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

CALLY FALLENSTEIN, on behalf of
herself and all others similarly situated,

Plaintiff,

vs.

PVH CORP., a Delaware Corporation,
PVH RETAIL STORES LLC, a
Delaware Limited Liability Company,
and DOES 1- 50, inclusive,

Defendants.

Case No. '21CV1690 AJB AGS

CLASS ACTION COMPLAINT

- 1. Violation of California’s Unfair Competition Laws (“UCL”);
CAL. BUS. & PROF. CODE §§ 17200, et seq.**
- 2. Violation of California’s False Advertising Laws (“FAL”);
CAL. BUS. & PROF. CODE §§ 17500, et seq.**
- 3. Violations of California Consumer Legal Remedies Act (“CLRA”);
CAL. CIV. CODE §§ 1750, et seq.**

DEMAND FOR JURY TRIAL

1 Plaintiff Cally Fallenstein (“Plaintiff”) brings this action, on behalf of herself and all
2 others similarly situated, against Defendants PVH Corp. and PVH Retail Stores LLC (“PVH
3 Retail” and, collectively with PHV Corp., “Defendants”), and states:

4 **I. NATURE OF THE ACTION**

5 1. American consumers thrive on finding the best deal. Retailers, including
6 Defendants, are keen to this fact and try to lure consumers to purchase their goods with
7 advertised sales that promise huge savings off the regular price. But the promised savings
8 are false if a retailer simply recasts its regular price as a discount from some higher,
9 fictitious “original” price that no one ever pays. This class action seeks monetary damages,
10 restitution, declaratory and injunctive relief from Defendants arising from their deceptive
11 business practice of advertising fictitious reference prices and corresponding phantom
12 discounts on Calvin Klein branded outlet merchandise sold in Defendants’ Calvin Klein
13 outlet stores in California.

14 2. The practice of false reference pricing occurs when a retailer fabricates a false
15 “original” price, and then offers an item for sale at a deeply “discounted” price. The result
16 is a sham price disparity that misleads consumers into believing they are receiving a good
17 deal and induces them into making a purchase. In reality, the practice artificially inflates
18 the true market price for these items by raising consumers’ internal reference price, and
19 therefore the value, ascribed to these products by consumers. The practice enables retailers,
20 like Defendants, to sell their goods above their true market price. Consumers are damaged
21 by the inflated market price that is established by the false-discounting scheme.

22 3. An overview of the illegal scheme and attendant harm are best demonstrated
23 by the following example: Take a retailer who is in the business of selling suits. That retailer
24 knows it can sell a particular suit at \$250.00. That \$250.00 price represents the “market”
25 price for the suit and the price at which the retailer regularly offers the suit for sale and
26 makes a profit. The retailer then offers the suit on sale. However, instead of discounting
27 the suit from its true original price of \$250.00, the retailer utilizes an inflated, “original”
28 price for the suit and lists it at \$1,000.00, and then holds it out for sale at **70% off**—rendering

1 the “*sale*” price of the suit \$300.00. Consumers who happen upon that purported fake “sale”
2 are influenced by the amount of the perceived, substantial discount. By presenting the
3 consumer with a false “original” price of \$1,000.00, the retailer has increased demand for
4 the suit through the *perceived value* of both the suit itself and the substantial discount of
5 \$700.00. This effect, in turn, impacts the market price of the suit because more consumers
6 are willing to pay \$300.00 for a suit they believed was once sold for \$1,000.00, when, in
7 fact, the true market price of the suit, without the false discount, was \$250.00. If the retailer
8 tried to sell that same suit, for \$300.00, *without* offering the false original price of \$1,000.00
9 and the attendant 70% off discount, that retailer would not be able to sell any suits at
10 \$300.00 because the true market price of the suit is \$250.00. Thus, through the use of a
11 false original price and the corresponding phantom discount of 70% off, the retailer was
12 able create a false “market” price for the suit—at \$300.00. Plaintiff’s case seeks that
13 disparity—the impact on the increase in market price from \$250.00 to \$300.00 through the
14 Defendants’ application of an illegal discounting scheme.

15 4. Retailers, including Defendants, substantially benefit from employing false
16 reference pricing schemes and experience increased sales because consumers use advertised
17 reference prices to make purchase decisions. The information available to consumers varies
18 for different types of products, but consumers frequently lack full information about a
19 product and, as a result, can incorporate information from sellers to make purchase
20 decisions.

21 5. Through their false and misleading marketing, advertising, and pricing scheme
22 alleged herein, Defendants violated, and continue to violate, California and federal law
23 which prohibit the advertisement of goods for sale discounted from former prices that are
24 false. California and federal law also prohibit the dissemination of misleading statements
25 about the existence and amount of price reductions. Specifically, Defendants violated, and
26 continue to violate: California’s Unfair Competition Law, CAL. BUS. & PROF. CODE
27 §§ 17200, *et seq.* (the “UCL”); California’s False Advertising Law, CAL. BUS. & PROF.
28 CODE §§ 17500, *et seq.* (the “FAL”); the California Consumer Legal Remedies Act, CAL.

1 CIV. CODE §§ 1750, *et seq.* (the “CLRA”); and the Federal Trade Commission Act
2 (“FTCA”), which prohibits “unfair or deceptive acts or practices in or affecting commerce”
3 (15 U.S.C. § 45(a)(1)) and false advertisements (15 U.S.C. § 52(a)).

4 6. Plaintiff brings this action on behalf of herself and other similarly situated
5 consumers who have purchased one or more Calvin Klein branded outlet products from a
6 Calvin Klein outlet store in California that was deceptively represented as discounted from
7 a false reference price. Plaintiff seeks to halt the dissemination of this false, misleading, and
8 deceptive pricing scheme, to correct the false and misleading perception it has created in
9 the minds of consumers, and to obtain redress for those who have purchased merchandise
10 tainted by this deceptive pricing scheme. Plaintiff also seeks to enjoin Defendants from
11 using false and misleading misrepresentations regarding former price comparisons in their
12 labeling and advertising permanently. Further, Plaintiff seeks to obtain damages, restitution,
13 and other appropriate relief in the amount by which Defendants were unjustly enriched as
14 a result of their sales of merchandise offered at a false discount.

15 7. Finally, Plaintiff seeks reasonable attorneys’ fees pursuant to CAL. CIV. PROC.
16 CODE § 1021.5, as this lawsuit seeks the enforcement of an important right affecting the
17 public interest and satisfies the statutory requirements for an award of attorneys’ fees.

18 **II. JURISDICTION AND VENUE**

19 8. This Court has original jurisdiction of this action pursuant to the Class Action
20 Fairness Act, 28 U.S.C. § 1332(d)(2). The matter in controversy, exclusive of interest and
21 costs, exceeds the sum or value of \$5,000,000 and at least some members of the proposed
22 Class (defined below) have a different citizenship from Defendants.

23 9. The Southern District of California has personal jurisdiction over Defendants
24 because Defendants are corporations or other business entities which conduct business in
25 the State of California. Defendants conduct sufficient business with sufficient minimum
26 contacts in California, and/or otherwise intentionally avail themselves to the California
27 market through the operation of the Calvin Klein outlet stores within the State of California.

1 10. Venue is proper under 28 U.S.C. § 1391(b)(2) because Defendants transact
 2 substantial business in this District, and a substantial part of the events giving rise to
 3 Plaintiff's claims arose here.

4 III. GENERAL ALLEGATIONS

5 A. Retailers Benefit from False Reference Pricing Schemes.

6 11. Defendants engage in a false and misleading reference price scheme in the
 7 marketing and selling of their products in their Calvin Klein outlet stores.

8 12. Retailers substantially benefit from employing false reference pricing schemes
 9 and experience increased sales because consumers use advertised reference prices to make
 10 purchase decisions. The information available to consumers varies for different types of
 11 products,¹ but consumers frequently lack full information about a product and, as a result,
 12 can incorporate information from sellers to make purchase decisions.²

13 13. Defendants' deceptive advertised reference prices are thus incorporated into
 14 the consumer's decision process. First, a product's "price is also used as an indicator of
 15 product quality."³ In other words, consumers view Defendants' deceptive advertised
 16 reference prices as a proxy for product quality. Second, reference prices "appeal[] to
 17
 18

19 ¹ Even within a product, consumers may have imperfect information on the individual
 20 attributes. Economists describe "search goods" as those whose attributes "can be
 21 ascertained in the search process prior to purchase" (e.g., style of a shirt), "experience
 22 goods" as those whose attributes "can be discovered only after purchase as the product is
 23 used" (e.g., longevity of a shirt), and "credence goods" as those whose attributes "cannot
 24 be evaluated in normal use" (e.g., whether the shirt's cotton was produced using organic
 25 farming methods). Darby, Michael R., and Edi Karni. "Free Competition and the Optimal
 Amount of Fraud." *The Journal of Law and Economics* 16 no. 1 (1973): 67-88, pp. 68-69.

26 ² "Not only do consumers lack full information about the prices of goods, but their
 27 information is probably even poorer about the quality variation of products simply because
 28 the latter information is more difficult to obtain". Nelson, Phillip. "Information and
 Consumer Behavior." *Journal of Political Economy* 78, no. 2 (1970): 311-329, pp. 311-
 312.

³ Grewal, Dhruv, and Larry D. Compeau. "Comparative price advertising: Informative or
 deceptive?" *Journal of Public Policy & Marketing* (1992): 52-62, p. 54. Also see Thaler,
 Richard. "Mental Accounting and Consumer Choice." *Marketing Science* 4, no. 3 (1985):
 199-214, p. 212 ("The [reference price] will be more successful as a reference price the less
 often the good is purchased. The [reference price] is most likely to serve as a proxy for
 quality when the consumer has trouble determining quality in other ways (such as by
 inspection)").

1 consumers' desire for bargains or deals."⁴ Academic researchers note how consumers
 2 "sometimes expend more time and energy to get a discount than seems reasonable given
 3 the financial gain involved," and "often derive more satisfaction from finding a sale price
 4 than might be expected on the basis of the amount of money they actually save."⁵ Under
 5 this concept, coined as "transaction utility" by Noble Prize-winning economist Richard
 6 Thaler, consumers place some value on the psychological experience of obtaining a product
 7 at a perceived bargain.⁶

8 14. Research in marketing and economics has long recognized that consumer
 9 demand can be influenced by "internal" and "external" reference prices.⁷ Internal reference
 10 prices are "prices stored in memory" (*e.g.*, a consumer's price expectations adapted from
 11 past experience) while external reference prices are "provided by observed stimuli in the
 12 purchase environment" (*e.g.*, a "suggested retail price," or other comparative sale price).⁸
 13 Researchers report that consumer's internal reference prices adjust toward external
 14 reference prices when valuing a product.⁹ For infrequently purchased products, external
 15 reference prices can be particularly influential because these consumers have little or no

16 _____
 17 ⁴ Grewal, Dhruv, and Larry D. Compeau. "Comparative price advertising: Informative or
 18 deceptive?" *Journal of Public Policy & Marketing* (1992): 52-62, p. 52.

19 ⁵ Darke, Peter and Darren Dahl. "Fairness and Discounts: The Subjective Value of a
 20 Bargain." *Journal of Consumer Psychology* 13, no 3 (2003): 328-338, p. 328.

21 ⁶ "To incorporate ... the psychology of buying into the model, two kinds of utility are
 22 postulated: *acquisition utility* and *transaction utility*. The former depends on the value of
 23 the good received compared to the outlay, the latter depends solely on the perceived merits
 24 of the 'deal'". Thaler, Richard. "Mental Accounting and Consumer Choice." *Marketing
 Science* 4, no. 3 (1985): 199-214, p. 205.

25 ⁷ Empirical results "suggest that internal reference prices are a significant factor in purchase
 26 decisions. The results also add empirical evidence that external reference prices
 27 significantly enter the brand-choice decision." Mayhew, Glenn E. and Russell S. Winer.
 28 "An Empirical Analysis of Internal and External Reference Prices using Scanner Data."
Journal of Consumer Research 19, no. 1 (1992): 62-70, p. 68.

⁸ Mayhew, Glenn E. and Russell S. Winer. "An Empirical Analysis of Internal and External
 Reference Prices using Scanner Data." *Journal of Consumer Research* 19, no. 1 (1992): 62-
 70, p. 62.

⁹ "Buyers' internal reference prices adapt to the stimuli prices presented in the
 advertisement. That is, buyers either adjust their internal reference price or accept the
 advertised reference price to make judgments about the product's value and the value of the
 deal." Grewal, Dhruv, Kent B. Monroe, and Ramayya Krishnan. "The Effects of Price-
 Comparison Advertising on Buyers' Perceptions of Acquisition Value, Transaction Value,
 and Behavioral Intentions." *The Journal of Marketing* 62 (1998): 46-59, p. 48.

1 prior internal reference.¹⁰ In other words, “[t]he deceptive potential of such advertised
 2 reference prices are likely to be considerably higher for buyers with less experience or
 3 knowledge of the product and product category.”¹¹ Academic literature further reports that
 4 “there is ample evidence that consumers use reference prices in making brand choices”¹²
 5 and publications have summarized the empirical data as follows:

6 Inflated reference prices can have multiple effects on consumers. They can
 7 increase consumers’ value perceptions (transaction value and acquisition
 8 value), reduce their search intentions for lower prices, increase their purchase
 9 intentions, and reduce their purchase intentions for competing products ...
 10 Inflated and/or false advertised reference prices enhance consumers’ internal
 11 reference price estimates and, ultimately, increase their perceptions of value
 12 and likelihood to purchase[.]¹³

13 15. Retailers, including Defendants, understand that consumers are susceptible to
 14 a good bargain, and therefore, Defendants have a substantial financial interest in making
 15 the consumer believe they are receiving a good bargain, even if they are not. A product’s
 16 reference price matters to consumers because it serves as a baseline upon which consumers
 17 perceive a product’s value.

18 **B. California State and Federal Pricing Regulations Prohibit False “Original
 19 price” references and Out-Dated “Original price” references.**

20 16. Under California law, a retailer may only discount an item from its own
 21 *original price* for up to 90 days, or in the alternative, it may offer a discount from the
 22 original price of an item being offered by a competitor, within the relevant market, for up
 23 to 90 days. In either scenario, a retailer can only offer a “sale” from an original price for
 24 90 days. At that point, on day 91, the retailer has two options: the product must either return

25 ¹⁰ As Thalen notes, “the [suggested retail price] will be more successful as a reference price
 26 the less often the good is purchased.” Thaler, Richard. “Mental Accounting and Consumer
 27 Choice.” *Marketing Science* 4, no. 3 (1985): 199-214, p. 212.

28 ¹¹ Grewal, Dhruv, and Larry D. Compeau. “Pricing and public policy: A research agenda
 and an overview of the special issue.” *Journal of Public Policy & Marketing* 18, no. 1
 (1999): 3-10, p. 7.

¹² Kalyanaram, Gurusurthy, and Russell S. Winer. “Empirical Generalizations from
 Reference Price Research.” *Marketing Science* 14, no. 3 (1995): G161-G169, p. G161.

¹³ Grewal, Dhruv, and Larry D. Compeau. “Pricing and public policy: A research agenda
 and an overview of the special issue.” *Journal of Public Policy & Marketing* 18, no. 1
 (1999): 3-10, p. 7.

1 to its full original price, or the retailer may continue to sell the product at the discounted
 2 price, as long as it discloses to the consumer the date on which the product was last
 3 offered for sale at its full retail price. See BUS. & PROF. CODE § 17501. Under California
 4 law, a retailer cannot use an old, outdated, “original price” as the basis for a sale or discount,
 5 unless it discloses to the consumer the date on which the prior original price was offered in
 6 the market.

7 17. Additionally, under the FCTA, when a retailer offers a discount from its own,
 8 former **original price**, the original price is required to have been a price at which the retailer
 9 held that item out for sale on a regular basis, for a commercially reasonable period of
 10 time. See 16 C.F.R. § 233.1(a) and (b) (emphasis added).

11 **C. Defendants’ Fraudulent Price Discounting Scheme Violates California**
 12 **State and Federal Regulations.**

13 18. Defendants advertise merchandise for sale by listing on the merchandise’s
 14 price tag a fictitious or misleading **Manufacturer’s Suggested Retail Price (“MSRP”)**
 15 appearing alongside a corresponding sale sign such as “_% off” or “\$29.99” to arrive at its
 16 “sale price.” This seeming discount from Defendants’ “MSRP” reference price conveys to
 17 consumers, including to Plaintiff, “the product’s worth and the prestige that ownership of
 18 the product conveys.” *Hinojos v. Kohl’s Corp.*, 718 F.3d 1098 (9th Cir. 2013) (citing Dhruv
 19 Grewal & Larry D. Compeau, Comparative Price Advertising: Informative or Deceptive?,
 20 11 J. Pub. Pol’y & Mktg. 52, 55 (Spring 1992) (“By creating an impression of savings, the
 21 presence of a higher reference price enhances subjects’ perceived value and willingness to
 22 buy the product.”). “Misinformation about a product’s ‘normal’ price is...significant to
 23 many consumers in the same way as a false product label would be.” *Hinojos*, 718 F.3d
 24 at 1106.

25 19. The reason why the “MSRP” reference price is either false or misleading is
 26 because Defendants either: 1) have never offered the outlet goods for sale at the “MSRP”
 27 (in the case of its “made for outlet” merchandise), or 2) have offered the outlet merchandise
 28 for sale at their “MSRP” at some time period in the distant past—in violation of the 90-day

1 time period afforded them to discount merchandise under California law¹⁴ and the federal
2 regulation requiring the discount to be presented from a recent, regularly offered, original
3 price.

4 20. Additionally, Defendants are not offering a discount or a percentage off
5 (% off) a competitor's price for goods offered for sale in the relevant market. In the case of
6 its "made for outlet" products, there are no other retailers who sell those goods; they are
7 exclusively sold by Defendants' Calvin Klein outlets. In the case of their out of season
8 merchandise, the Calvin Klein merchandise being offered at Defendants' outlet stores is not
9 offered at any other relevant market competitors in the 90-day time period preceding the
10 sale because it is old and outdated.

11 21. How the scheme works: on all merchandise sold in the Calvin Klein outlet
12 stores, Defendants represent to consumers a "**MSRP**" on the product's price tag (i.e.,
13 \$49.00). Defendants then publish the proffered discount as a percentage off (i.e., 40% off)
14 or at a sale price (i.e., \$29.99). The represented discounts are advertised on placards placed
15 at, on, or above the particular products being discounted.

16 22. The "**MSRP**" reference price thus represents to consumers the merchandise's
17 "original price, while the "sale" price denotes to consumers a significantly discounted price,
18 or savings from the regular higher price.

19 23. Defendants' Calvin Klein outlets do not offer any outlet merchandise at the
20 full, or original price—ever. Every product in the store is discounted from an original price,
21 the minute it hits the floor.

22 24. Defendants' perpetual discounting of the Calvin Klein outlet merchandise
23 constitutes false, fraudulent, and deceptive advertising because the "**MSRP**" reference price
24 listed is substantially higher than those prices ever actually offered by Defendants in their
25 outlet stores. The reference price is used exclusively as a benchmark from which the false
26 discount and corresponding "sale" price is derived. Defendants' scheme has the effect of

27
28 ¹⁴ If Defendants continued to offer a discount from an original price, beyond the 90-day
time period afforded it under California law, they were required to disclose the date on
which the original prices were last offered. Defendants do not make any such disclosure.

1 tricking consumers into believing they are getting a significant deal by purchasing
2 merchandise at a steep discount, when, in reality, consumers are paying for merchandise at
3 its usual retail price. Defendants’ deceptive pricing scheme further artificially raises the
4 prices actually paid by consumers by creating the false impression of a bargain.

5 25. Defendants’ Calvin Klein outlet merchandise is *never* offered for sale, nor
6 actually sold, at its advertised “**MSRP**” reference price. Similarly, regular Calvin Klein
7 merchandise, that may have been previously offered for sale at other retailers or online, is
8 never offered for sale at Calvin Klein outlet stores, at its advertised original price, within
9 90 days of that price being offered in the market. Upon information and belief, “out of
10 season” Calvin Klein merchandise is a small percentage of Defendants’ outlet stores’ total
11 inventory and is typically several years removed from being marketed at the original price,
12 if ever.

13 26. Nowhere in Defendants’ Calvin Klein outlet stores do Defendants disclose that
14 the reference or original prices used are not: 1) former prices; or 2) are not recent (within
15 90 days), regularly offered former prices; or 3) prices at which identical products are sold
16 elsewhere in the market. Nor do Defendants disclose the date at which the original prices
17 were offered in the market or by one of Defendants’ other retailers. The omission of these
18 disclosures, coupled with Defendants’ use of fictitious advertised reference prices, renders
19 Defendants’ outlet pricing inherently misleading.

20 27. Thus, the advertised reference prices are false and induce consumers into
21 believing that the merchandise was once sold at the reference price, and will be again if the
22 consumer does not make a purchase at the “bargain” price. Defendants engage in this
23 practice knowing full-well that the advertised products are never actually offered or sold at
24 the advertised reference prices or never actually offered or sold at the advertised reference
25 prices within 90 days of them being discounted in the Calvin Klein outlet store.

26 28. Moreover, the advertised discounts were fictitious because the “**MSRP**”
27 reference prices did not represent a *bona fide* price at which Defendants previously sold or
28 offered to sell the products, on a regular basis, for a commercially reasonable period of time,

1 as required by the Federal Trade Commission (“FTC”). In addition, the represented
2 advertised reference prices were not the prevailing market retail prices within the three
3 months (90 days) immediately preceding the publication of the advertised former reference
4 price, as required by California law.

5 29. Thus, Defendants’ scheme intends to, and does, provide misinformation to the
6 customer. This misinformation communicates to consumers, including Plaintiff, that the
7 products sold in Defendants’ outlets have a greater value than the advertised discounted
8 price.

9 **D. Investigation**

10 30. An investigation of Calvin Klein outlet stores conducted by Plaintiff’s counsel
11 (Plaintiff’s Investigation”) revealed that Defendants’ outlet store merchandise is priced
12 uniformly. That is, Calvin Klein outlet merchandise sold at Defendants’ outlet stores bears
13 a price tag with a false “**MSRP**” reference price, along with a substantially discounted sale
14 price of “_% off” or, for example, “\$29.99.” Plaintiff’s Investigation confirmed that the
15 merchandise purchased by Plaintiff was priced with a false reference price and a
16 corresponding discounted price for at least the 90-day period immediately preceding
17 Plaintiff’s purchase in violation of California law and the FTCA.

18 31. Plaintiff’s counsel’s investigators cataloged the pricing practices of Calvin
19 Klein outlet stores across California, including in Los Angeles (Citadel Outlets), San Diego
20 (Las Americas Premium Outlets), and Carlsbad (Carlsbad Premium Outlets), as well as
21 Calvin Klein outlet stores in Chicago, Illinois, and Tinton Falls, New Jersey, and Grove
22 City, Pennsylvania, from June of 2019 through October of 2019. Plaintiff’s Investigation
23 revealed that items listed for sale in Defendants’ outlets were never offered for sale at their
24 full “**MSRP**” reference price. Plaintiff’s counsel’s investigators visited Calvin Klein outlet
25 stores consistently throughout the investigation period to verify the prices being offered on
26 Defendants’ outlet merchandise. The prices were uniform across all stores visited in
27 California. All items, including the merchandise purchased by Plaintiff, in the Calvin Klein
28 outlet stores were priced at a discount in the 90 days prior to Plaintiff’s purchase, discussed

1 below. A sample of the products tracked, which remained continuously discounted
2 throughout the observed period, include CK Leggings, Woven Top, Lightly Lined Bra, CK
3 Graphic Tee, The Authentic Five-Pocket Pant, Slim Fit Top, and men's Straight Jeans. *See*
4 Exhibit A, Investigation Summary.

5 32. Additionally, Plaintiff's Investigation attempted to locate the items sold at the
6 Calvin Klein outlet store in other distribution channels in the relevant market. For example,
7 in San Diego, Plaintiff's Investigation verified that the merchandise sold at Calvin Klein
8 outlet stores was *not* the same as Calvin Klein merchandise offered for sale at mainline
9 Calvin Klein retail stores, Macy's, Bloomingdale's, Nordstrom, Nordstrom Rack, Kohl's,
10 Ross Dress for Less, or TJ Max. Plaintiff's Investigation compared the items tracked in the
11 Calvin Klein outlet stores to Calvin Klein merchandise offered for sale at the
12 aforementioned retailers on a monthly basis during the course of the investigation.

13 33. Thus, the "**MSRP**" on the Calvin Klein merchandise sold at Defendants;
14 Calvin Klein outlet stores, including the "**MSRP**" listed on the products Plaintiff purchased,
15 are either false original prices or severely outdated prices that have not been offered in the
16 relevant market or at a Calvin Klein store for at least the three months (90 days) immediately
17 preceding Plaintiff's purchase.

18 34. The false reference price and corresponding discount price scheme were both
19 uniform and identical on almost all of the merchandise sold at Defendants' outlet stores.
20 The only thing that changed was the requisite " % off" or sale price on certain merchandise
21 items.

22 35. The fraudulent pricing scheme applies to all Calvin Klein outlet merchandise
23 offered on sale at Defendants' California outlet stores, including the products purchased by
24 Plaintiff as described below.

25 IV. PARTIES

26 **Plaintiff**

27 36. Plaintiff resides in San Diego County, California. Plaintiff, in reliance on
28 Defendants' false and deceptive advertising, marketing and discounting pricing schemes,

1 purchased a small grey cardigan sweater, a medium green V-neck blouse, and a medium
2 black tank top at a Calvin Klein outlet store located at the Las Americas Premium Outlets,
3 4265 Camino De La Plaza, San Diego, CA 92173 on October 1, 2019. Plaintiff examined
4 several women's apparel products at Defendants' San Diego outlet store before deciding on
5 a grey cardigan, a green blouse, and a black tank top after reviewing the items' advertised
6 sale prices. The grey cardigan purchased was advertised with a "**MSRP**" of \$98.00 and a
7 "sale" price of \$49.00 (50% off). The green V-neck blouse Plaintiff purchased was
8 advertised with a "**MSRP**" of \$69.00 and a "sale" price of \$34.75 (50% off). The black tank
9 top Plaintiff purchased was advertised with a "**MSRP**" of \$59.00 and a "sale" price of
10 \$29.50 (50% off). Plaintiff's receipt described the *actual* sale price of each item as the "New
11 Price." During her time at the San Diego outlet store on October 1, 2019, Plaintiff noticed
12 numerous signs within the store advertising a "__% off" over items throughout the store.
13 Plaintiff noticed that most, if not all, items in the store were accompanied by an in-store
14 sign purporting to represent a "__% off."

15 37. After observing the "**MSRP**" of the items and the accompanying sale prices,
16 Plaintiff believed she was receiving a significant discount on the items she had chosen.
17 Because she liked the items and felt that the discounted price would likely not last, and that
18 she was getting a significant bargain on the merchandise, she proceeded to the register and
19 purchased the products. The "**MSRP**" and corresponding sale price of the items led Plaintiff
20 to believe that she was purchasing authentic Calvin Klein merchandise that was previously
21 available at Calvin Klein retail stores or other retail stores at the advertised reference prices,
22 or sold formerly for that price at the outlet store. She paid a total of \$122.03 with tax.

23 38. However, the merchandise Plaintiff purchased was never offered for sale at the
24 listed "**MSRP**" reference price on the price tag and certainly not within the three months
25 (90 days) preceding Plaintiff's purchase. Neither Plaintiff's receipt nor any in-store signage
26 observed or relied upon by Plaintiff indicated to her that the products she purchased were
27 not offered previously at the advertised reference price at Defendants' Calvin Klein outlet
28 store or elsewhere.

1 39. Neither Plaintiff's receipt, nor in-store signage, nor information listed on the
2 price tags suggested that the products were exclusive. Plaintiff was damaged in her purchase
3 because Defendants' false reference price discounting scheme inflated the true market value
4 of the products she purchased. Despite being misled by Defendants with respect to the
5 products she purchased, Plaintiff lacks personal knowledge as to Defendants' specific
6 pricing practices relating to all its California outlet merchandise. Consequently, Plaintiff is
7 susceptible to reoccurring harm because she cannot be certain that Defendants have
8 corrected their deceptive pricing scheme, and she desires to continue to purchase Calvin
9 Klein outlet merchandise from Calvin Klein California outlet stores, assuming that she
10 could determine whether she was receiving authentic Calvin Klein products at a true
11 bargain. However, she currently cannot trust that Defendants will label and/or advertise the
12 merchandise truthfully and in a non-misleading fashion in compliance with applicable law.
13 Plaintiff simply does not have the resources to ensure that Defendants are complying with
14 California and federal law with respect to their pricing, labeling and advertising of their
15 California outlet merchandise. An injunction is the only form of relief which will guarantee
16 Plaintiff and other consumers the appropriate assurances.

17 40. Additionally, because of the wide selection of merchandise available at
18 Defendants' California outlet stores, the fact that there are numerous items of outlet
19 merchandise involved in Defendants' deceit, and due to the likelihood that Defendants may
20 yet develop and market additional outlet merchandise items for sale at their California outlet
21 stores, Plaintiff may again, though by mistake, purchase a falsely discounted product from
22 Defendants under the impression that the advertised reference price represents a *bona fide*
23 former price at which the item was previously offered for sale by Defendants. Indeed,
24 Plaintiff regularly shops at outlet stores, including Defendants', and she desires to continue
25 purchasing merchandise from Calvin Klein outlet stores in the future. Moreover, Class
26 members will continue to purchase the Calvin Klein California outlet merchandise,
27 reasonably, but incorrectly, believing that its advertised reference prices represent *bona fide*
28 former prices at which the merchandise was previously offered for sale by Defendants.

1 41. Accordingly, Plaintiff, Class members and the general public lack an adequate
2 remedy at law. Absent an equitable injunction enjoining Defendants from continuing in the
3 unlawful course of conduct alleged herein, Plaintiff, Class members and the public will be
4 irreparably harmed and denied an effective and complete remedy because they face a real
5 and tangible threat of future harm emanating from Defendants' ongoing conduct, which
6 cannot be remedied with monetary damages.

7 42. Moreover, Plaintiff lacks an adequate remedy at law with respect to her claim
8 for equitable restitution because she has not yet retained an expert to determine whether an
9 award of damages can or will adequately remedy her monetary losses caused by
10 Defendants. Particularly, as legal damages focus on remedying the loss to the plaintiff, and
11 equitable restitution focuses wholly distinctly on restoring monies wrongly acquired by the
12 defendant, legal damages are inadequate to remedy Plaintiff's loss because Plaintiff does
13 not know at this juncture, and is certainly not required to set forth evidence, whether a model
14 for legal damages (as opposed to equitable restitution) will be viable or will adequately
15 compensate Plaintiff's losses.

16 43. Finally, Plaintiff's case is substantially predicated on Defendants' violations
17 of CAL. BUS. & PROF. CODE § 17501, an equitable claim, as Plaintiff's Investigation
18 revolved around ensuring that Defendants did not sell outlet merchandise within the 90 days
19 preceding Plaintiff's purchase and, likewise, that Defendants failed to disclose to consumers
20 the date on which outlet merchandise was last offered at their advertised reference price.
21 This claim and test of liability go to the heart of Plaintiff's case and the same test is not
22 available under a CLRA legal claim for damages. Thus, Plaintiff does *not* have an adequate
23 remedy at law because the CLRA does not provide the same metric of liability as CAL.
24 BUS. & PROF. CODE § 17501, which is integral not only to Plaintiff's prayer for restitution,
25 but also to Plaintiff's very theory of liability at trial. Accordingly, Plaintiff may set forth
26 alternate claims for legal damages and equitable restitution.

27

28

1 **Defendants**

2 44. Plaintiff is informed and believes, and upon such information and belief
3 alleges, PVH Corp. is a Delaware corporation with its principal executive offices at
4 200 Madison Ave, New York, NY 10016. PHV Corp. operates Calvin Klein outlet stores,
5 as well as the calvinklein.com website, and advertises, markets, distributes, and/or sells
6 clothing and clothing accessories in California and throughout the United States.

7 45. Plaintiff is informed and believes, and upon such information and belief
8 alleges, PVH Retail is a Delaware limited liability company with is principal executive
9 offices at 200 Madison Ave, New York, NY 10016. PHV Retail operates Calvin Klein outlet
10 stores, as well as the calvinklein.com websites, and advertises, markets, distributes, and/or
11 sells clothing and clothing accessories in California and throughout the United States.

12 46. Plaintiff is informed and believes, and upon such information and belief
13 alleges, that Calvin Klein was acquired in 2002 by Defendants for more than \$400 million
14 in cash.

15 47. Plaintiff is informed and believes, and thereon alleges, that Defendants operate
16 at least 18 Calvin Klein outlet locations in California.

17 48. Plaintiff is informed and believes, and thereon alleges, that all times material
18 hereto and mentioned herein, each defendant sued herein was the agent, servant, employer,
19 joint venture, partner, subsidiary, parent, division, alias, and/or alter ego of each of the
20 remaining defendants and was, at all times, acting within the purpose and scope of such
21 agency, servitude, employment, ownership, subsidiary, alias, and/or alter ego and with the
22 authority, consent, approval, control, influence, and ratification of each remaining
23 defendant sued herein.

24 49. Plaintiff does not know the true names or capacities of the persons or entities
25 sued herein as Does 1-50, inclusive, and therefore sues such defendants by such fictitious
26 names. Plaintiff is informed and believes, and upon such information and belief alleges,
27 that each of the Doe defendants is in some manner legally responsible for the damages
28 suffered by Plaintiff and the Class members as alleged herein. Plaintiff will amend her

1 Complaint to set forth the true names and capacities of these defendants when they have
2 been ascertained, along with appropriate charging allegations, as may be necessary.

3 50. The reference prices listed and advertised on products sold at Defendants'
4 outlet stores are false or severely outdated reference prices, utilized only to perpetuate
5 Defendants' false discount scheme.

6 51. Defendants know that their reference price advertising is false, deceptive,
7 misleading, and unlawful under California and federal law.

8 52. Defendants fraudulently concealed from, and intentionally failed to disclose
9 to, Plaintiff and other members of the Class the truth about their advertised discount prices
10 and former reference prices.

11 53. At all relevant times, Defendants have been under a duty to Plaintiff and the
12 Class to disclose the truth about their false discounts.

13 54. Plaintiff reasonably relied upon Defendants' artificially inflated reference
14 prices and false discounts when purchasing the products from Defendants' Calvin Klein
15 outlet store in San Diego, California. Plaintiff would not have made such purchase but for
16 Defendants' representations regarding the substantial discounts being offered on the
17 merchandise. Plaintiff would like to continue shopping at Defendants' outlet stores in the
18 future but cannot be certain of the veracity of Defendants' advertised bargains.

19 55. Plaintiff and the Class reasonably and justifiably acted and relied on the
20 substantial price differences that Defendants advertised, and made purchases believing that
21 they were receiving a substantial discount on an item of greater value than it actually was.
22 Plaintiff, like other Class members, was lured in and damaged by the deceptive pricing
23 scheme that Defendants carried out because of her reliance upon Defendants'
24 misrepresentations.

25 **V. CLASS ALLEGATIONS**

26 56. Plaintiff brings this action on behalf of herself and all other similarly situated
27 Class members pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil
28

1 Procedure and seeks certification of the following Class against Defendants for violations
2 of California state laws:

3 All persons, within the State of California, who, within the preceding four
4 years (the “Class Period”), purchased from a California Calvin Klein outlet
5 store one or more products at a purported discount from an advertised
“reference” price and who have not received a refund or credit for their
purchase(s).

6 Excluded from the Class are Defendants, as well as its officers, employees, agents or
7 affiliates, parent companies and/or subsidiaries, and each of their respective officers,
8 employees, agents or affiliates, and any judge who presides over this action. Plaintiff
9 reserves the right to expand, limit, modify, or amend this Class definition, including the
10 addition of one or more subclasses, in connection with her motion for Class certification,
11 or at any other time, based upon, *inter alia*, changing circumstances and/or new facts
12 obtained during discovery.

13 57. **Numerosity:** The Class members are so numerous that joinder of all members
14 is impracticable. Plaintiff is informed and believes that the proposed Class contains
15 hundreds of thousands of individuals who have been damaged by Defendants’ conduct as
16 alleged herein. The precise number of Class members is unknown to Plaintiff.

17 58. **Existence and Predominance of Common Questions of Law and Fact:** This
18 action involves common questions of law and fact, which predominate over any questions
19 affecting individual Class members. These common legal and factual questions include,
20 but are not limited to, the following:

21 a. whether, during the Class Period, Defendants used falsely advertised
22 reference prices on its outlet products labels and falsely advertised price discounts on
23 merchandise sold in its outlet stores;

24 b. whether, during the Class Period, the reference prices advertised by
25 Defendants were the prevailing market prices for the products in question during the
26 three month period preceding the dissemination and/or publication of the advertised
27 former prices;

28

1 c. whether Defendants' alleged conduct constitutes violations of the laws
2 asserted;

3 d. whether Defendants engaged in unfair, unlawful and/or fraudulent
4 business practices under the laws asserted;

5 e. whether Defendants engaged in false or misleading advertising;

6 f. whether Plaintiff and Class members are entitled to damages and/or
7 restitution and the proper measure of that loss; and

8 g. whether an injunction is necessary to prevent Defendants from
9 continuing to use false, misleading or illegal price comparison.

10 59. **Typicality:** Plaintiff's claims are typical of the claims of the Class members
11 because, *inter alia*, all Class members have been deceived (or were likely to be deceived)
12 by Defendants' false and deceptive price advertising scheme, as alleged herein. Plaintiff is
13 advancing the same claims and legal theories on behalf of himself and all Class members.

14 60. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the Class
15 members. Plaintiff has retained counsel experienced in complex consumer class action
16 litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no
17 antagonistic or adverse interest to those of the Class.

18 61. **Superiority:** The nature of this action and the nature of laws available to
19 Plaintiff and the Class make the use of the class action format a particularly efficient and
20 appropriate procedure to afford relief to her and the Class for the wrongs alleged. The
21 damages or other financial detriment suffered by individual Class members is relatively
22 modest compared to the burden and expense that would be entailed by individual litigation
23 of their claims against Defendants. It would thus be virtually impossible for Plaintiff and
24 Class members, on an individual basis, to obtain effective redress for the wrongs done to
25 them. Absent the class action, Class members and the general public would not likely
26 recover, or would not likely have the chance to recover, damages or restitution, and
27 Defendants will be permitted to retain the proceeds of their fraudulent and deceptive
28 misdeeds.

1 62. All Class members, including Plaintiff, were exposed to one or more of
2 Defendants’ misrepresentations or omissions of material fact claiming that former reference
3 prices advertised prices were legitimate. Due to the scope and extent of Defendants’
4 consistent false sale prices and advertising scheme, disseminated in a years-long campaign
5 to California consumers, it can be reasonably inferred that such misrepresentations or
6 omissions of material fact were uniformly made to all members of the Class. In addition,
7 it can be reasonably presumed that all Class members, including Plaintiff, affirmatively
8 acted in response to the representations contained in Defendants’ false advertising scheme
9 when purchasing merchandise sold at Defendants’ Calvin Klein outlet stores.

10 63. Plaintiff is informed that Defendants keep extensive computerized records of
11 its Calvin Klein outlet customers through, *inter alia*, customer loyalty programs and general
12 marketing programs. Defendants have one or more databases through which a significant
13 majority of Class members may be identified and ascertained, and they maintain contact
14 information, including email and home addresses, through which notice of this action could
15 be disseminated in accordance with due process requirements.

16 **VI. CAUSES OF ACTION**

17 **FIRST CAUSE OF ACTION**

18 **Violation of California’s Unfair Competition Law (“UCL”)**
19 **CAL. BUS. & PROF. CODE §§ 17200, *et seq.***

20 64. Plaintiff repeats and re-alleges the allegations contained in every preceding
21 paragraph as if fully set forth herein.

22 65. The UCL defines “unfair business competition” to include any “unlawful,
23 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading”
24 advertising. CAL. BUS. PROF. CODE § 17200.

25 66. The UCL imposes strict liability. Plaintiff need not prove that Defendants
26 intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices—
27 but only that such practices occurred.

28

1 ***“Unfair” Prong***

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

6 68. Defendants’ actions constitute “unfair” business practices because, as alleged
7 above, Defendants engaged in misleading and deceptive price comparison advertising that
8 represented false reference prices and corresponding deeply discounted phantom “sale”
9 prices. Defendants’ acts and practices offended an established public policy of transparency
10 in pricing, and engaged in immoral, unethical, oppressive, and unscrupulous activities that
11 are substantially injurious to consumers.

12 69. The harm to Plaintiff and Class members outweighs the utility of Defendants’
13 practices. There were reasonably available alternatives to further Defendants’ legitimate
14 business interests other than the misleading and deceptive conduct described herein.

15 ***“Fraudulent” Prong***

16 70. A business act or practice is “fraudulent” under the UCL if it is likely to
17 deceive members of the consuming public.

18 71. Defendants’ acts and practices alleged above constitute fraudulent business
19 acts or practices, as they deceived Plaintiff and are highly likely to deceive members of the
20 consuming public. Plaintiff relied on Defendants’ fraudulent and deceptive representations
21 regarding their false reference prices and corresponding phantom discounts on products
22 sold at Defendants’ outlets. These misrepresentations played a substantial role in Plaintiff’s
23 decision to purchase those products at purportedly steep discounts, and Plaintiff would not
24 have purchased those products without Defendants’ misrepresentations.

25 ***“Unlawful” Prong***

26 72. A business act or practice is “unlawful” under the UCL if it violates any other
27 law or regulation.

28

1 73. Defendants’ act and practices alleged above constitute unlawful business acts or
2 practices as they have violated state and federal law in connection with their deceptive pricing
3 scheme. The FTCA prohibits “unfair or deceptive acts or practices in or affecting commerce”
4 (15 U.S.C. § 45(a)(1)) and prohibits the dissemination of any false advertisements. 15 U.S.C.
5 § 52(a). Under the FTC, false former pricing schemes, similar to the ones implemented by
6 Defendants, are described as deceptive practices that would violate the FTCA:

7 (a) One of the most commonly used forms of bargain advertising is to offer a
8 reduction from the advertiser’s own former price for an article. If the former
9 priced is the actual, bona fide price at which the article was offered to the
10 public on a regular basis for a reasonably substantial period of time, it provides
11 a legitimate basis for the advertising of a price comparison. Where the former
12 price is genuine, the bargain being advertised is a true one. If, on the other
13 hand, the former price being advertised is not bona fide but fictitious – for
14 example, where an artificial, inflated price was established for the purpose
15 of enabling the subsequent offer of a large reduction – the “bargain” being
16 advertised is a false one; the purchaser is not receiving the unusual value he
17 expects. In such a case, the “reduced” price is, in reality, probably just the
18 seller’s regular price.

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

26 16 C.F.R. § 233.1(a) and (b) (emphasis added).

27 74. In addition to federal law, California law also expressly prohibits false former
28 pricing schemes. California’s FAL, BUS. & PROF. CODE § 17501, entitled “*Worth or value;
statements as to former price,*” states:

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

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

CAL. BUS. & PROF. CODE § 17501 (emphasis added).

1 75. As detailed in Plaintiff’s Third Cause of Action below, the CLRA, CAL. CIV.
2 CODE § 1770(a)(9), prohibits a business from “[a]dvertising goods or services with intent
3 not to sell them as advertised,” and subsection (a)(13) prohibits a business from “[m]aking
4 false or misleading statements of fact concerning reasons for, existence of, or amounts of
5 price reductions.”

6 76. The violation of any law constitutes an “unlawful” business practice under the
7 UCL.

8 77. As detailed herein, the acts and practices alleged were intended to or did result
9 in violations of the FTCA, the FAL, and the CLRA.

10 78. Defendants’ practices, as set forth above, have misled Plaintiff, the proposed
11 Class, and the public in the past, and will continue to mislead in the future. Consequently,
12 Defendants’ practices constitute an unlawful, fraudulent, and unfair business practice within
13 the meaning of the UCL.

14 79. Defendants’ violation of the UCL, through their unlawful, unfair, and
15 fraudulent business practices, are ongoing and present a continuing threat that Class
16 members and the public will be deceived into purchasing products based on price
17 comparisons of arbitrary and inflated “reference” prices and substantially discounted “sale”
18 prices. These false comparisons created phantom markdowns and lead to financial damage
19 for consumers like Plaintiff and the Class.

20 80. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent
21 injunctive relief and an order for Defendants to cease this unfair competition, as well as
22 disgorgement and restitution to Plaintiff and the Class of all Defendants’ revenues
23 associated with their unfair competition, or such portion of those revenues as the Court may
24 find equitable.

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1 **SECOND CAUSE OF ACTION**

2 **Violation of California’s False Advertising Law (“FAL”)**
3 **CAL. BUS. & PROF. CODE §§ 17500, *et seq.***

4 81. Plaintiff repeats and re-alleges the allegations contained in every preceding
5 paragraph as if fully set forth herein.

6 82. CAL. BUS. & PROF. CODE § 17500 provides:

7 It is unlawful for any...corporation...with intent...to dispose of...personal
8 property...to induce the public to enter into any obligation relating thereto, to
9 make or disseminate or cause to be made or disseminated...from this state
10 before the public in any state, in any newspaper or other publication, or any
11 advertising device, or by public outcry or proclamation, or in any other
12 manner or means whatever, including over the Internet, any statement...which
13 is untrue or misleading, and which is known, or which by the exercise of
14 reasonable care should be known, to be untrue or misleading...”

15 (Emphasis added).

16 83. The “intent” required by section 17500 is the intent to dispose of property, and
17 not the intent to mislead the public in the disposition of such property.

18 84. Similarly, this section provides

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

24 CAL BUS. & PROF. CODE § 17501.

25 85. Defendants’ routine of advertising discounted prices from false “reference”
26 prices, which were never the prevailing market prices of those products and were materially
27 greater than the true prevailing prices (i.e., Defendants’ actual sale price), was an unfair,
28 untrue, and misleading practice. This deceptive marketing practice gave consumers the
false impression that the products were regularly sold on the market for a substantially
higher price than they actually were, therefore, leading to the false impression that the
products sold at Defendants’ outlet stores were worth more than they actually were.

86. Defendants misled consumers by making untrue and misleading statements
and failing to disclose what is required by the Code, as alleged above.

1 87. As a direct and proximate result of Defendants’ misleading and false
2 advertisements, Plaintiff and Class members have suffered injury in fact and have lost
3 money. As such, Plaintiff requests that this Court order Defendants to restore this money
4 to Plaintiff and all Class members, and to enjoin Defendants from continuing these unfair
5 practices in violation of the UCL in the future. Otherwise, Plaintiff, Class members, and
6 the broader general public, will be irreparably harmed and/or denied an effective and
7 complete remedy.

8 **THIRD CAUSE OF ACTION**

9 **Violation of California’s Consumers Legal Remedies Act (“CLRA”),**
10 **CAL. CIV. CODE § 1750, *et seq.***

11 88. Plaintiff repeats and re-alleges the allegations contained in every preceding
12 paragraph as if fully set forth herein.

13 89. This cause of action is brought pursuant to the CLRA, CAL. CIV. CODE § 1750,
14 *et seq.* Plaintiff and each member of the proposed Class are “consumers” as defined by CAL.
15 CIV. CODE § 1761(d). Defendants’ sale of merchandise in their outlets to Plaintiff and the
16 Class were “transactions” within the meaning of CAL. CIV. CODE § 1761(e). The products
17 purchased by Plaintiff and the Class are “goods” within the meaning of CAL. CIV. CODE
18 § 1761(a).

19 90. Defendants violated, and continue to violate, the CLRA by engaging in the
20 following practices proscribed by CAL. CIV. CODE § 1770(a) in transactions with Plaintiff
21 and the Class which were intended to result in, and did result in, the sale of merchandise
22 sold in their California outlet stores:

23 (13) Making false or misleading statements of fact concerning reasons for,
24 existence of, or amounts of price reductions.

25 91. Pursuant to § 1782(a) of the CLRA, on or about September 28, 2021, Plaintiff’s
26 counsel notified Defendants in writing by certified mail of the particular violations of § 1770
27 of the CLRA, and demanded that it rectify the problems associated with the actions detailed
28 above and give notice to all affected consumers of Defendants’ intent to act.

1 92. If Defendants fail to respond to Plaintiff’s letter, fail to agree to rectify the
2 problems associated with the actions detailed above, or fail to give notice to all affected
3 consumers within 30 days of the date of written notice, as prescribed by section 1782,
4 Plaintiff will move to amend her Complaint to pursue claims for actual, punitive, and
5 statutory damages, as appropriate against Defendants. As to this cause of action, at this
6 time, Plaintiff seeks only injunctive relief.

7 **VII. PRAYER FOR RELIEF**

8 Wherefore, Plaintiff, on behalf of herself and on behalf of the other members of the
9 Class, requests that this Court award relief against Defendants as follows:

- 10 a. an order certifying the Class and designating Plaintiff as the Class
11 Representative and her counsel as Class Counsel;
- 12 b. awarding restitution and disgorgement of all profits and unjust
13 enrichment that Defendants obtained from Plaintiff and the Class members as a result
14 of its unlawful, unfair, and fraudulent business practices described herein;
- 15 c. awarding declaratory and injunctive relief as permitted by law or equity,
16 including: enjoining Defendants from continuing the unlawful practices as set forth
17 herein, and directing Defendants to identify, with Court supervision, victims of their
18 misconduct and pay them all money they are required to pay;
- 19 d. order Defendants to engage in a corrective advertising campaign;
- 20 e. awarding attorneys’ fees and costs; and
- 21 f. for such other and further relief as the Court may deem necessary or
22 appropriate.

23 **VIII. DEMAND FOR JURY TRIAL**

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

25 Dated: September 28, 2021

CARLSON LYNCH LLP

26 By: /s/ Todd D. Carpenter

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