(c):

(c) A closely related form of bargain advertising is to offer a reduction from the prices being charged either by the advertiser or by others in the advertiser’s trade area for other merchandise of like grade and quality – in other words, comparable or competing merchandise – to that being advertised... The advertiser should, however, be reasonably certain, just as in the case of comparisons involving the same merchandise, that the price advertised as being the price of comparable merchandise does not exceed the price at which such merchandise is being offered by representative retail outlets in the area. For example, retailer Doe advertises Brand X pen as having “Comparable Value \$15.00”. Unless a reasonable number of the principal outlets in the area are offering Brand Y, an essentially similar pen, for that price, this advertisement would be deceptive.

(emphasis added).

38. Similarly, 16 C.F.R. § 233.1 prohibits the advertising of false, “phantom” price reductions and discounts off inflated, fictitious former prices that never actually existed. *See* 16 C.F.R. § 233.1., stating:

§ 233.1 Former price comparisons.

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

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

1 honestly and in good faith – and, of course, not for the purpose of
 2 establishing a fictitious higher price on which a deceptive comparison
 3 might be based. And the advertiser should scrupulously avoid any
 4 implication that a former price is a selling, not an asking price (for
 5 example, by use of such language as, “Formerly sold at \$ ___”), unless
 6 substantial sales at that price were actually made.

7 * * *

8 (d) Other illustrations of fictitious price comparisons could be given.
 9 An advertiser might use a price at which he never offered the article at
 10 all; he might feature a price which was not used in the regular course
 11 of business, or which was not used in the recent past but at some remote
 12 period in the past, without making disclosure of that fact; he might use
 13 a price that was not openly offered to the public, or that was not
 14 maintained for a reasonable length of time, but was immediately
 15 reduced.

16 (emphasis added).

17 39. New Jersey law also recognizes that the tactic of using a false comparison or
 18 false former price to lure consumers into believing they are getting a discount is a misleading
 19 and deceptive tactic.

20 40. The regulations promulgated under the New Jersey Consumer Fraud Act include
 21 an entire set of regulations designed to ensure that when a seller uses purported discounts and
 22 statements regarding purported comparison prices or former prices to try to induce a purchase,
 23 the statements are clear, true, and accurate, and not in any way misleading or deceptive.

24 41. Taken together, these regulations prohibit a New Jersey seller from using a
 25 fictitious, baseless, made-up, or “estimated” comparison or former price in its advertising and
 26 require that a seller’s stated comparison or former price be a real price at which the goods in
 27 question were actually offered for sale in New Jersey in the recent past.

28 42. For example, N.J.A.C. § 13:45A-9.6, entitled “Pricing; prohibition on fictitious
 pricing and methods of substantiation” states:

29 (a) An advertiser shall not use a fictitious former price. Use of a
 30 fictitious former price will be deemed to be a violation of the Consumer
 31 Fraud Act.

32 (b) A former price or price range or the amount of reduction shall be
 33 deemed fictitious if it cannot be substantiated, based upon proof:

34 1. Of a substantial number of sales of the advertised
 35 merchandise, or comparable merchandise of like grade or
 36 quality made within the advertiser’s trade area in the regular
 37 course of business at any time within the most recent 60 days

during which the advertised merchandise was available for sale prior to, or which were in fact made in the first 60 days during which the advertised merchandise was available for sale following the effective date of the advertisement;

2. That the advertised merchandise, or comparable merchandise of like grade or quality, was actively and openly offered for sale at that price within the advertiser's trade area in the regular course of business during at least 28 days of the most recent 90 days before or after the effective date of the advertisement; or

3. That the price does not exceed the supplier's cost plus the usual and customary mark-up used by the advertising merchant in the actual sale of the advertised merchandise or comparable merchandise of like grade or quality in the recent regular course of business.

(emphasis added).

43. Similarly, for items with a price of less than \$100, N.J.A.C. §13:45A-9.3(a)(3) provides that a seller must comply with N.J.A.C. §13:45A-9.4(a)(6), which requires a seller to specifically:

6. Set forth with specificity when in the remote past a former price of an item of merchandise was effective if it was not actively or openly offered for sale within the advertiser's trade area in the regular course of business during at least 28 of the 90 days before the effective date of the advertisement. In this regard, when advertising a seasonal sale, such as Christmas dishes, pool supplies, outdoor furniture, etc., actual dates, specific holidays or terms such as 'last season,' may be used to describe when the former price was used in the remote past.

(emphasis added).

44. Thus, these regulations do not permit a seller to invent, estimate, or blindly adopt a purported comparison or former price. Rather, under these regulations, a purported comparison or former price advertised by the seller must be a real price at which the seller or someone in the seller's trade area actually sold or offered the item for sale in the recent past.

VI. THE UNIFORM POLICIES GIVING RISE TO THE CLASS CLAIMS

45. Defendant's false discount pricing practices include advertising false reference prices, false discounts, and false percentage-off savings.

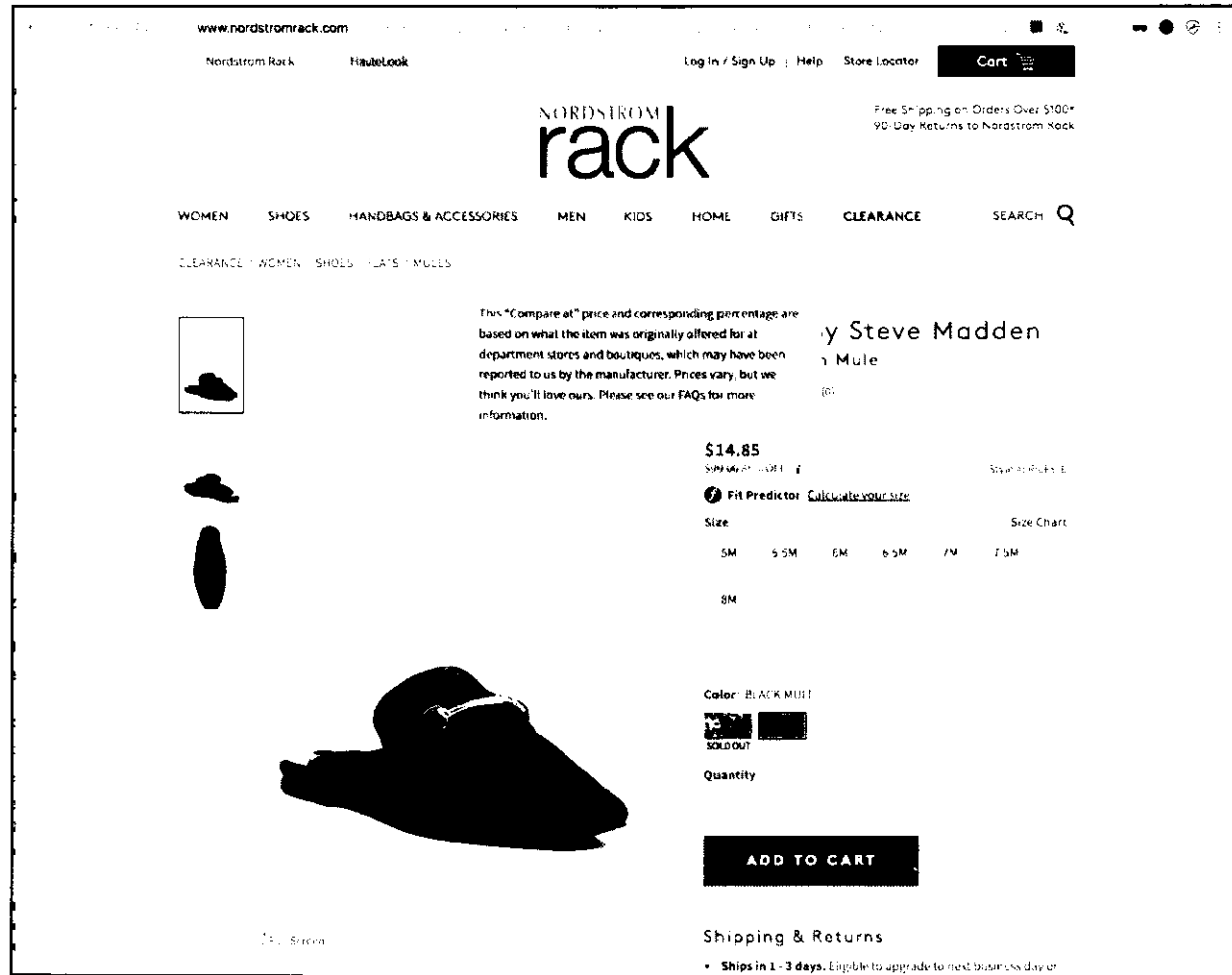
46. Defendant's policy of providing customers with a tag bearing two prices—a higher reference price that purports to be a comparison or former price and a lower,

1 purportedly-discounted selling price—is a deceptive and misleading practice in the sale of
 2 goods because Defendant’s reference prices are false and inflated.

3 47. As a matter of uniform policy, nearly every item of merchandise in every
 4 Nordstrom Rack store in New Jersey bears a price tag that lists at least two prices: a higher
 5 reference price that purports to be either a comparison or former price for the item, and a
 6 purportedly discounted “sale” price at which Defendant is currently offering the item for sale.

7 48. Defendant typically identifies a purported comparison price with the terms
 8 “**COMPARE AT**” or “**COMPARABLE VALUE.**” *See, e.g., Exhibit A*, Photograph of a
 9 pair of Sperry Top-Sider boat shoes purchased by Plaintiff Munning at Defendant’s Nordstrom
 10 Rack store, with an affixed tag stating “**COMPARE AT \$90.00**”; *Exhibit B*, Photograph of a
 11 price tag affixed to a Tommy Hilfiger tie similar to one of those purchased by Plaintiff
 12 Munning at Defendant’s Nordstrom Rack store, stating “**COMPARABLE VALUE 69.50.**”

13 49. Ordinary consumers understand, and Nordstrom intends, that the phrase
 14 “**COMPARE AT**” mean the price at which that particular item is or was recently usually sold
 15 by Nordstrom’s or by a retail competitor to Nordstrom’s. Notably, in Nordstrom Rack retail
 16 stores in New Jersey, no definition or explanation regarding the meaning of “**COMPARE AT**”
 17 is disclosed anywhere in the store—not on the price tags, not on the product shelves, and not on
 18 any signage or postings. However, it is notable that on the Nordstrom Rack website, Nordstrom
 19 Rack (although *only in the fine print*) explicitly defined “**COMPARE AT**” to mean what “the
 20 item” (i.e., that particular item) was originally offered for at other retailers. Below is a
 21 screenshot taken on the Nordstrom Rack website on January 11, 2018, which displays this
 22 disclaimer being shown after the user clicks on the little “i” next to the advertised reference
 23 price:



50. Starting around mid 2018, Nordstrom also began using the phrase “**COMPARABLE VALUE**” to describe some of its reference prices in its Nordstrom Rack retail stores. Ordinary consumers understand the phrase “**COMPARABLE VALUE**” to mean the price at which that particular item, or possibly a comparable item of similar quality, is or was usually offered in the recent past by Nordstrom’s or by a retail competitor to Nordstrom’s. Notably, in Nordstrom Rack retail stores in New Jersey, no definition or explanation regarding the meaning of “**COMPARABLE VALUE**” is disclosed anywhere in the store—not on the price tags, not on the product shelves, and not on any signage or postings.

51. Nordstrom also advertises some reference prices without using any descriptive language at all except for a strike-through. *See, e.g., Exhibit C*, Photograph of a price tag attached to a Weatherproof Vintage sweater offered for sale at Defendant’s Nordstrom Rack store, stating simply “**75.00.**” Ordinary consumers understand such a strike-through reference

price by itself to represent Defendant's *own* former price at which the product was regularly offered in the recent past.

52. As evidenced by the above examples, Defendant adds a strikethrough designation to both comparison and former reference prices on the majority of its tags, ostensibly to emphasize that those prices are common elsewhere, or were previously the regular price in Defendant's stores, but have been reduced by Defendant. *See, e.g., Exhibit A* ("~~\$90.00~~"), *Exhibit B* ("~~69.50~~"), *Exhibit C* ("~~75.00~~").

53. Sometimes, "MSRP" is also present on the product's tags (which in some cases may have been printed on the tag by the manufacturer). This MSRP printed price is often present together with Defendant's own comparison price or former price representations. Significantly, Defendant's reference prices—whether comparison or former—often track this MSRP when it is provided. *See Exhibit C* (former price of "~~75.00~~" identical to "**MANUFACTURER'S SUGGESTED RETAIL PRICE**" of "**\$75.00**"); *Exhibit D* ("**COMPARABLE VALUE**" of "~~30.00~~" identical to manufacturer's suggested price of "**\$30.00**"); *Exhibit E*, Photographs of various price tags attached to items offered for sale at Defendant's Nordstrom Rack stores, where the purported base prices are identical to the suggested retail prices proposed by the manufacturer. In such cases, Defendant's comparison or former reference prices are often blindly adopted by Defendant from an MSRP provided by the manufacturer, or which is set in coordination with the manufacturer, and are inflated far above the actual market price for the product.

54. Defendant's price tags also expressly quantify, in terms of percentage, the difference between the listed reference price and the listed sale price, explicitly stating the "% Savings" purportedly afforded to the consumer. For example, a product with a listed reference price of \$90.00 and a listed sale price of \$69.97 will state "**22% Savings**" on the tag. *See, e.g., Exhibit A*, Photograph of Sperry Top-Sider boat shoes purchased by Plaintiff Munning at Defendant's Nordstrom Rack store, with a price tag stating:

COMPARE AT \$90.00

\$69.97

22% Savings

55. Confronted with such a price tag, a reasonable New Jersey consumer would believe that the higher reference price represents a typical price at which the same item was previously sold by Defendant or in the marketplace, and thus is equivalent to the fair market value of the item in question.

56. The reasonable consumer would also understand that the claimed “% Savings” on Defendant’s price tags represents the amount of monetary savings that would be enjoyed by the consumer who purchases the item from Defendant rather than from someone else.

57. As a matter of uniform policy, however, the reference prices listed on Defendant’s price tags are not true current or former prices, in that the items in question were never actually sold or offered for sale by Defendant or anyone else in the marketplace at the purported reference prices; let alone for a substantial number of sales in New Jersey in the recent past.

58. Rather, every reference price listed on Defendant’s price tags in Defendant’s New Jersey stores was created by Defendant, using subjective criteria and a standardized formula designed by Defendant, or alternatively was blindly adopted by Defendant from the MSRP without any attempt at confirmation.

59. It is specifically alleged that, during the class period, Defendant took no action whatsoever to confirm that items offered for sale in its New Jersey Nordstrom Rack stores, or comparable items, had ever been sold by anyone at the reference prices listed on their tags, or had been offered for sale at those prices for any specific length of time.

60. Based on Plaintiff’s counsel’s pre-filing investigation, at no time during the class period did Defendant itself offer items for sale at their listed reference prices in its New Jersey Nordstrom Rack stores. This is consistent with counsel’s investigation of the Nordstrom Rack website (which often offers the identical items as in Nordstrom Rack’s retail stores, with

the same reference price and substantially the same selling price). Counsel has been monitoring Nordstrom Rack's website since August 21, 2014, via a proprietary data harvesting system. Counsel has been tracking approximately 80,000 products each and every day, a large number of which are also offered in Nordstrom retail stores. In total, counsel has collected and archived daily pricing information and screenshots for over 100 million daily offerings for over 1 million products offered on Nordstrom Rack's website over this three-and-a-half-year period. The data confirms that Nordstrom virtually *never* offers any of its products at the advertised reference price online, consistent with its practices in its retail stores such as those in New Jersey.

61. Virtually no items offered for sale in Defendant's Nordstrom Rack retail stores with affixed tags listing both a higher reference price and a lower, purportedly-discounted sale price are actually being discounted by Defendant; instead, the lower sale price is (or is very close to) the true, every-day, regular price at which the items are typically offered and sold.

62. Consequently, the "% Savings" represented by Defendant on its price tags is also false because consumers are not saving the claimed percentage, if anything at all. In reality, the claimed "% Savings" represents only the difference between the higher inflated and unsubstantiated reference price and the lower sale price; it does not correlate to any actual savings afforded to the customer.

63. The result of Defendant's policy was to induce Plaintiff and other consumers to purchase items from Defendant's Nordstrom Rack stores, based on their belief that they were purchasing valuable merchandise worth a much higher price (*i.e.*, Defendant's claimed reference price) at substantial savings (*i.e.*, Defendant's claimed "% Savings"), as compared to prices ordinarily charged for those same products by other retailers. In actuality, they would have paid the same or less for identical or similar products sold by other merchants in New Jersey.

VII. PLAINTIFF'S FACTUAL ALLEGATIONS

64. Plaintiff Munning's personal experience illustrates Defendant's unlawful, deceptive and misleading policies as described herein.

65. On or about July 12, 2017, Plaintiff Munning visited the Nordstrom Rack retail

1 store located at the Nordstrom Rack Towne Place, Garden State Park, 951 Haddonfield Road,
 2 Suite A, Cherry Hill, NJ 08002. While at the store, Ms. Munning saw price tags that advertised
 3 significant sales and percentage-off discounts for products.

4 66. For example, one item purchased by Ms. Munning was a pair of Sperry Top-
 5 Sider boat shoes for \$69.97 ("Shoes"). Affixed to the Shoes was a price tag stating:

6
 7 **COMPARE AT \$90.00**

8 **\$69.97**

9 **22% Savings**

10 See **Exhibit A**, Photograph of Sperry Top-Sider boat shoe purchased by Plaintiff Munning at
 11 Defendant's Nordstrom Rack store, with affixed price tag.

12 67. Ms. Munning viewed this price tag, and understood that she would receive 22%
 13 off the regular price for this pair of Shoes.

14 68. Relying on Defendant's representations, Ms. Munning reasonably believed that
 15 the Shoes were normally offered and sold by Defendant or a competing retailer for the \$90.00
 16 "**COMPARE AT**" reference price. Ms. Munning thereby reasonably believed that the Shoes
 17 were worth and had a value of \$90.00. Ms. Munning reasonably believed that the advertised
 18 "**22% Savings**" represented a special bargain, where Defendant was currently offering the
 19 Shoes for \$30.03 off of the regular and normal selling price of \$90.00. Relying on Defendant's
 20 representations, Ms. Munning purchased the Shoes for \$69.97 (at a purported discount of 22%
 21 off the regular price of \$90.00).

22 69. However, Defendant's \$90.00 "**COMPARE AT**" reference price and advertised
 23 discount of "**22% Savings**" was false and deceptive. In reality, and unbeknownst to Ms.
 24 Munning, Defendant had never offered the Shoes for \$90.00. Likewise, \$90.00 was not the
 25 regular price for those Shoes at other retail stores which competed with Nordstrom Rack.

26 70. Defendant had fooled Ms. Munning. The Shoes were not in fact worth the
 27 \$90.00 price that Defendant had led her to believe. Contrary to Defendant's representations,
 28 Ms. Munning did not receive any deal at all. The \$69.97 price she paid was in fact

1 approximately equal to the usual and normal selling price for the Shoes.

2 71. Also while at that same Nordstrom Rack on July 12, 2017, in Cherry Hill, New
3 Jersey, Ms. Munning saw and purchased several Tommy Hilfiger ties (“Ties”). Affixed to each
4 tie was a price tag stating:

5 **COMPARABLE VALUE 69.50**

6 **71% Savings 19.97**

7
8 See **Exhibit B**, Photograph of several Tommy Hilfiger ties purchased by Plaintiff Munning at
9 Defendant’s Nordstrom Rack store, and a price tag affixed to a similar Tommy Hilfiger tie
10 stating “**COMPARABLE VALUE 69.50.**”

11 72. Ms. Munning viewed this price tag, and understood that she would receive 71%
12 off the regular price for these Ties.

13 73. Relying on Defendant’s representations, Ms. Munning reasonably believed that
14 the Ties were each normally offered and sold by Defendant or a competing retailer for the
15 \$69.50 “**COMPARABLE VALUE**” reference price. Ms. Munning thereby reasonably
16 believed that each Tie was worth and had a value of \$69.50. Ms. Munning reasonably believed
17 that the advertised sayings of “**71% Savings**” represented a special bargain, where Defendant
18 was currently offering each Tie for \$49.53 off of the regular and normal selling price of \$69.50.
19 Relying on Defendant’s representations, Ms. Munning purchased the Ties for \$19.97 each (at a
20 purported discount of 71% off the regular price of \$69.50).

21 74. However, Defendant’s \$69.50 “**COMPARABLE VALUE**” reference price and
22 advertised discount of 71% off was false and deceptive. In reality, and unbeknownst to Ms.
23 Munning, Defendant had never offered the Ties for \$69.50. Likewise, \$69.50 was not the
24 regular price for those Ties at other retail stores which competed with Defendant. \$69.50 was
25 also not the regular price for similar ties of comparable quality at Defendant’s stores or at
26 competing retailers’ stores.

27 75. Defendant had fooled Ms. Munning. The Ties were not in fact worth the \$69.50
28 price that Defendant had led her to believe. Contrary to Defendant’s representations, Ms.

1 Munning did not receive any deal at all. The \$19.97 price she paid was in fact approximately
2 equal to the usual and normal selling price for the Ties.

3 76. Ms. Munning reasonably relied on Defendant's material misrepresentations. If
4 Ms. Munning had known the truth, she would have acted differently and/or would not have
5 purchased the products at the Nordstrom Rack store.

6 77. These misrepresentations by Defendant are material misrepresentations, in that
7 they are the type of representations on which an ordinary prudent person would rely upon in
8 conducting his or her affairs.

9 78. As a direct and proximate result of Defendant's acts and omissions, Plaintiff was
10 harmed, suffered an injury-in-fact, and lost money or property.

11 79. Defendant's false advertising harmed Ms. Munning by causing her to pay more
12 than she otherwise would have paid and to buy more than she otherwise would have bought.
13 Ms. Munning did not enjoy the stated discounts from the purported regular prices for the
14 products that Defendant represented to her, and the products were not, in fact, worth as much as
15 Defendant represented them to be worth (i.e., the products were not worth the inflated and
16 fictitious reference price).

17 80. Plaintiff has a legal right to rely now, and in the future, on the truthfulness and
18 accuracy of Defendant's representations regarding its advertised reference prices and discounts.

19 81. Ms. Munning was a regular shopper at Nordstrom Rack, and would likely
20 regularly shop there again if she could have confidence regarding the truth of Defendant's
21 prices and the value of its products.

22 82. Ms. Munning will be harmed if, in the future, she is left to guess as to whether
23 Defendant is providing a legitimate sale or not, and whether products are actually worth the
24 amount that Defendant is representing.

25 83. If Ms. Munning were to purchase again at a Nordstrom Rack store without
26 Defendant having changed its unlawful and deceptive conduct alleged herein, Ms. Munning
27 would be harmed on an ongoing basis and/or would be harmed once or more in the future.

28 84. The deceptive practices and policies alleged herein, and experienced directly by
CLASS ACTION COMPLAINT FOR
DAMAGES, INJUNCTIVE, AND
DECLARATORY RELIEF

Plaintiff Munning, are not limited to any single product or group of products. Rather, Defendant's deceptive advertising and sales practices, which advertise and state false "COMPARE AT, "COMPARABLE VALUE," former, and/or strikethrough prices, and false percentage-off discounts, were, and continue to be, systematic and pervasive across nearly all of Defendant's purportedly discounted products in its New Jersey Nordstrom Rack retail stores.

VIII. CLASS ACTION ALLEGATIONS

85. Plaintiff Munning brings this class-action lawsuit under New Jersey state law on behalf of herself and the members of the following proposed class:

All New Jersey citizens who purchased any item bearing a price tag that contained both a higher reference price and a lower sale price at a Nordstrom Rack store located in New Jersey between October 7, 2013 and the present.

86. Plaintiff Munning also brings this class-action lawsuit under New Jersey state law on behalf of herself and the members of the following proposed subclass:

All New Jersey citizens who purchased any item bearing a price tag that stated "Compare At" at a Nordstrom Rack store located in New Jersey between October 7, 2013 and the present.

87. Plaintiff Munning also brings this class-action lawsuit under New Jersey state law on behalf of herself and the members of the following proposed subclass:

All New Jersey citizens who purchased any item bearing a price tag that stated "Comparable Value" at a Nordstrom Rack store located in New Jersey between October 7, 2013 and the present.

88. Specifically excluded from the Class are Defendant, any entity in which Defendant has a controlling interest or which has a controlling interest in Defendant, Defendant's agents and employees and attorneys, the bench officers to whom this civil action is assigned, and the members of each bench officer's staff and immediate family.

89. *Numerosity.* Plaintiff does not know the exact number and identities of the persons who fit within each proposed class, but is informed and believes that the proposed classes and subclasses are each composed of at least 10,000 persons. As such, the classes for whose benefit this action is brought are each so numerous that joinder of all members is

1 impracticable.

2 90. ***Commonality and Predominance.*** Common questions of law and fact exist as to
3 each class member. All claims in this action arise exclusively from uniform policies and
4 procedures of Defendant as outlined herein. No violations alleged in this Complaint are a result
5 of any individualized oral communications or individualized interaction of any kind between
6 class members and Defendant or anyone else. These questions predominate over questions that
7 might affect individual class members. These common questions include, but are not limited to,
8 the following:

9 a. Whether the uniform advertising, marketing, and sales practices alleged
10 herein exist;

11 b. Whether Defendant employs a uniform policy of listing fictitious
12 reference prices on the tags of its merchandise that do not represent actual prices at which the
13 merchandise has been or is typically sold or offered for sale;

14 c. Whether Defendant uses a standardized formula or policy to create or
15 adopt such fictitious reference prices;

16 d. Whether Defendant's policy of listing fictitious reference prices and false
17 "**% Savings**" on the tags of its merchandise is a deceptive, misleading and/or unlawful practice
18 relating to the sale of goods in violation of N.J.S.A. § 56:8-2 of the New Jersey Consumer Fraud
19 Act;

20 e. Whether the tags on Defendant's merchandise constitute consumer
21 notices, signs or warranties within the meaning of N.J.S.A. § 56:12-15 of the New Jersey Truth
22 in Consumer Contract, Warranty and Notice Act;

23 f. whether Defendant's policy of listing fictitious reference prices and false
24 "**% Savings**" on the tags of its merchandise violates N.J.S.A. § 56:12-15 of the New Jersey Truth
25 in Consumer Contract, Warranty and Notice Act;

26 g. Whether each class member is entitled to a \$100 per person statutory
27 penalty under N.J.S.A. § 56:12-17 of the New Jersey Truth in Consumer Contract, Warranty and
28 Notice Act; and

h. Whether Plaintiff and the class are entitled to an order for injunctive relief, barring the continuing illegal policies described herein.

91. The prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members which would establish incompatible standards of conduct for the party opposing the classes.

92. The party opposing each class has acted or refused to act on grounds generally applicable to each class, thereby making appropriate final injunctive relief with respect to each class as a whole.

93. **Typicality.** Plaintiff is a member of the classes she seeks to represent. The claims of Plaintiff are typical of all class members. All claims of Plaintiff and the classes arise from the same course of conduct, policy and procedures as outlined herein. All claims of Plaintiff and the classes are based on the same legal theories. Plaintiff seeks the same relief for herself as for every other class and sub-class member. Defendant has acted and/or refused to act on grounds generally applicable to the classes, thereby making appropriate injunctive and declaratory relief for each class as a whole.

94. **Adequacy.** Plaintiff will fairly and adequately protect class members' interests. Plaintiff has no interest antagonistic to or in conflict with the classes. Plaintiff has retained qualified and competent legal counsel to represent herself and the classes.

95. Further, a class action is superior to all other available methods for fairly and efficiently adjudicating this controversy. Each class member's interests are small compared to the burden and expense required to litigate each of their claims individually, so it would be impractical and would not make economic sense for class members to seek individual redress for Defendant's conduct. Individual litigation would add administrative burden on the courts, increasing the delay and expense to all parties and to the court system. Individual litigation would also create the potential for inconsistent or contradictory judgments regarding the same uniform conduct. A single adjudication would create economies of scale and comprehensive supervision by a single judge. Moreover, Plaintiff does not anticipate any difficulties in managing a class action trial.

96. By its conduct and omissions alleged herein, Defendant has acted and refused to act on grounds that apply generally to the classes, such that final injunctive relief and/or declaratory relief is appropriate respecting the classes as a whole.

97. The nature of Defendant's misconduct is non-obvious and/or obscured from public view, and neither Plaintiff nor the members of the classes could have, through the use of reasonable diligence, learned of the accrual of their claims against Defendant at an earlier time. This Court should, at the appropriate time, apply the discovery rule to extend any applicable limitations period (and the corresponding class period) to the date on which Defendant first began perpetrating the false reference price and false discount advertising scheme alleged herein.

CAUSES OF ACTION

COUNT I

Violation of the New Jersey Consumer Fraud Act (N.J.S.A. § 56:8-1, *et seq.*)

98. Plaintiff realleges and incorporates by reference all paragraphs alleged hereinbefore.

99. The New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, *et seq.* ("CFA"), was enacted to protect consumers against sharp and unconscionable commercial practices by persons engaged in the sale of goods or services. *See Marascio v. Campanella*, 689 A.2d 852, 857 (N.J. Ct. App. 1997).

100. The CFA is a remedial statute which the New Jersey Supreme Court has repeatedly held must be construed liberally in favor of the consumer to accomplish its deterrent and protective purposes. *See Furst v. Einstein Moomjy, Inc.*, 860 A.2d 435, 441 (N.J. 2004) ("**The [CFA] is remedial legislation that we construe liberally to accomplish its broad purpose of safeguarding the public.**").

101. Indeed, "[t]he available legislative history demonstrates that the [CFA] was intended to be one of the strongest consumer protection laws in the nation." *New Mea Const. Corp. v. Harper*, 497 A.2d 534, 543 (N.J. Ct. App. 1985).

1 102. For this reason, the **“history of the [CFA] is one of constant expansion of**
2 **consumer protection.”** *Kavky v. Herbalife Int’l of Am.*, 820 A.2d 677, 681-82 (N.J. Ct. App.
3 2003).

4 103. The CFA was intended to protect consumers **“by eliminating sharp practices**
5 **and dealings in the marketing of merchandise and real estate.”** *Lemelledo v. Beneficial*
6 *Mgmt. Corp.*, 696 A.2d 546, 550 (N.J. 1997).

7 104. Specifically, N.J.S.A. 56:8-2 prohibits **“unlawful practices”** which are defined
8 as:

9 **The act, use or employment of any unconscionable commercial**
10 **practice, deception, fraud, false pretense, misrepresentation, or the**
11 **knowing, concealment, suppression, or omission of any material fact**
12 **with intent that others rely upon such concealment, suppression or**
omission whether or not any person has in fact been misled, deceived
or damaged thereby.

13 105. The catch-all term **“unconscionable commercial practice”** was added to the
14 CFA by amendment in 1971 to ensure that the CFA covered, *inter alia*, **“incomplete**
15 **disclosures.”** *Skeer v. EMK Motors, Inc.*, 455 A.2d 508, 512 (N.J. Ct. App. 1982).

16 106. In describing what constitutes an **“unconscionable commercial practice,”** the
17 New Jersey Supreme Court has noted that it is an amorphous concept designed to establish a
18 broad business ethic. *See Cox v. Sears Roebuck & Co.*, 647 A.2d 454, 462 (N.J. 1994).

19 107. In order to state a cause of action under the CFA, a plaintiff does not need to
20 show reliance by the consumer. *See Varacallo v. Massachusetts Mut. Life Ins. Co.*, 752 A.2d
21 807 (N.J. App. Div. 2000); *Gennari v. Weichert Co. Realtors*, 691 A.2d 350 (N.J. 1997)
22 (holding that reliance is not required in suits under the NJCFA because liability results from
23 **“misrepresentations whether ‘any person has in fact been misled, deceived or damaged**
24 **thereby”**).

25 108. As stated by the New Jersey Supreme Court in *Lee v. Carter-Reed Co., L.L.C.*, 4
26 A.3d 561, 580 (N.J. 2010): “It bears repeating that the [NJCFA] does not require proof of
27 reliance, but only a causal connection between the unlawful practice and ascertainable loss.”
28

109. It is also not required that an affirmative statement be literally false in order to be considered deceptive and misleading under the CFA. Even a statement which is literally true can be misleading and deceptive in violation of the CFA. *See Smajlaj v. Campbell Soup Co.*, 782 F. Supp. 2d 84, 98 (D.N.J. 2011) (upholding a CFA claim where the defendant argued its written statement was literally true, holding “**the fact that the labels were literally true does not mean they cannot be misleading to the average consumer.**”).

110. A CFA violation also does not require that the merchant be aware of the falsity of the statement or that the merchant act with an intent to deceive. *See Gennari v. Weichert Co. Realtors*, 691 A.2d 350, 365 (N.J. 1997):

One who makes an affirmative misrepresentation is liable even in the absence of knowledge of the falsity of the misrepresentation, negligence, or the intent to deceive... An intent to deceive is not a prerequisite to the imposition of liability.

111. Nor is it a defense to a CFA claim that the merchant acted in good faith. *See Cox v. Sears Roebuck & Co.*, 647 A.2d 454, 461 (N.J. 1994) (“**the Act [CFA] is designed to protect the public even when a merchant acts in good faith.**”).

112. In the case at bar, Defendant’s policy of placing a fictitious reference price and inflated “% Savings” claim on the price tags of items offered for sale in its Nordstrom Rack stores in New Jersey is a deceptive, misleading, and/or unconscionable commercial practice in the sale of goods in violation of N.J.S.A. § 56:8-2 for the reasons set forth herein.

113. This policy involves, *inter alia*, both misleading affirmative statements, the knowing omission of material facts, and violations of regulatory standards.

114. First, the practice of placing on price tags a fictitious reference price—a price that does not reflect an actual price at which Defendant or anyone in New Jersey has actually sold a substantial number of the same or similar items in the recent past, or offered such items for sale for a significant period of time—and an inflated discount claim based on that fictitious price, are both affirmative misleading and deceptive statements in the sale of goods in violation of N.J.S.A. § 56:8-2.

115. Second, Defendant knows that any reasonable New Jersey consumer who sees the fake reference price and inflated discount on Defendant's tags will believe that the reference price is an actual price at which either Defendant or some other retailer in New Jersey actually offered the item for sale in the marketplace in the recent past, and that Defendant's sale price represents an actual savings equal to the promised discount. Despite this, Defendant does not place any statement or warning on or near the tag itself, or on or near the item itself, or anywhere in the store, explaining that the reference price is simply a marketing tool created by Defendant that does not represent an actual price at which the same, or even a similar item of like quality, has been sold or offered for sale in the marketplace for any substantial length of time. Nor does Defendant inform customers that its claimed "% Savings" on its tags do not actually result in those claimed savings realized by the consumer. Thus, Defendant's policy also involves knowing omissions of material fact in the sale of goods in violation of N.J.S.A. § 56:8-2.

116. Finally, Defendant's policy as described herein is an unconscionable commercial practice because it violates regulatory authority such as 16 C.F.R. § 233.1-2 and N.J.A.C. § 13:45A-9.6, as set forth herein.

117. Plaintiff and the class members reasonably and justifiably expected Defendant to comply with applicable law, but Defendant failed to do so.

118. As a direct and proximate result of these unlawful actions by Defendant, Plaintiff and the classes have been injured and have suffered an ascertainable loss of money.

119. As with other terms of the CFA, the term "ascertainable loss" is to be construed liberally in favor of the consumer in order to carry out the CFA's broad remedial purposes. *See In Union Ink Co., Inc. v. AT&T Corp.*, 352 N.J. Super. 617, 646 (App. Div. 2002) (holding that the ascertainable loss "**requirement has been broadly defined as embracing more than a monetary loss**").

120. Thus, the CFA does not require a plaintiff to have suffered any out-of-pocket loss. *See Union Ink*, 352 N.J. Super. at 646:

[A] victim of consumer fraud must prove an 'ascertainable loss,'

N.J.S.A. 56:8-19, but that requirement has been broadly defined as embracing more than a monetary loss.

(emphasis added).

121. Indeed, a consumer has experienced an “ascertainable loss” within the meaning of the CFA whenever the consumer fails to receive the bargain which was promised by the seller. *See International Union v. Merck & Co.*, 384 N.J. Super. 275, 291 (App. Div. 2006):

Ascertainable loss “has been broadly defined as more than a monetary loss” and encompasses situations where “a consumer receives less than what was promised.”

122. Speaking specifically as to the benefit of the bargain expected by a consumer who purchases merchandise at a discount, the New Jersey Supreme Court in *Furst v. Einstein Moomjy*, 182 N.J. 1, 13-14 (2004), held that “[t]he ‘**expectation interest**’ of the consumer who purchases merchandise at a discount is the benefit of the bargain.”

123. Plaintiff suffered an ascertainable loss within the meaning of the CFA when she failed to receive the full benefit of the bargain promised by Defendant.

124. The purported discounts offered by Defendant were illusory because the existence of the promised discounts was premised on Defendant’s misleading and false reference prices, and its representations that the actual value of the items were equal to those prices.

125. Under New Jersey law, the value of an item is presumed to be the price listed on its price tag as the regular, typical price at which it is sold in the marketplace.

126. By stating that the reference price of each item purchased by Plaintiff was higher than the price at which the item was typically sold or offered for sale, Defendant promised a bargain to Plaintiff in which she would receive items worth the reference price claimed on Defendant’s tags and would save the “**% Savings**” claimed on Defendant’s tags. In actuality, however, the true and actual value of these items was less than the false and inflated reference prices, and Plaintiff did not save the amount of money claimed by Defendant.

127. For example, the Sperry Top-Sider boat shoes purchased by Plaintiff Munning bore a price tag that promised “**COMPARE AT \$90.00**” and “**22% Savings**”. In reality,

1 those statements of value and claimed discount were inflated by Defendant. Plaintiff Munning
 2 did not receive the benefit of Defendant's promise that she would be receiving shoes worth
 3 \$90.00 and savings of "22%". The shoes were not typically sold in New Jersey by anyone for a
 4 price as high as \$90.00, and the shoes were worth less than \$90.00; thus, Plaintiff Munning did
 5 not actually realize a "22% Savings" when she purchased the shoes for \$69.97.

6 128. Similarly, the Tommy Hilfiger tie purchased by Plaintiff Munning bore a price
 7 tag that promised "COMPARABLE VALUE 69.50" and "71% Savings". In reality, those
 8 statements of value and claimed discount were inflated by Defendant. Plaintiff Munning did
 9 not receive the benefit of Defendant's promise that she would be receiving a tie worth \$69.50
 10 and savings of "71%". The tie was not typically sold in New Jersey by anyone for a price as
 11 high as \$69.50, and the tie was worth less than \$69.50; thus, Plaintiff Munning did not actually
 12 realize a "71% Savings" when she purchased the tie for \$19.97.

13 129. With respect to omissions, Defendant at all relevant times had a duty to disclose
 14 the information in question because, *inter alia*: (a) Defendant had exclusive knowledge of
 15 material information that was not known to Plaintiff and the classes; (b) Defendant concealed
 16 material information from Plaintiff and the classes; and/or (c) Defendant made partial
 17 representations which were false and misleading absent the omitted information.

18 130. Defendant's misrepresentations and nondisclosures deceive and have a tendency
 19 to deceive the general public.

20 131. Defendant's misrepresentations and nondisclosures are material, in that a
 21 reasonable person would attach importance to the information and would be induced to act on
 22 the information in making purchase decisions.

23 132. As a direct and proximate result of these violations, Plaintiff and the classes
 24 suffered injury-in-fact and lost money.

25 133. Plaintiff and the classes paid more than they otherwise would have paid for the
 26 products they purchased from Defendant's Nordstrom Rack stores and they bought more than
 27 they otherwise would have bought from Defendant.

28 134. Plaintiff and the Classes did not enjoy the actual discounts Defendant

1 represented to them, and the products were not in fact worth the inflated amount that Defendant
 2 represented to them (i.e., the products were not actually worth the fictitious and inflated
 3 reference price).

4 135. Defendant's false advertising scheme has harmed all of its customers by
 5 fraudulently increasing demand for its products, thereby shifting the demand curve and
 6 enabling Defendant to charge its customers more than it otherwise could have charged and to
 7 generate more sales than it otherwise would have generated.

8 136. Defendant's conduct alleged herein caused substantial injury to Plaintiff, the
 9 classes, and the public. Defendant's conduct is ongoing and is likely to continue and recur
 10 absent a permanent injunction.

11 137. Pursuant to N.J.S.A. § 56:8-19, Plaintiff seeks, *inter alia*, actual damages, treble
 12 damages, and injunctive relief for herself and for the classes.

13 **COUNT II**

14 **Violation of the New Jersey Truth in Consumer Contract, Warranty, and Notice Act** 15 **(N.J.S.A. § 56:12-14, *et seq.*)**

16 138. Plaintiff realleges and incorporates by reference all paragraphs alleged
 17 hereinbefore.

18 139. Plaintiff and the class members are "consumers" within the meaning of N.J.S.A.
 19 § 56:12-15.

20 140. Defendant is a "seller" within the meaning of N.J.S.A. § 56:12-15.

21 141. The price tags on the merchandise sold by Defendant bearing the reference
 22 prices and claimed savings are consumer "**notices**," "**signs**" and/or "**warranties**" within the
 23 meaning of N.J.S.A. § 56:12-15.

24 142. By the acts alleged herein, Defendant has violated N.J.S.A. § 56:12-15 because,
 25 in the course of Defendant's business, Defendant has offered, displayed and presented written
 26 consumer notices, signs and warranties to Plaintiff and the classes which contained provisions
 27 that violated their clearly established legal rights under state law and federal law, within the
 28

1 meaning of N.J.S.A. § 56:12-15.

2 143. Specifically, the clearly established rights of Plaintiff and the classes under state
3 law include the right not to be subjected to unconscionable commercial practices and false
4 written affirmative statements of fact in the sale of goods, as described herein, which acts are
5 prohibited by the CFA, N.J.S.A. § 56:8-2.

6 144. Further, the clearly established rights of Plaintiff and the classes under federal
7 law include the right not to be subjected to false advertising in violation of 16 C.F.R. § 233.2.

8 145. Plaintiff and each class member are aggrieved consumers for the reasons set
9 forth herein, and specifically because, *inter alia*, each purchased item from Defendant bearing
10 the complained-of tags that set forth false reference prices and inflated discounts and suffered
11 an ascertainable loss under the CFA as described above.

12 146. Pursuant to N.J.S.A. § 56:12-17, Plaintiff seeks a statutory penalty of \$100 for
13 each class and sub-class member, as well as actual damages and attorneys' fees and costs. *See*
14 N.J.S.A. § 56:12-17, providing that a seller who violates the TCCWNA: **"shall be liable to the**
15 **aggrieved consumer for a civil penalty of not less than \$100.00 or for actual damages, or**
16 **both at the election of the consumer, together with reasonable attorney's fees and court**
17 **costs."** *See also United Consumer Fin. Servs. Co. v. Carbo*, 410 N.J. Super. 280, 310 (App.
18 Div. 2009), affirming the trial judge's decision to award the \$100 statutory penalty to each
19 class member under N.J.S.A. §56:12-17 of TCCWNA, stating:

20 [T]he \$100 civil penalty is not unreasonably disproportionate when
21 viewed in that context, whether it is considered with respect to an
22 individual consumer or the 16,845 consumers whose contracts included
23 the prohibited fee. We note that when assessing the constitutional
24 reasonableness of punitive damage awards, courts are directed to
25 consider and give "substantial deference" to judgments made by the
26 Legislature in fixing civil penalties. Nothing about the facts of this case
27 or the numerosity of this class warrants a more searching evaluation of
28 the reasonableness of awarding the civil penalty selected by the
Legislature to each member of this class.

(citation omitted).

COUNT III

Breach of Contract Under the Implied Covenant of Good Faith and Fair Dealing (All Statutory, Inherent, and Other Authority)

147. Plaintiff realleges and incorporates by reference all paragraphs alleged hereinbefore.

148. There was no written contract between Defendant and its customers, including Plaintiff and the class members.

149. Rather, by operation of the law of New Jersey, there existed an implied contract for the sale of goods between Defendant and each customer who purchased items from Nordstrom Rack stores in New Jersey.

150. By operation of law, there existed an implied duty of good faith and fair dealing in each such implied contract.

151. By the acts alleged herein, Defendant has violated that duty of good faith and fair dealing, thereby breaching the implied contract between Defendant and each class member.

152. Specifically, it was a violation of the duty of good faith and fair dealing for Defendant to falsely misrepresent the reference prices of the items offered for sale and the associated discounts.

153. As a direct and proximate result of Defendant's breach of the implied covenant of good faith and fair dealing, Plaintiff and the class members have been injured and have suffered actual damages in an amount to be established at trial.

COUNT IV

New Jersey Uniform Declaratory Judgment Act
(N.J.S.A. § 2A:16-51, *et seq.*)

154. Plaintiff realleges and incorporates by reference all paragraphs alleged hereinbefore.

155. Plaintiff and the class need, and are entitled to, an order for injunctive and declaratory relief:

a. declaring that Defendant's uniform policy of placing fictitious reference prices on the tags of merchandise, which are not based on actual prices offered or charged in New Jersey in the recent past, to be a violation of New Jersey law;

b. declaring Defendant's uniform policy of placing false, inflated discounts and false promised "**% Savings**" on the tags of merchandise to be a violation of New Jersey law; and

c. enjoining Defendant from continuing both of these policies.

156. Plaintiff and the class members have a significant interest in this matter in that each has been or will be subjected to the unlawful policies alleged herein.

157. Defendant is continuing to engage in both of the policies alleged herein.

158. Plaintiff is a long-time customer of Defendant's Nordstrom Rack stores and would like to shop there again, but brings this suit to ensure that the reference prices and promised "**% Savings**" listed on Defendant's price tags are genuine and not fictitious.

159. Based on the foregoing, a justifiable controversy is presented in this case, rendering declaratory judgment and injunctive relief appropriate.

PRAYER FOR RELIEF

160. In order to prevent injury to the general public, Plaintiff LAURIE MUNNING individually requests that the Court enter a public injunction enjoining Defendant from advertising false reference prices and/or false discounts.

161. Further, on behalf of herself and the proposed classes, Plaintiff requests that the Court order relief and enter judgment against Defendant as follows:

a. Declare this action to be a proper class action, certify the classes, and appoint Plaintiff and her counsel to represent the classes;

b. Find that Defendant's conduct alleged herein be adjudged and decreed in violation of the New Jersey laws cited above;

c. Order disgorgement or restitution, including, without limitation, disgorgement of all revenues, profits and/or unjust enrichment that Defendant obtained, directly or indirectly, from Plaintiff and the members of the classes or otherwise as a result of the unlawful conduct alleged herein;

d. Permanently enjoin Defendant from the unlawful conduct alleged herein;

e. Retain jurisdiction to police Defendant's compliance with the permanent

1 injunctive relief;

2 f. Order Defendant to pay damages and restitution to Plaintiff and the
3 classes in an amount to be proven at trial;

4 g. Order Defendant to pay punitive and exemplary damages to the extent
5 allowed by law;

6 h. Declare that Defendant is financially responsible for notifying all class
7 members of Defendant's deceptive advertising, sales, and marketing practices alleged herein;

8 i. Order Defendant to pay attorneys' fees, costs, and pre-judgment and
9 post-judgment interest to the extent allowed by law; and

10 j. Provide all other relief to which Plaintiff and the classes may show
11 themselves justly entitled.

12
13 DATED this 6th day of October, 2019.

14 Presented by:

15 HATTIS & LUKACS

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