

CARLSON LYNCH LLP
Todd D. Carpenter (CA 234464)
tcarpenter@carlsonlynch.com
Scott G. Braden (CA 305051)
sbraden@carlsonlynch.com
1350 Columbia Street, Ste. 603
San Diego, California 92101
Telephone: 619.762.1910
Facsimile: 619.756.6991

*Attorneys for Plaintiff and
Proposed Class Counsel*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MATILDA DAHLIN, on behalf of
herself and all others similarly situated,

Plaintiff,

vs.

THE DONNA KARAN COMPANY
STORE LLC, a New York limited liability
company, and DOES 1- 50, inclusive,

Defendants.

Case No. 2:21-cv-7711

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.**

IDEMAND FOR JURY TRIAL

1 Plaintiff Matilda Dahlin (“Plaintiff”) brings this action on behalf of herself and all
2 others similarly situated against Defendant The Donna Karan Company Store LLC,
3 (“DKNY” or “Defendant”), and states:

4 **I. NATURE OF THE ACTION**

5 1. American consumers thrive on finding the best deal. Retailers, including
6 Defendant, 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 Defendant arising from its deceptive
11 business practice of advertising fictitious reference prices and corresponding phantom
12 discounts on DKNY branded outlet merchandise sold in Defendant’s outlet stores in
13 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 Defendant, 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
14 Defendant’s application of an illegal discounting scheme.

15 4. Retailers, including Defendant, 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 its false and misleading marketing, advertising, and pricing scheme
22 alleged herein, DKNY violated, and continues to violate, California and federal law which
23 prohibit the advertisement of goods for sale discounted from former prices that are false.
24 California and federal law also prohibit the dissemination of misleading statements about
25 the existence and amount of price reductions. Specifically, Defendant violated, and
26 continues 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 DKNY branded outlet products from a DKNY
6 outlet store in California that was deceptively represented as discounted from a false
7 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 Defendant from
11 using false and misleading misrepresentations regarding former price comparisons in its
12 labeling and advertising permanently. Further, Plaintiff seeks to obtain damages, restitution,
13 and other appropriate relief in the amount by which Defendant was unjustly enriched as a
14 result of its sales of merchandise offered 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 Defendant.

23 9. The Central District of California has personal jurisdiction over Defendant
24 because Defendant is a corporation or other business entity which does conduct business in
25 the State of California. Defendant conducts sufficient business with sufficient minimum
26 contacts in California, and/or otherwise intentionally avails itself to the California market
27 through the operation of the DKNY outlet stores within the State of California.

1 10. Venue is proper under 28 U.S.C. § 1391(b)(2) because Defendant transacts
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. Defendant engages in a false and misleading reference price scheme in the
7 marketing and selling its products in its DKNY 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. Defendant's 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 Defendant's 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
26 Amount of Fraud." *The Journal of Law and Economics* 16 no. 1 (1973): 67-88, pp. 68-69.

27 ² "Not only do consumers lack full information about the prices of goods, but their
28 information is probably even poorer about the quality variation of products simply because
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 Defendant, understand that consumers are susceptible to a
 14 good bargain, and therefore, Defendant has a substantial financial interest in making the
 15 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 *original*
 21 *price* for up to 90 days; or in the alternative, it may offer a discount from the original price of
 22

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

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

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

28 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 an item being offered by a competitor, within the relevant market, for up to 90 days. In either
2 scenario, a retailer can only offer a “sale” from an original price for 90 days. At that point,
3 on day 91, the retailer has two options: the product must either return to its full original price,
4 or the retailer may continue to sell the product at the discounted price, as long as it discloses
5 to the consumer the date on which the product was last offered for sale at its full retail
6 price. See BUS. & PROF. CODE § 17501. Under California law, a retailer cannot use an old,
7 outdated, “original price” as the basis for a sale or discount, unless it discloses to the consumer
8 the date on which the prior original price was offered in the market.

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

13 **C. Defendant’s Fraudulent Price Discounting Scheme Violates California**
14 **State and Federal Regulations.**

15 18. Defendant advertises merchandise for sale by listing on the merchandise’s price
16 tag a fictitious or misleading “**original price**” that is universally accompanied by
17 corresponding “___% off” signage, resulting in seemingly significant “discounts” on all of
18 its outlet merchandise. These ostensible discounts from higher reference prices convey to
19 consumers, including to Plaintiff, “the product’s worth and the prestige that ownership of the
20 product conveys.” *Hinojos v. Kohl's Corp.*, 718 F.3d 1098 (9th Cir. 2013) (citing Dhruv
21 Grewal & Larry D. Compeau, Comparative Price Advertising: Informative or Deceptive?,
22 11 J. Pub. Pol’y & Mktg. 52, 55 (Spring 1992) (“By creating an impression of savings, the
23 presence of a higher reference price enhances subjects’ perceived value and willingness to
24 buy the product.”). “Misinformation about a product’s ‘normal’ price is...significant to many
25 consumers in the same way as a false product label would be.” *Hinojos*, 718 F.3d at 1106.

26 19. The reason why the **original price** is either false or misleading is because
27 DKNY either: (1) has never offered the outlet goods for sale at the **original price** (in the
28 case of its made-for-outlet merchandise) or (2) has offered the goods for sale at their

1 **original price** at some time period in the distant past—in violation of the 90 day time period
 2 afforded it to discount merchandise under California law¹⁴ and the federal regulation
 3 requiring the discount to be presented from a recent, regularly offered, original price.

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

10 21. How the scheme works: On all merchandise sold in the DKNY outlet stores, it
 11 represents to consumers a “**original price**” along with a percent-off (“___% off”) discount
 12 signage. DKNY then publishes the proffered discount as a percentage off (i.e., 40% off) of
 13 the “**original price.**” The represented discounts are advertised on placards placed at, on, or
 14 above the particular products being discounted. They are printed on white card stock with
 15 black print offering the advertised “_% off”. The placards appear as follows:



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

1 22. The “*original price*” reference price thus represents to consumers the
2 merchandise’s original price, while the “sale” price denotes to consumers a significantly
3 discounted price, or savings from the regular higher price.

4 23. DKNY outlets do not offer any outlet merchandise at the full, or original
5 price—ever. Every product in the store is discounted from an original price, the minute it
6 hits the floor.

7 24. Defendant’s perpetual discounting of the DKNY outlet merchandise
8 constitutes false, fraudulent, and deceptive advertising because the original reference price
9 listed is substantially higher than those prices ever actually offered by Defendant in its outlet
10 stores. The reference prices are used exclusively as a benchmark from which the false
11 discount and corresponding “sale” price is derived. Defendant’s scheme has the effect of
12 tricking consumers into believing they are getting a significant deal by purchasing
13 merchandise at a steep discount, when, in reality, consumers are paying for merchandise at
14 its usual retail price. Defendant’s deceptive pricing scheme further artificially raises the
15 prices actually paid by consumers by creating the false impression of a bargain.

16 25. Defendant’s outlet-only-merchandise is *never* offered for sale, nor actually
17 sold, at its advertised original price. Similarly, regular DKNY merchandise that may have
18 been previously offered for sale at other retailers or online is never offered for sale at DKNY
19 outlet stores, at its advertised original price, within 90 days of that price being offered in
20 the market. Upon information and belief, standard DKNY merchandise is a small
21 percentage of its outlet stores’ total inventory and is typically several years removed from
22 being marketed at the original price, if ever.

23 26. Nowhere in Defendant’s outlet stores does Defendant disclose that the
24 reference or original prices used are not: 1) former prices; or 2) are not recent (within
25 90 days), regularly offered former prices; 3) or prices at which identical products are sold
26 elsewhere in the market. Nor does DKNY disclose the date at which the original prices
27 were offered in the market or by one of DKNY’ other retailers. The omission of these
28

1 disclosures, coupled with Defendant's use of fictitious advertised reference prices, renders
2 Defendant's outlet pricing inherently misleading.

3 27. Thus, the advertised reference prices are false and induce consumers into
4 believing that the merchandise was once sold at the reference price, and will be again if the
5 consumer does not make a purchase at the "bargain" price. Defendant engages in this
6 practice knowing full-well that the advertised products are never actually offered or sold at
7 the advertised reference prices or never actually offered or sold at the advertised reference
8 prices within 90 days of them being discounted in the DKNY outlet store.

9 28. Moreover, the advertised discounts were fictitious because the reference prices
10 did not represent a *bona fide* price at which Defendant previously sold or offered to sell the
11 products, on a regular basis, for a commercially reasonable period of time, as required by
12 the Federal Trade Commission ("FTC"). In addition, the represented advertised reference
13 prices were not the prevailing market retail prices within the three months (90 days)
14 immediately preceding the publication of the advertised former reference price, as required
15 by California law.

16 29. Thus, Defendant's scheme intends to, and does, provide misinformation to the
17 customer. This misinformation communicates to consumers, including Plaintiff, that the
18 products sold in Defendant's outlets have a greater value than the advertised discounted
19 price.

20 **D. Investigation**

21 30. An investigation of DKNY outlet stores conducted by Plaintiff's counsel
22 ("Plaintiff's Investigation") revealed that Defendant's outlet store merchandise is priced
23 uniformly. That is, DKNY outlet merchandise sold at DKNY outlet stores bears a price tag
24 with a false "*original*" reference price, along with signage denoting a substantial percentage
25 off the higher reference price, resulting in a fictitious discount. Plaintiff's Investigation
26 confirmed that the merchandise purchased by Plaintiff was priced with a false reference
27 price and a corresponding discounted price for at least the 90-day period immediately
28 preceding Plaintiff's purchase in violation of California law and the FTCA.

1 31. Plaintiff’s counsel’s investigators cataloged the pricing practices of DKNY
2 outlet stores across California, including in San Francisco (San Francisco Premium
3 Outlets), Los Angeles (Citadel Outlets) and San Diego (Las Americas Premium Outlets),
4 from July of 2019, through October of 2019. Plaintiff’s Investigation revealed that items
5 listed for sale in Defendant’s outlets were never offered for sale at their full “*original price*”
6 reference prices. Plaintiff’s counsel’s investigators visited DKNY outlet stores consistently
7 throughout the investigation period to verify the prices being offered on Defendant’s outlet
8 merchandise. The prices were uniform across all stores visited in California. All items,
9 including the product purchased by Plaintiff, in the DKNY outlet stores were priced at a
10 discount in the 90 days prior to Plaintiff’s purchases discussed below. A sample of the
11 products tracked, which all remained discounted throughout the observed period, include
12 White Faux Fur Jacket; Women's Mustard Blouse; Women's Black Blouse; Women's B/W
13 leopard print blouse; Women's Pleated Skirts; Grey knit long-sleeve sweater; Women’s
14 Suits; including B/W Plaid Print; Women’s blue jeans; and Women’s Plaid zip up jacket.
15 *See Exhibit A, Investigation Summary.*

16 32. Additionally, Plaintiff’s Investigation attempted to locate the items sold at the
17 DKNY outlet stores in other distribution channels in the relevant market. For example, in
18 San Diego, Plaintiff’s Investigation verified that the merchandise sold at DKNY outlet
19 stores, was *not* the same as DKNY merchandise presented for sale at commonly known
20 retailers such as Nordstrom Rack, Macy’s, Ross Dress for Less, TJ Max, or Kohl’s.
21 Plaintiff’s Investigation compared the items tracked in the DKNY outlet stores to DKNY
22 merchandise offered for sale at the aforementioned retailers on a monthly basis during the
23 course of the investigation.

24 33. Thus, the “*original price*” on the DKNY merchandise sold at the DKNY outlet
25 stores, including the “*original price*” listed on the items Plaintiff purchased, are false.

26 34. The false reference prices and corresponding discount price scheme were both
27 uniform and identical on almost all of the merchandise sold at Defendant’s outlet stores.
28 The only thing that changed was the requisite “_ % off” on certain merchandise items.

1 Plaintiff's purchase. Neither Plaintiff's receipt nor any in-store signage observed or relied
2 upon by Plaintiff indicated to her that the products she purchased were not offered
3 previously at the advertised reference prices at the DKNY outlet store or elsewhere.

4 39. At the time of her purchase, Plaintiff was also unaware that the products sold
5 in Defendant's outlet store were manufactured for sale specifically and exclusively at
6 Defendant's outlet stores and that the products are never sold anywhere else. Neither
7 Plaintiff's receipt, nor in-store signage, nor information listed on the price tags suggested
8 that the products were exclusive. Plaintiff was damaged in her purchase because
9 Defendant's false reference price discounting scheme inflated the true market value of the
10 products she purchased. Despite being misled by Defendant with respect to the products
11 she purchased, Plaintiff lacks personal knowledge as to Defendant's specific pricing
12 practices relating to all its California outlet merchandise. Consequently, Plaintiff is
13 susceptible to reoccurring harm because she cannot be certain that Defendant has corrected
14 its deceptive pricing scheme, and she desires to continue to purchase DKNY outlet
15 merchandise from DKNY California outlet stores, assuming that she could determine
16 whether she was receiving authentic DKNY products at a true bargain. However, she
17 currently cannot trust that Defendant will label and/or advertise the merchandise truthfully
18 and in a non-misleading fashion in compliance with applicable law. Plaintiff simply does
19 not have the resources to ensure that Defendant is complying with California and federal
20 law with respect to its pricing, labeling, and advertising of its California outlet merchandise.
21 An injunction is the only form of relief which will guarantee Plaintiff and other consumers
22 the appropriate assurances.

23 40. Additionally, because of the wide selection of merchandise available and
24 Defendant's California outlet stores, the fact that there are numerous items of outlet
25 merchandise involved in Defendant's deceit, and due to the likelihood that Defendant may
26 yet develop and market additional outlet merchandise items for sale at its California outlet
27 stores, Plaintiff may again, though by mistake, purchase a falsely discounted product from
28 Defendant under the impression that the advertised reference price represents a *bona fide*

1 former price at which the item was previously offered for sale by Defendant. Indeed,
2 Plaintiff regularly shops at outlet stores, including Defendant's, and she desires to continue
3 purchasing merchandise from DKNY outlet stores in the future. Moreover, Class (defined
4 below) members will continue to purchase the DKNY California outlet merchandise,
5 reasonably, but incorrectly, believing that its advertised reference prices represent *bona fide*
6 former prices at which the merchandise was previously offered for sale by Defendant.

7 41. Accordingly, Plaintiff, Class members, and the general public lack an adequate
8 remedy at law. Absent an equitable injunction enjoining Defendant from continuing in the
9 unlawful course of conduct alleged herein, Plaintiff, Class members, and the public will be
10 irreparably harmed and denied an effective and complete remedy because they face a real
11 and tangible threat of future harm emanating from Defendant's ongoing conduct, which
12 cannot be remedied with monetary damages.

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

22 43. Finally, Plaintiff's case is substantially predicated on Defendant's violations
23 of CAL. BUS. & PROF. CODE § 17501, an equitable claim, as Plaintiff's Investigation
24 revolved around ensuring that Defendant did not sell outlet merchandise within the 90 days
25 preceding Plaintiff's purchase and, likewise, that Defendant failed to disclose to consumers
26 the date on which outlet merchandise was last offered at its advertised reference price. This
27 claim and test of liability go to the heart of Plaintiff's case and the same test is not available
28 under a CLRA legal claim for damages. Thus, Plaintiff does *not* have an adequate remedy

1 at law because the CLRA does not provide the same metric of liability as CAL. BUS. & PROF.
2 CODE § 17501, which is integral not only to Plaintiff's prayer for restitution, but also to
3 Plaintiff's very theory of liability at trial. Accordingly, Plaintiff may set forth alternate
4 claims for legal damages and equitable restitution.

5 **Defendant**

6 44. Plaintiff is informed and believes, and upon such information and belief
7 alleges, Defendant is a New York limited liability company with its principal executive
8 offices in New York, NY. Plaintiff is informed and believes that Defendant operates DKNY
9 outlet stores in California and advertises, markets, distributes, and/or sells clothing, apparel,
10 cosmetics and lifestyle products in California and throughout the United States.

11 45. Plaintiff does not know the true names or capacities of the persons or entities
12 sued herein as Does 1-50, inclusive, and therefore sues such defendants by such fictitious
13 names. Plaintiff is informed and believes, and upon such information and belief alleges,
14 that each of the Doe defendants is in some manner legally responsible for the damages
15 suffered by Plaintiff and the Class members as alleged herein. Plaintiff will amend his
16 Complaint to set forth the true names and capacities of these defendants when they have
17 been ascertained, along with appropriate charging allegations, as may be necessary.

18 46. The reference prices listed and advertised on products sold at Defendant's
19 outlet stores are false or severely outdated reference prices, utilized only to perpetuate
20 Defendant's false discount scheme.

21 47. Defendant knows that its reference price advertising is false, deceptive,
22 misleading, and unlawful under California and federal law.

23 48. Defendant fraudulently concealed from, and intentionally failed to disclose to,
24 Plaintiff and other members of the Class the truth about its advertised discount prices and
25 former reference prices.

26 49. At all relevant times, Defendant has been under a duty to Plaintiff and the Class
27 to disclose the truth about its false discounts.

28

1 50. Plaintiff reasonably relied upon Defendant's artificially inflated reference
2 prices and false discounts when purchasing the pair of DKNY jeans, pleated skirt, and T-
3 shirt from Defendant's Citadel Outlet store in Los Angeles, California. Plaintiff would not
4 have made such purchase but for Defendant's representations regarding the substantial
5 discounts being offered on the merchandise. Plaintiff would like to continue shopping at
6 Defendant's outlet stores in the future but cannot be certain of the veracity of Defendant's
7 advertised bargains.

8 51. Plaintiff and the Class reasonably and justifiably acted and relied on the
9 substantial price differences that Defendant advertised, and made purchases believing that
10 they were receiving a substantial discount on an item of greater value than it actually was.
11 Plaintiff, like other Class members, was lured in and damaged by the deceptive pricing
12 scheme that Defendant carried out because of her reliance upon Defendant's
13 misrepresentations.

14 v. CLASS ALLEGATIONS

15 52. Plaintiff brings this action on behalf of herself and all other similarly situated
16 Class members pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil
17 Procedure and seeks certification of the following Class against Defendant for violations of
18 California state laws:

19 All persons, within the State of California, who, within the preceding four
20 years (the "Class Period"), purchased from a California DKNY outlet store
21 one or more products at a purported discount from an advertised "reference"
22 price and who have not received a refund or credit for their purchase(s).

23 Excluded from the Class is Defendant, as well as its officers, employees, agents or affiliates,
24 parent companies and/or subsidiaries, and each of their respective officers, employees,
25 agents or affiliates, and any judge who presides over this action. Plaintiff reserves the right
26 to expand, limit, modify, or amend this Class definition, including the addition of one or
27 more subclasses, in connection with his motion for Class certification, or at any other time,
28 based upon, *inter alia*, changing circumstances and/or new facts obtained during discovery.

1 53. **Numerosity:** The Class members are so numerous that joinder of all members
2 is impracticable. Plaintiff is informed and believes that the proposed Class contains
3 hundreds of thousands of individuals who have been damaged by Defendant's conduct as
4 alleged herein. The precise number of Class members is unknown to Plaintiff.

5 54. **Existence and Predominance of Common Questions of Law and Fact:** This
6 action involves common questions of law and fact, which predominate over any questions
7 affecting individual Class members. These common legal and factual questions include,
8 but are not limited to, the following:

9 a. whether, during the Class Period, Defendant used falsely advertised
10 reference prices on its outlet products' labels and falsely advertised price discounts
11 on merchandise sold in its outlet stores;

12 b. whether, during the Class Period, the reference prices advertised by
13 Defendant were the prevailing market prices for the products in question during the
14 three months period preceding the dissemination and/or publication of the advertised
15 former prices;

16 c. whether Defendant's alleged conduct constitutes violations of the laws
17 asserted;

18 d. whether Defendant engaged in unfair, unlawful and/or fraudulent
19 business practices under the laws asserted;

20 e. whether Defendant engaged in false or misleading advertising;

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

23 g. whether an injunction is necessary to prevent Defendant from
24 continuing to use false, misleading or illegal price comparison.

25 55. **Typicality:** Plaintiff's claims are typical of the claims of the Class members
26 because, *inter alia*, all Class members have been deceived (or were likely to be deceived)
27 by Defendant's false and deceptive price advertising scheme, as alleged herein. Plaintiff is
28 advancing the same claims and legal theories on behalf of herself and all Class members.

1 56. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the Class
2 members. Plaintiff has retained counsel experienced in complex consumer class action
3 litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no
4 antagonistic or adverse interest to those of the Class.

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

15 58. All Class members, including Plaintiff, were exposed to one or more of
16 Defendant's misrepresentations or omissions of material fact claiming that former reference
17 prices advertised prices were legitimate. Due to the scope and extent of Defendant's
18 consistent false sale prices and advertising scheme, disseminated in a years-long campaign
19 to California consumers, it can be reasonably inferred that such misrepresentations or
20 omissions of material fact were uniformly made to all members of the Class. In addition,
21 it can be reasonably presumed that all Class members, including Plaintiff, affirmatively
22 acted in response to the representations contained in Defendant's false advertising scheme
23 when purchasing merchandise sold at Defendant's outlet stores.

24 59. Plaintiff is informed that Defendant keeps extensive computerized records of
25 its DKNY outlet customers through, *inter alia*, customer loyalty programs and general
26 marketing programs. Defendant has one or more databases through which a significant
27 majority of Class members may be identified and ascertained, and it maintains contact
28

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

3 **VI. CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION**

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

7 60. Plaintiff repeats and re-alleges the allegations contained in every preceding
8 paragraph as if fully set forth herein.

9 61. The UCL defines “unfair business competition” to include any “unlawful,
10 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading”
11 advertising. CAL. BUS. PROF. CODE § 17200.

12 62. The UCL imposes strict liability. Plaintiff need not prove that Defendant
13 intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices—
14 but only that such practices occurred.

15 ***“Unfair” Prong***

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

20 64. Defendant’s actions constitute “unfair” business practices because, as alleged
21 above, Defendant engaged in misleading and deceptive price comparison advertising that
22 represented false reference prices and corresponding deeply discounted phantom “sale”
23 prices. Defendant’s acts and practices offended an established public policy of transparency
24 in pricing, and engaged in immoral, unethical, oppressive, and unscrupulous activities that
25 are substantially injurious to consumers.

26 65. The harm to Plaintiff and Class members outweighs the utility of Defendant’s
27 practices. There were reasonably available alternatives to further Defendant’s legitimate
28 business interests other than the misleading and deceptive conduct described herein.

1 ***“Fraudulent” Prong***

2 66. A business act or practice is “fraudulent” under the UCL if it is likely to
3 deceive members of the consuming public.

4 67. Defendant’s acts and practices alleged above constitute fraudulent business
5 acts or practices, as they deceived Plaintiff and are highly likely to deceive members of the
6 consuming public. Plaintiff relied on Defendant’s fraudulent and deceptive representations
7 regarding its false reference prices and corresponding phantom discounts on products sold
8 at Defendant’s outlets. These misrepresentations played a substantial role in Plaintiff’s
9 decision to purchase those products at purportedly steep discounts, and Plaintiff would not
10 have purchased those products without Defendant’s misrepresentations.

11 ***“Unlawful” Prong***

12 68. A business act or practice is “unlawful” under the UCL if it violates any other
13 law or regulation.

14 69. Defendant’s act and practices alleged above constitute unlawful business acts
15 or practices as it has violated state and federal law in connection with its deceptive pricing
16 scheme. The FTCA prohibits “unfair or deceptive acts or practices in or affecting
17 commerce” (15 U.S.C. § 45(a)(1)) and prohibits the dissemination of any false
18 advertisements. 15 U.S.C. § 52(a). Under the FTC, false former pricing schemes, similar to
19 the ones implemented by Defendant, are described as deceptive practices that would violate
20 the FTCA:

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

1 of enabling the subsequent offer of a large reduction – the “bargain” being
2 advertised is a false one; the purchaser is not receiving the unusual value he
3 expects. In such a case, the “reduced” price is, in reality, probably just the
4 seller’s regular price.

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

12 16 C.F.R. § 233.1(a) and (b) (emphasis added).

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

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

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

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

26 71. As detailed in Plaintiff’s Third Cause of Action below, the CLRA, CAL. CIV.
27 CODE § 1770(a)(9), prohibits a business from “[a]dvertising goods or services with intent
28 not to sell them as advertised,” and subsection (a)(13) prohibits a business from “[m]aking

1 false or misleading statements of fact concerning reasons for, existence of, or amounts of
2 price reductions.”

3 72. The violation of any law constitutes an “unlawful” business practice under the
4 UCL. As detailed herein, the acts and practices alleged were intended to or did result in
5 violations of the FTCA, the FAL, and the CLRA.

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

10 74. Defendant’s violation of the UCL, through its unlawful, unfair, and fraudulent
11 business practices, are ongoing and present a continuing threat that Class members and the
12 public will be deceived into purchasing products based on price comparisons of arbitrary
13 and inflated “reference” prices and substantially discounted “sale” prices. These false
14 comparisons created phantom markdowns and lead to financial damage for consumers like
15 Plaintiff and the Class.

16 75. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent injunctive
17 relief and an order for Defendant to cease this unfair competition, as well as disgorgement and
18 restitution to Plaintiff and the Class of all Defendant’s revenues associated with its unfair
19 competition, or such portion of those revenues as the Court may find equitable.

20 **SECOND CAUSE OF ACTION**

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

23 76. Plaintiff repeats and re-alleges the allegations contained in every preceding
24 paragraph as if fully set forth herein.

25 77. CAL. BUS. & PROF. CODE § 17500 provides:

26 It is unlawful for any...corporation...with intent...to dispose of...personal
27 property...to induce the public to enter into any obligation relating thereto, to
28 make or disseminate or cause to be made or disseminated...from this state

1 before the public in any state, in any newspaper or other publication, or any
2 advertising device, or by public outcry or proclamation, or in any other
3 manner or means whatever, including over the Internet, any statement...which
4 is untrue or misleading, and which is known, or which by the exercise of
5 reasonable care should be known, to be untrue or misleading...

6 (Emphasis added).

7 78. The “intent” required by section 17500 is the intent to dispose of property, and
8 not the intent to mislead the public in the disposition of such property.

9 79. Similarly, this section provides, “no price shall be advertised as a former price
10 of any advertised thing, unless the alleged former prices was the prevailing market
11 price...within three months next immediately preceding the publication of the
12 advertisement or unless the date when the alleged former price did prevail is clearly,
13 exactly, and conspicuously stated in the advertisement.” CAL BUS. & PROF. CODE § 17501.

14 80. Defendant’s routine of advertising discounted prices from false “reference”
15 prices, which were never the prevailing market prices of those products and were materially
16 greater than the true prevailing prices (i.e., Defendant’s actual sale price), was an unfair,
17 untrue, and misleading practice. This deceptive marketing practice gave consumers the
18 false impression that the products were regularly sold on the market for a substantially
19 higher price than they actually were, therefore, leading to the false impression that the
20 products sold at Defendant’s outlet stores were worth more than they actually were.

21 81. Defendant misled consumers by making untrue and misleading statements and
22 failing to disclose what is required by the Code, as alleged above.

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

THIRD CAUSE OF ACTION

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

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

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

85. Defendant violated, and continues to violate, the CLRA by engaging in the following practices proscribed by CAL. CIV. CODE § 1770(a) in transactions with Plaintiff and the Class, which were intended to result in, and did result in, the sale of merchandise sold in its California outlet stores:

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

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

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

1 **VII. PRAYER FOR RELIEF**

2 Wherefore, Plaintiff, on behalf of herself and on behalf of the other members of the
3 Class, requests that this Court award relief against Defendant as follows:

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

17 **VIII. DEMAND FOR JURY TRIAL**

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

19 Dated: September 28, 2021

CARLSON LYNCH LLP

20 By: /s/ Todd D. Carpenter

21 Todd D. Carpenter (CA 234464)
22 tcarpenter@carlsonlynch.com
23 Scott G. Braden (CA 305051)
24 sbraden@carlsonlynch.com
25 1350 Columbia Street, Ste. 603
26 San Diego, California 92101
27 Telephone: (619) 762-1910
28 Facsimile: (619) 756-6991

*Attorneys for Plaintiff and
Proposed Class Counsel*