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14  
15 UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

16 SHAWNNA MONTES,  
17 on behalf of herself and all others  
similarly situated,

18 Plaintiff,

19 v.

20 SPARC GROUP LLC,

21 Defendant.

No. \_\_\_\_\_

**CLASS ACTION COMPLAINT  
FOR DAMAGES UNDER THE  
CONSUMER PROTECTION ACT,  
RCW 19.86**

**JURY TRIAL DEMANDED**

1 Plaintiff Shawna Montes, demanding trial by jury as to all issues so triable,  
2 alleges as follows, on personal knowledge and investigation of her counsel, against  
3 Defendant SPARC Group LLC d/b/a Aéropostale (hereinafter “Defendant” or  
4 “Aéropostale”):

5 **I. INTRODUCTION**

6 1. This lawsuit is a class action on behalf of Washington consumers who  
7 purchased falsely discounted clothing and accessories on the Aéropostale website  
8 and, due to Aéropostale’s fraud, paid more than they otherwise would have paid.

9 2. Aéropostale is a designer, marketer, and retail seller of casual clothing  
10 and accessories, targeting primarily the teen and young adult market. Almost all the  
11 items offered for sale by Aéropostale on its website and in its retail stores are branded  
12 as “Aéropostale” products, and are offered and sold exclusively by Aéropostale.  
13 Aéropostale had over \$1 billion in sales revenues in 2019 on its website and in its  
14 brick-and-mortar stores.

15 3. For years, Aéropostale perpetrated a massive false discount advertising  
16 scheme across nearly all of its Aéropostale-branded products and sales channels (i.e.,  
17 on Aéropostale website and in its brick-and-mortar stores). Specifically, Aéropostale  
18 advertised perpetual or near perpetual website-wide and store-wide “sales” and  
19 percentage-off discounts—typically 50% to 70% off—from Aéropostale’s self-  
20 created list prices for its products in order to trick its customers and the general public  
21 into thinking that its products were “on sale.”

22 4. Aéropostale represented its list prices, which were advertised on its  
23 website with a slash-through (and which were printed on the product tags affixed to  
24 the items it sold), to be the “regular” and normal selling prices of the items. The list  
25 prices functioned as reference prices to which the advertised discounts were applied.

26 5. Aéropostale also advertised “free” offers such as “Buy 1 Get 1 Free” or

1 “Buy 1 Get 2 Free,” where Aéropostale represented that it would include one or two  
2 more of a given item (or of a specified similar item) for “free” if the customer paid  
3 the list price for the item.

4 6. Aéropostale’s advertised discounts were false because Aéropostale never  
5 or rarely offered or sold its products at the advertised list price. Rather, Aéropostale  
6 invented inflated and fictitious list prices in order to enable it to advertise perpetual  
7 discounts and store-wide “sale” events to induce customers to purchase its products.  
8 Aéropostale’s “free” offers were likewise false because Aéropostale directly  
9 recovered the cost of the “free” items by doubling or tripling the first item’s selling  
10 price to the inflated—and otherwise never charged—list price.

11 7. Aéropostale’s marketing plan was to trick its customers into believing  
12 that the list price (which it labeled the “**REGULAR PRICE**” on its website), and  
13 which it printed on its product tags, was the regular and normal selling price for its  
14 products, and that its products were worth this inflated list price, such that the lower  
15 advertised “sale” price represented a special bargain.

16 8. Aéropostale’s nationwide deceptive advertising scheme harmed  
17 Washington state consumers like Plaintiff Shawna Montes, who purchased falsely  
18 discounted products from Aéropostale’s website. Customers like Plaintiff were  
19 harmed because they would not have purchased the items at the prices they paid had  
20 they known the items were not truly “on sale” and had not been regularly offered at  
21 the higher list price. And in fact, the items they purchased were not actually worth the  
22 inflated amount that Aéropostale represented to them. Aéropostale’s unlawful  
23 advertising not only directly harmed its customers and prospective customers—it  
24 harmed the integrity of competition in retail markets and injured honest competitors  
25 who played by the rules.  
26

1           9.       Moreover, Aéropostale had no means to “establish” its online list prices  
2 through full-price sales in its retail stores. Based on the investigation of Plaintiff’s  
3 counsel, Aéropostale offered and advertised its products with identical list prices and  
4 at substantially the same sale prices both on the Aéropostale website and in its retail  
5 stores in Washington and throughout the nation. Aéropostale virtually never offered  
6 its discounted products at the list price in *any* sales channel—whether online or in-  
7 store.

8           10.       Plaintiff Montes brings this action individually and on behalf of a class  
9 of similarly situated Aéropostale Washington customers who purchased purportedly  
10 discounted products on the Aéropostale website, and is seeking, *inter alia*, damages  
11 (which may be trebled) under the Washington Consumer Protection Act (“CPA”),  
12 RCW 19.86.

## 13   **II.   PARTIES**

14           11.       Plaintiff Shawna Montes is a citizen of the United States of America  
15 and Washington and an individual and a natural adult person who resides in Spokane  
16 County, Washington.

17           12.       Defendant SPARC Group LLC (“SPARC”) is a limited liability  
18 company chartered under the laws of the State of Delaware. SPARC currently has,  
19 and at all relevant times had, its executive, marketing, and technology operations in  
20 Lyndhurst, New Jersey or New York, New York. SPARC Group LLC manages the  
21 retail and website operations of the Aéropostale brand and has conducted the  
22 unlawful actions described herein. SPARC describes itself as “a fashion industry  
23 leader that designs, sources, manufactures, distributes and markets women’s, men’s  
24 and kids apparel and accessories in key markets worldwide for iconic brands  
25 including Aéropostale, Brooks Brothers, Eddie Bauer, Forever 21, Lucky Brand,  
26



1 Nautica and Reebok.”<sup>1</sup> SPARC Group LLC is a joint venture between Simon  
2 Property Group, L.P. and Authentic Brands Group LLC. Some of the unlawful  
3 activities pled herein were conducted by SPARC Group LLC when SPARC Group  
4 LLC was legally named “Aero OpCo LLC.”<sup>2</sup> For purposes of this lawsuit, SPARC  
5 Group LLC is a successor to Aero OpCo LLC, and SPARC Group LLC is  
6 responsible for all unlawful actions pled herein that SPARC Group LLC conducted  
7 during the time that it was named Aero OpCo LLC.

8 13. Defendant SPARC Group LLC operates a retail website  
9 www.aeropostale.com, through which Defendant advertises and sells its goods, with  
10 said website being regularly seen and used by consumers in Washington and  
11 throughout the United States to purchase goods from Aéropostale. SPARC Group  
12 LLC also owns and/or operates approximately 500 brick-and-mortar Aéropostale  
13 retail stores throughout the United States, including 8 in Washington.

14 14. The allegations of this Complaint only concern Aéropostale’s actions  
15 since September 16, 2016, during which time Defendant has owned and/or operated  
16 the Aéropostale business.

### 17 **III. JURISDICTION AND VENUE**

18 15. **Subject Matter Jurisdiction.** The Court has subject matter jurisdiction  
19 over this civil action pursuant to 28 U.S.C. § 1332(d)(2)—i.e., Class Action Fairness  
20 Act jurisdiction—because the amount in controversy exceeds the sum or value of \$5  
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22 <sup>1</sup> See SPARC Group LLC homepage at: <https://www.sparcgroup.com/> (last  
23 accessed September 13, 2022).

24 <sup>2</sup> SPARC Group LLC still appears to operate to some extent under the name  
25 Aero OpCo LLC. For example, as of September 13, 2022, the Aéropostale Terms &  
26 [of-service.html](https://www.aeropostale.com/terms-of-service.html) stated: “Aeropostale.com is operated by Aero OpCo LLC (‘Aero’) on  
behalf of itself and its affiliates (the ‘Web Site’).”

1 million (exclusive of interest and costs) and is a class action in which any member of  
2 a class of plaintiffs is a citizen of a state different from any defendant.

3 16. Defendant has generated substantially more than \$5 million in revenue  
4 from sales on its Aéropostale website in Washington during the past four years.  
5 Further, the CPA allows treble damages, which also count towards the amount in  
6 controversy. Because treble damages may be considered, the \$5 million amount in  
7 controversy is met under any possible damages theory. For example, the \$5 million is  
8 met if the damages (trebled) is the full purchase price of each product that Plaintiff  
9 and putative class members would not have bought but for the misrepresentations.  
10 The \$5 million is similarly met if the damages (trebled) is the difference between the  
11 value of each product as represented and the value of the product as purchased.

12 17. **Personal Jurisdiction.** This Court may exercise personal jurisdiction  
13 over Defendant pursuant to Washington State's long-arm statute, RCW 4.28.185.  
14 This Court may exercise personal jurisdiction over out-of-state Defendant because the  
15 claims alleged in this civil action arose from, without limitation, the transaction by  
16 Defendant of any business within the State of Washington (and/or within the Eastern  
17 District of Washington), and/or the commission by Defendant of a tortious act within  
18 the State of Washington (and/or within the Eastern District of Washington).

19 18. This Court may exercise personal jurisdiction over out-of-state  
20 Defendant to the fullest extent allowed under the federal due process clause.  
21 Defendant has certain minimum contacts with the State of Washington (and/or with  
22 the Eastern District of Washington) such that the maintenance of this lawsuit does not  
23 offend traditional notions of fair play and substantial justice. As alleged in this  
24 pleading, Defendant has and continues to purposefully do some act or consummate  
25 some transaction in the State of Washington (and/or in the Eastern District of  
26 Washington), Plaintiff's claims arise from and/or are connected with said act or

1 transaction of Defendant, and the assumption of jurisdiction by this Court does not  
2 offend traditional notions of fair play and substantial justice, consideration being  
3 given to the quality, nature, and extent of the activity in the State of Washington  
4 (and/or in the Eastern District of Washington), the relative convenience of the parties,  
5 the benefits and protection of laws of the State of Washington afforded the respective  
6 parties, and the basic equities of the situation.

7 19. Aéropostale operates a website, [www.aeropostale.com](http://www.aeropostale.com), by which  
8 Aéropostale advertises and sells its goods, with said website being regularly seen by  
9 Washington and Eastern District consumers and being regularly used by Washington  
10 and Eastern District consumers to purchase goods from Aéropostale. Aéropostale also  
11 owns and operates approximately eight Aéropostale-branded retail stores in the State  
12 of Washington, including a store in Spokane.

13 20. **Venue.** Venue is proper in the Eastern District of Washington under 28  
14 U.S.C. § 1391(b) because, without limitation, a substantial part of the events or  
15 omissions giving rise to Plaintiff's claims occurred in the Eastern District of  
16 Washington.

17 21. **Intra-District Assignment.** Plaintiff Montes resides in Spokane County,  
18 which is within the Spokane Division of the Eastern District of Washington.

19 **IV. FACTUAL ALLEGATIONS OF AÉROPOSTALE'S FALSE DISCOUNT**  
20 **ADVERTISING SCHEME**

21 22. This lawsuit concerns damages suffered by Washington consumers who  
22 purchased falsely discounted products **from the Aéropostale retail website at**  
23 **[www.aeropostale.com](http://www.aeropostale.com)**. (Aéropostale also operates brick-and-mortar Aéropostale  
24 retail stores throughout the United States, including 8 in Washington state; but those  
25 retail store sales are not the subject of this lawsuit.)

26 23. Almost all the items offered by Aéropostale are branded as

1 “Aéropostale” products and are exclusively offered for sale and sold by Aéropostale  
2 on its website (and in its retail stores). In other words, the products offered by  
3 Aéropostale on its website and in its stores are not offered or sold by, and are not  
4 available from, any other retailer.

5 24. Aéropostale had over \$1 billion in sales revenues in 2019 on its website  
6 and in its retail stores.

7 25. In significant part, however, Aéropostale’s revenues have been the  
8 product of a massive false discount advertising scheme. Aéropostale perpetually  
9 advertised nearly all of its products with significant discounts of 50-70% from a false  
10 reference price, in order to trick its customers into believing the advertised “sale”  
11 price represented a special bargain from Aéropostale’s usual and “regular” prices. In  
12 fact, unbeknownst to its customers, Aéropostale’s discounts were never-ending, and  
13 its products were never or virtually never offered at the supposed regular price.  
14 Aéropostale perpetrated this illegal scheme in order to induce consumers to purchase  
15 its products and to increase the amount it could charge for its products.

16 26. Decades of academic research has established that the use of false  
17 discounts, such as those utilized by Aéropostale, materially impacts consumers’  
18 behavior. Advertised discounts from a higher reference price affect a consumer’s  
19 perception of the value of the transaction, the consumer’s willingness to make the  
20 purchase, and the amount of money the consumer is willing to pay for the product.<sup>3</sup>

21 \_\_\_\_\_  
22 <sup>3</sup> See, e.g., Rajesh Chandrashekar & Dhruv Grewal, *Assimilation of Advertised*  
23 *Reference Prices: The Moderating Role of Involvement*, 79 J. Retailing 53 (2003);  
24 Pilsik Choi & Keith S. Coulter, *It’s Not All Relative: The Effects of Mental and*  
25 *Physical Positioning of Comparative Prices on Absolute Versus Relative Discount*  
26 *Assessment*, 88 J. Retailing 512 (2012); Larry D. Compeau & Dhruv Grewal,  
*Comparative Price Advertising: An Integrative Review*, 17 J. Pub. Pol’y & Mktg. 257  
(1998); Larry D. Compeau, Dhruv Grewal & Rajesh Chandrashekar, *Comparative*  
*Price Advertising: Believe It or Not*, 36 J. Consumer Aff. 284 (2002); David  
Friedman, *Reconsidering Fictitious Pricing*, 100 Minn. L. Rev. 921 (2016); Dhruv  
Grewal & Larry D. Compeau, *Consumer Responses to Price and its Contextual*

1           27. When advertised discounts and the reference prices to which those  
2 discounts are applied are bona fide and truthful—e.g., when those reference prices  
3 truly represent the retailer’s regular former prices for the product—they may help  
4 consumers in making informed purchasing decisions. In contrast, consumers are  
5 harmed when retailers, such as Aéropostale, advertise fake “sales” from false and  
6 inflated purported former prices. **The advertised false discounts from inflated  
7 former prices deceive consumers, deprive consumers of a fair opportunity to  
8 accurately evaluate the offer, and result in purchasing decisions based on false  
9 pretenses.**

10           28. Fake “sales” from false former prices—as employed by Aéropostale—  
11 cause consumers to pay more than they otherwise would have paid for products. False  
12 discounts also illegitimately increase consumer demand for products, shifting the  
13 demand curve and enabling the retailer to charge higher prices—to everyone—than  
14 the retailer otherwise could have charged.

15           29. Beyond the adverse impact upon consumers’ welfare, the practice of  
16 employing false discounts from false former prices also negatively affects the  
17 integrity of competition in retail markets. A retailer’s use of false discounts  
18 constitutes an unfair method of competition, injuring honest competitors that sell the  
19 same or similar products, or otherwise compete in the same market, who advertise  
20 legitimate sales from valid and accurate former prices. Businesses who play by the

21 \_\_\_\_\_  
22 *Information Cues: A Synthesis of Past Research, a Conceptual Framework, and*  
23 *Avenues for Further Research*, in 3 Rev. of Mktg. Res. 109 (Naresh K. Malhotra ed.,  
24 2007); Daniel J. Howard & Roger A. Kerin, *Broadening the Scope of Reference Price*  
25 *Advertising Research: A Field Study of Consumer Shopping Involvement*, 70 J. Mktg.  
26 185 (2006); Aradhna Krishna, Richard Briesch, Donald R. Lehmann & Hong Yuan, *A*  
*Meta-Analysis of the Impact of Price Presentation on Perceived Savings*, 78 J.  
Retailing 101 (2002); Balaji C. Krishnan, Sujay Dutta & Subhash Jha, *Effectiveness*  
*of Exaggerated Advertised Reference Prices: The Role of Decision Time Pressure*, 89  
J. Retailing 105 (2013); and Tridib Mazumdar, S. P. Raj & Indrahit Sinha, *Reference*  
*Price Research: Review and Propositions*, 69 J. Mktg. 84 (2005).

1 rules—and the investors in those businesses—are penalized if the unlawful  
2 advertising practices of their competitors go unchecked.

3 30. Washington law, as well as federal regulations which guide Washington  
4 law, prohibit false discount advertising practices such as those perpetrated by  
5 Aéropostale.

6 31. “The [Consumer Protection Act], first enacted in 1961, is Washington’s  
7 principal consumer protection and antitrust statute. The consumer protection  
8 provisions of the CPA were modeled after Section 5 of the Federal Trade  
9 Commission Act, 15 U.S.C.A. § 45.” Washington Pattern Jury Instruction No. 310.00  
10 (Consumer Protection Act — Introduction).

11 32. The Washington Consumer Protection Act is codified as Chapter 19.86  
12 of the Revised Code of Washington. Its principal substantive provision states “Unfair  
13 methods of competition and unfair or deceptive acts or practices in the conduct of any  
14 trade or commerce are hereby declared unlawful.” RCW 19.86.020.

15 33. The Washington Legislature has declared the purpose and intent of the  
16 Consumer Protection Act: “The legislature hereby declares that the purpose of this act  
17 is to complement the body of federal law governing restraints of trade, unfair  
18 competition and unfair, deceptive, and fraudulent acts or practices in order to protect  
19 the public and foster fair and honest competition.” RCW 19.86.920.

20 34. Under Washington law, “The capacity of a marketing technique to  
21 deceive is determined with reference to **the least sophisticated consumers** among  
22 us.” *Keithly v. Intelius*, 764 F. Supp. 2d 1257, 1268 (W.D. Wash. 2011) (emphasis  
23 added).

24 35. Under the Washington Consumer Protection Act (“CPA”), Defendant’s  
25 false discount advertising scheme constituted unfair methods of competition and/or  
26 unfair or deceptive acts or practices which directly affected the people of



1 Washington, and which injured Plaintiff Shawwna Montes, the members of the Class,  
2 honest competing businesses, the integrity of the retail marketplace, and the general  
3 public.

4 36. The text of the Washington Consumer Protection Act explicitly states  
5 that in determining whether an act is unlawful under the CPA, courts should look for  
6 guidance to how the Federal Trade Commission (“FTC”) has dealt with similar  
7 subject matter. “It is the intent of the legislature that, in construing this act, the courts  
8 be guided by final decisions of the federal courts and final orders of the federal trade  
9 commission interpreting the various federal statutes dealing with the same or similar  
10 matters ...” RCW 19.86.920. Thus, in interpreting whether alleged false discount  
11 advertising and false “free” offers are unfair deceptive acts and practices under the  
12 Washington CPA, the courts should be guided by the FTC rules on former price  
13 comparison advertising at 16 C.F.R § 233.1 *et seq.* and the FTC rules on “free” offers  
14 at 16 C.F.R. § 251.1 (collectively, the “FTC Rules”).

15 37. In 16 C.F.R § 233.1, the FTC describes what constitutes **false discount**  
16 **advertising from false former prices:**

17 (a) One of the most commonly used forms of bargain advertising is to  
18 offer a reduction from the advertiser’s own former price for an article.  
19 If the former price is the actual, bona fide price at which the article was  
20 offered to the public on a regular basis for a reasonably substantial  
21 period of time, it provides a legitimate basis for the advertising of a  
22 price comparison. Where the former price is genuine, the bargain being  
23 advertised is a true one. If, on the other hand, the former price being  
24 advertised is not bona fide but fictitious -- for example, where an  
25 artificial, inflated price was established for the purpose of enabling the  
26 subsequent offer of a large reduction -- the “bargain” being advertised  
is a false one; the purchaser is not receiving the unusual value he  
expects. In such cases, the “reduced price” is, in reality, probably just  
the seller’s regular price.

1           38. In 16 C.F.R. § 251.1, the FTC describes what constitutes a **false and**  
2 **deceptive “free” offer:**

3           Because the purchasing public continually searches for the best buy,  
4 and regards the offer of “Free” merchandise or service to be a special  
5 bargain, all such offers must be made with extreme care so as to avoid  
6 any possibility that consumers will be misled or deceived. ... [W]hen  
7 the purchaser is told that an article is ‘Free’ to him if another article is  
8 purchased, the word ‘Free’ indicates that he is paying nothing for that  
9 article and no more than the regular price for the other. *Thus, a  
purchaser has a right to believe that the merchant will not directly and  
immediately recover, in whole or in part, the cost of the free  
merchandise or service by marking up the price of the article which  
must be purchased . . . .”*

10 (emphasis added).

11           39. The United States Court of Appeals for the Ninth Circuit has also  
12 recognized the abuses that flow from false discount advertising: “Most consumers  
13 have, at some point, purchased merchandise that was marketed as being ‘on sale’  
14 because the proffered discount seemed too good to pass up. Retailers, well aware of  
15 consumers’ susceptibility to a bargain, therefore have an incentive to lie to their  
16 customers by falsely claiming that their products have previously sold at a far higher  
17 ‘original’ price in order to induce customers to purchase merchandise at a purportedly  
18 marked-down ‘sale’ price.” *Hinojos v. Kohl’s Corp.*, 718 F.3d 1098, 1101 (9th Cir.  
19 2013).

20           40. Aéropostale’s false discounting scheme is similar in all material respects  
21 to the deceptive practices described and prohibited by the Washington CPA and the  
22 FTC Rules.





1 44. There can be no doubt that Aéropostale intended that consumers  
2 interpret and understand the strike-through list prices advertised on its website (and  
3 printed on its product tags) to stand for Aéropostale’s regular selling prices for those  
4 products. In fact, for years on its product webpages on the Aéropostale website,  
5 Aéropostale prominently advertised that the advertised savings were from  
6 Aéropostale’s “REGULAR PRICE.” See the screenshot below:

7 **Aéropostale Product Webpage August 20, 2020**



15 45. The screenshot above is of the product webpage for the Long Sleeve  
16 Seriously Soft Crew Tee (“Crew Tee”) taken from the Aéropostale website on August  
17 20, 2020. Aéropostale featured a prominent red box with the phrase “**SAVE 59%**  
18 **OFF THE REGULAR PRICE.**” The 59% savings was applied to the represented  
19 “regular” strike-through list price of \$29.50. Further, for maximum consumer  
20 impact, Aéropostale designed this red box (containing the “**SAVE 59% OFF THE**  
21 **REGULAR PRICE**”) as an animation on the product webpage which suddenly flew  
22 in from the right side of the screen and bounced up against the strike-through list  
23 price.

24 46. The advertised savings was false. Since November 1, 2019, Aéropostale  
25 had *never* charged more than the \$12.00 selling price for the Crew Tee. Notably,  
26 based on counsel’s investigation, from November 26, 2019 through August 19, 2020

1 Aéropostale charged \$7.00 for the Crew Tee (\$5.00 less than the supposed \$12.00  
2 “sale” price). Thus, customers who purchased the falsely discounted Crew Tee on  
3 August 20, 2020, had been tricked by Aéropostale into paying \$5.00 *more* than the  
4 true “regular price” of the Crew Tee.

5 47. Moreover, Aéropostale had no means to “establish” the \$29.50 list price  
6 for the Crew Tee in its brick-and-mortar retail stores. Based on the investigation of  
7 Plaintiff’s counsel, Aéropostale offered and advertised its products with identical list  
8 prices and at substantially the same sale prices both on the Aéropostale website and in  
9 its retail stores in Washington and throughout the nation. Aeropostale had rarely if  
10 ever offered the Crew Tee at the \$29.50 list price in *any* sales channel—whether  
11 online or in-store.

12 48. Aéropostale’s false discount advertisements and sales events were  
13 intended by Aéropostale to trick its customers into believing that its products had a  
14 value of, and were usually sold at, the “regular” reference prices advertised on its  
15 website (and printed on its product tags), and that the purported “sale” prices and  
16 advertised discounts represented a special and limited-time bargain.

17 49. In fact, the sale and discount representations on its website were false  
18 and misleading because customers were not receiving the special bargain that  
19 Aéropostale led them to believe. The specific amounts of the percentage-off or dollar  
20 discount may have slightly changed over time, but the existence of a significant  
21 discount on each product was perpetual.

22 50. Moreover, Aéropostale had no means to “establish” its online list prices  
23 through full-price sales in its brick-and-mortar retail stores. Based on the  
24 investigation of Plaintiff’s counsel, Aéropostale offered and advertised its products  
25 with identical list prices and at substantially the same sale prices both on the  
26 Aéropostale website and in its retail stores in Washington and throughout the nation.

1 Aeropostale virtually never offered its discounted products at the list price in *any*  
2 sales channel—whether online or in-store.

3 51. For example, in Aéropostale’s retail stores, Aéropostale’s regular  
4 practice was to post large signs on its store windows and throughout its retail stores  
5 advertising the same sales events and pricing that were on its website. Typically,  
6 Aéropostale posted signs throughout its retail stores advertising its products as being  
7 are “XX% OFF” (usually 50-70% off). These signs were usually pre-printed, but  
8 Aéropostale also posted hand-written signs on black chalkboard in its stores to further  
9 give the appearance of a special limited-time sale. But in fact, the percentage-off  
10 savings and discounts were perpetual (and identical to the false savings and discounts  
11 advertised on the Aéropostale website).

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1 52. Below are photographs taken at an Aéropostale store in Washington  
2 state on July 7, 2019, which were representative of Aéropostale's in-store advertising.

3 **Percentage-Off Discount Advertising**  
4 **Aéropostale Washington Retail Store on July 7, 2019**



1           53. In the example above, Aéropostale advertised an “ENTIRE STORE 50-  
2 70% OFF” sale event. The promised discounts were advertised on large signs both  
3 outside and inside the store. Signage on the racks adjacent to the clothing items  
4 prominently advertised “50% OFF,” “60% OFF” and “70% OFF” in bold lettering.  
5 Aéropostale had also placed hand-written chalkboard signs in the store which  
6 advertise discounts such as “50% OFF” and “70% OFF.” Aéropostale’s advertised  
7 discounts and reference prices were false and deceptive because it offered nearly all  
8 of its products at 50-70% nearly all of the time in all of its sales channels.

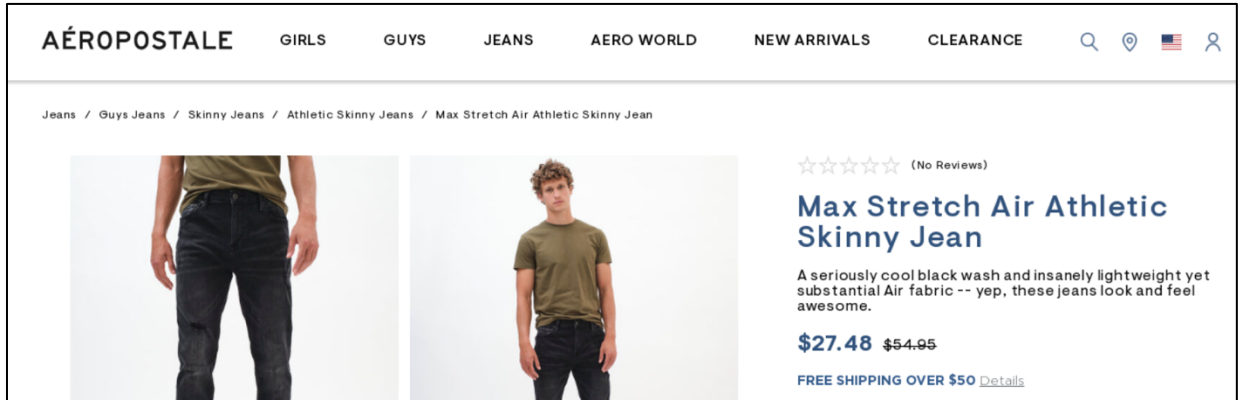
9           **B. Aéropostale’s False “Free” Offers**

10           54. Another related false discounting practice by Aéropostale was to  
11 advertise “Buy 1 Get 1 Free” or “Buy 1 Get 2 Free” offers for its products.

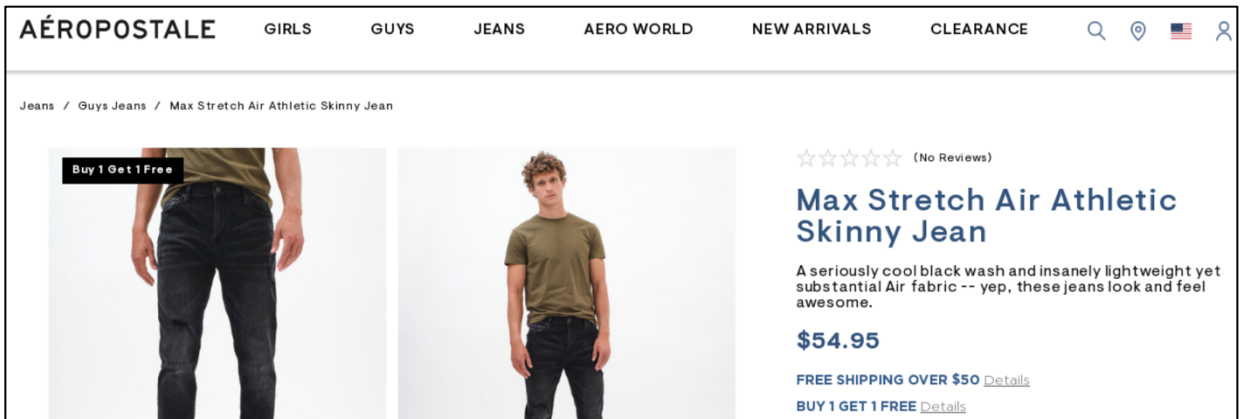
12           55. However, in all cases, Aéropostale’s promise of “Buy 1 Get 1 Free” or  
13 “Buy 1 Get 2 Free” was false and deceptive. Whenever Aéropostale made such a  
14 purported “Free” offer, Aéropostale inflated the first item’s selling price to the (never  
15 otherwise charged) price listed on the tag. Given Aéropostale’s perpetual “discount”  
16 pricing of 50-70% off the list price, this means Aéropostale was directly recovering  
17 the cost of the “free” product(s) by doubling or tripling the price of the first product,  
18 such that the customer was in fact not getting any deal at all.

1 56. For example, below are two screenshots from the Aéropostale website  
2 demonstrating Aéropostale’s false free offer scheme.

3 **Aéropostale Website January 13, 2021**  
4 **Advertised With a 50% Discount From an Inflated Reference Price**



11 **Aéropostale Website January 14, 2021**  
12 **Advertised With False “BUY 1 GET 1 FREE” Offer (Selling Price is Exactly Doubled)**



19 57. This item, the Max Stretch Air Athletic Skinny Jean (“Skinny Jean”),  
20 was always offered by Aéropostale on its website (and also in its retail stores) either  
21 as “on sale” for \$27.48 or less, or at the \$54.95 price with a “Buy 1 Get 1 Free” offer.  
22 Note that \$27.48 is exactly 50% of \$54.95. In other words, as the screenshot  
23 demonstrates, on January 14, 2021, Aéropostale formulaically doubled the selling  
24 price of the Skinny Jean in order to offer its (false) “Buy 1 Get 1 Free” offer.

25 58. The “Buy 1 Get 1 Free” offer for the Skinny Jean was false and  
26 deceptive because Aeropostale virtually never offered the Skinny Jean at the \$54.95



1 reference price (i.e., the list price, which was also printed on the product tag).

2 59. Moreover Aéropostale had no means to “establish” the \$54.95 reference  
3 price through in-store sales at the full price, because Aéropostale’s prices and  
4 perpetual discounts were consistent both online and in-store. Aéropostale rarely if  
5 ever offered the Skinny Jean for the \$54.95 list price in *any* sales channel.

6 60. Below are photographs taken at an Aéropostale retail store in  
7 Washington on July 7, 2019, demonstrating that Aéropostale utilized the same “Buy 1  
8 Get 1 Free” and “Buy 1 Get 2 Free” false advertising in its brick-and-mortar retail  
9 stores:

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1                                   **“Buy 1 Get 1 Free” and “Buy 1 Get 2 Free” Advertising**  
2                                   **Aéropostale Washington Retail Store on July 7, 2019**



23                   61.     On that same day of July 7, 2019, Aéropostale was likewise advertising  
24 on its website homepage a “BUY ONE GET ONE FREE” fake “sale.”

25                   62.     The Federal Trade Commission warns sellers advertising “Free” offers  
26 that “Where the seller, in making such an offer, increases his regular price of the

1 article required to be bought, or decreases the quantity and quality of that article, or  
2 otherwise attaches strings (other than the basic condition that the article be purchased  
3 in order for the purchaser to be entitled to the ‘free’ or ‘1¢’ additional merchandise)  
4 to the offer, the consumer may be deceived.” 16 C.F.R § 233.4. “In other words,  
5 when the purchaser is told that an article is ‘Free’ to him if another article is  
6 purchased, the word ‘Free’ indicates that he is paying nothing for that article and no  
7 more than the regular price for the other. *Thus, a purchaser has a right to believe that*  
8 *the merchant will not directly and immediately recover, in whole or in part, the cost*  
9 *of the free merchandise or service by marking up the price of the article which must*  
10 *be purchased . . .” 16 C.F.R. § 251.1 (emphasis added).*

11 63. Aéropostale engaged in exactly this deceptive and unlawful practice, in  
12 violation of the FTC Rules and the Washington CPA, when it recovered the cost of  
13 the supposedly “free” product(s) by doubling or tripling the price of the first product.  
14 Aéropostale’s “free” offer representations were false, and the customer was not in  
15 fact getting the bargain that Aéropostale was advertising.

16 64. Meanwhile, these “BUY 1 GET 1 FREE” or “BUY 1 GET 2 FREE”  
17 offer days, on which Aéropostale increased the price of the first product to the  
18 inflated list price, did not constitute bona fide offers to sell the product at the list price  
19 because the product was *only* offered at the list price when accompanied by a  
20 supposedly “FREE” offer. Thus, Aéropostale cannot credibly claim to have  
21 “established” its list prices via this deceptive free offer scheme, which was itself an  
22 independent unlawful act and practice.

1 **V. PLAINTIFF’S ALLEGATIONS ARE BASED ON A COMPREHENSIVE**  
2 **INVESTIGATION OF OVER 7 YEARS.**

3 65. Plaintiff’s allegations concerning Aéropostale’s false discount  
4 advertising scheme are based on a comprehensive investigation by Plaintiff’s counsel  
5 of Aéropostale’s pricing practices for a period of over 7 years. Plaintiff’s counsel has  
6 been monitoring and scraping the Aéropostale website on an automated daily basis  
7 with a proprietary software program since November 5, 2014. Plaintiff’s counsel has  
8 compiled and extracted daily pricing and marketing data from the website for nearly  
9 all of the products Aéropostale has offered during this time. In total, **Plaintiff’s**  
10 **counsel has assembled and analyzed an exhaustive historical database of daily**  
11 **prices and time-stamped website screenshots of over 4.4 million daily offerings**  
12 **of over 44,000 products over this more than 7-year period.** (Note, although  
13 counsel has been investigating the Aéropostale business since November 5, 2014, the  
14 allegations of this Complaint only concern Aéropostale’s actions since September 16,  
15 2016, during which time Defendant has owned and/or operated the Aéropostale  
16 business.)

17 66. **Moreover, Aéropostale has had no means to “establish” its list prices**  
18 **through full-price sales in its brick-and-mortar retail stores.** Plaintiff’s counsel  
19 has also investigated brick-and-mortar Aéropostale retail stores in Washington state  
20 (and also in other states) and has found that Aéropostale’s prices and false discount  
21 practices were substantially the same both online and in-store. Based on the  
22 investigation of Plaintiff’s counsel, Aéropostale offered and advertised its products  
23 with identical list prices and at substantially the same sale prices both on the  
24 Aéropostale website and in its retail stores in Washington and throughout the nation.  
25 Aéropostale’s discounted products were virtually never offered at the list price in *any*  
26 sales channel—whether online or in-store.



1 67. For example, the images below demonstrate how Aéropostale’s list  
2 prices, selling prices, and advertised discounts were substantially the same both  
3 online and in-store:

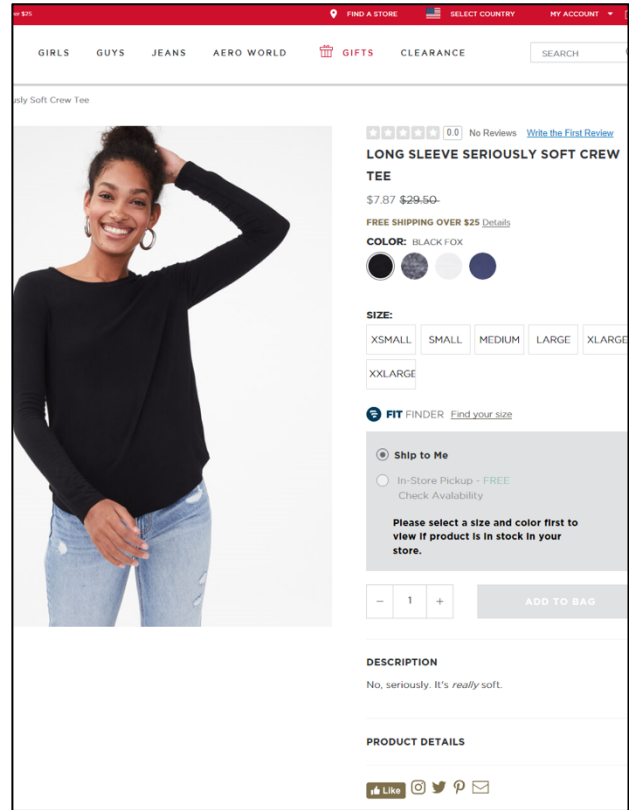
4 **Aéropostale Washington Retail Store**  
5 **November 26, 2019**

6 **Long Sleeve Seriously Soft Crew Tee**  
7 **Sales Price: \$7.87; List Price \$29.50**



**Aéropostale Website**  
November 26, 2019

**Long Sleeve Seriously Soft Crew Tee**  
Sales Price: \$7.87; List Price \$29.50



68. The images above are of the Aéropostale Long Sleeve Seriously Soft Crew Tee (“Crew Tee”). The photographs on the left were taken at an Aéropostale retail store in Washington on November 26, 2019. The screenshot on the right was taken the same day on Aéropostale’s website of the identical Crew Tee. The top photographs on the left show the \$7.87 sale price and the \$29.50 list price printed on the item tag. On the website, Aéropostale advertised the same \$29.50 list price (here represented with a strike-through indicating it is the higher regular price), alongside

1 the same \$7.87 sale price.

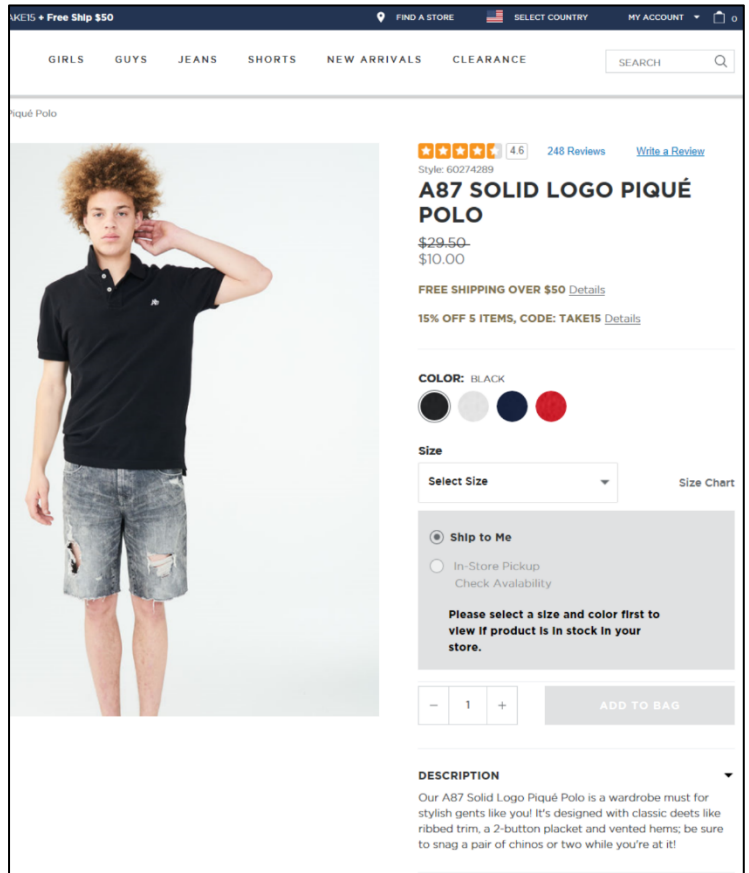
2 69. The images below further demonstrate how Aéropostale’s list prices,  
3 selling prices, and advertised purported discounts were substantially the same both  
4 online and in-store:

5 **Aéropostale Washington Retail Store**  
6 **July 7, 2019**

**Aéropostale Website**  
7 **July 7, 2019**

8 **A87 Solid Logo Pique Polo**  
9 **Sales Price: \$10.00; List Price \$29.50**

10 **A87 Solid Logo Pique Polo**  
11 **Sales Price: \$10.00; List Price \$29.50**



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21 70. The images above are of the Aéropostale A87 Solid Logo Pique Polo  
22 (“Solid Polo”). The photographs on the left were taken at an Aéropostale retail store  
23 in Washington on July 7, 2019. The screenshot on the right was taken the same day  
24 on Aéropostale’s website of the identical Solid Polo. The photographs on the left  
25 show the \$10.00 sale price and the \$29.50 list price printed on the product tag. On the  
26 website, Aéropostale advertised the same \$29.50 list price (here represented with a

1 strike-through indicating it is the higher regular price), alongside the same \$10.00  
2 sale price.

3 71. Plaintiff’s counsel’s exhaustive big-data analysis of millions of data  
4 points for more than 44,000 products over this more than 7-year period shows that  
5 Aéropostale advertised perpetual discounts for nearly all of its products. The  
6 percentage-off and other discounts were *always* false, and Aéropostale’s advertised  
7 former prices (i.e., the strike-through prices which Aéropostale labeled on its website  
8 as the “**REGULAR PRICE**”) to which the discounts were applied were false and  
9 inflated. In fact, for the majority of the products that Aéropostale advertised with a  
10 discount or with a “Free” offer, Aéropostale had *never*—not even for a single day—  
11 offered the product at the list price without a discount or “free” offer.

12 72. On those rare occasions that Aéropostale offered some of its products at  
13 list price, it did so in bad faith, solely for the purpose of “establishing” its list price to  
14 attempt to exculpate itself from legal liability for its illegal pricing scheme. It was  
15 Aéropostale’s intent to sell few if any products at list price, and in fact Aéropostale  
16 sold no, or practically no, products at list price.

17 73. Counsel’s comprehensive investigation has revealed and documented  
18 that the Aéropostale business was perpetrating this massive false discount advertising  
19 scheme online (and also in Aéropostale retail stores) since at least November 5, 2014.  
20 (However, the allegations of this Complaint only concern Aéropostale’s sales on its  
21 website since September 16, 2016, during which time Defendant has owned and/or  
22 operated the Aéropostale business.)

23 74. The false or misleading nature of Aéropostale’s purported discounts and  
24 list prices were at all relevant times masked or concealed or hidden such that an  
25 ordinary consumer exercising reasonable care under all the circumstances would not  
26 have known of or discovered their false or misleading nature.

1 75. By Aéropostale’s design, the false advertising scheme by its very nature  
2 was hidden and impossible for the typical consumer to discover. Consumers who  
3 shopped on the Aéropostale website would have no way to know the true daily price  
4 histories and past selling prices for the products they viewed and purchased.  
5 Consumers would have no way to know that the strike-through reference prices and  
6 “REGULAR PRICE” representations on the product webpages were fictitious and  
7 inflated and that the advertised savings were false.

8 76. In fact, counsel for Plaintiff only found evidence of Aéropostale’s  
9 advertising scheme as part of an expensive and expansive multi-year investigation of  
10 Aéropostale’s pricing practices in general.

11 **VI. CUSTOMERS WERE HARMED AS A RESULT OF AÉROPOSTALE’S**  
12 **FALSE DISCOUNT ADVERTISING SCHEME**

13 77. As a direct and proximate result of Aéropostale’s false discount  
14 advertising scheme and the acts and omissions described herein, all Washington  
15 consumers who purchased a product from the Aéropostale website that was  
16 advertised with a discount, reference price, and/or “free” offer were harmed and were  
17 injured in their business or property.

18 78. **First**, customers were injured because they would not have purchased  
19 the items at the prices they paid had they known the items had not in fact been  
20 regularly offered at the higher listed price. Customers paid more than they otherwise  
21 would have paid for the products they purchased.

22 79. **Second**, customers were injured because they did not enjoy the actual  
23 discounts Aéropostale represented and promised to them.

24 80. **Third**, customers were injured because the items they purchased were  
25 not worth the inflated amount that Aéropostale represented to them. In fact, the items  
26 did not normally sell for, and were not actually worth, the fictitious and invented list

1 price advertised on Aéropostale’s website (and printed on its product tags).

2 81. **Fourth**, customers were injured because they paid a price premium due  
3 to illegitimately inflated demand resulting from Aéropostale’s deceptive pricing  
4 scheme. Aéropostale’s false discount advertising scheme illegitimately increased  
5 demand for Aéropostale’s products, thereby shifting the demand curve and enabling  
6 Defendant to charge its customers more than it otherwise could have charged.  
7 Aéropostale’s false advertising scheme enabled Aéropostale to charge everyone more  
8 for all of its products by artificially stimulating demand based on false pretenses. But  
9 for the false advertising scheme, Aéropostale would have had to charge less money  
10 for its products in order to enjoy the same level of demand for its products.

11 **VII. PLAINTIFF’S FACTUAL ALLEGATIONS**

12 82. Plaintiff Shawna Montes is, and at all relevant times has been, a  
13 Washington resident and citizen.

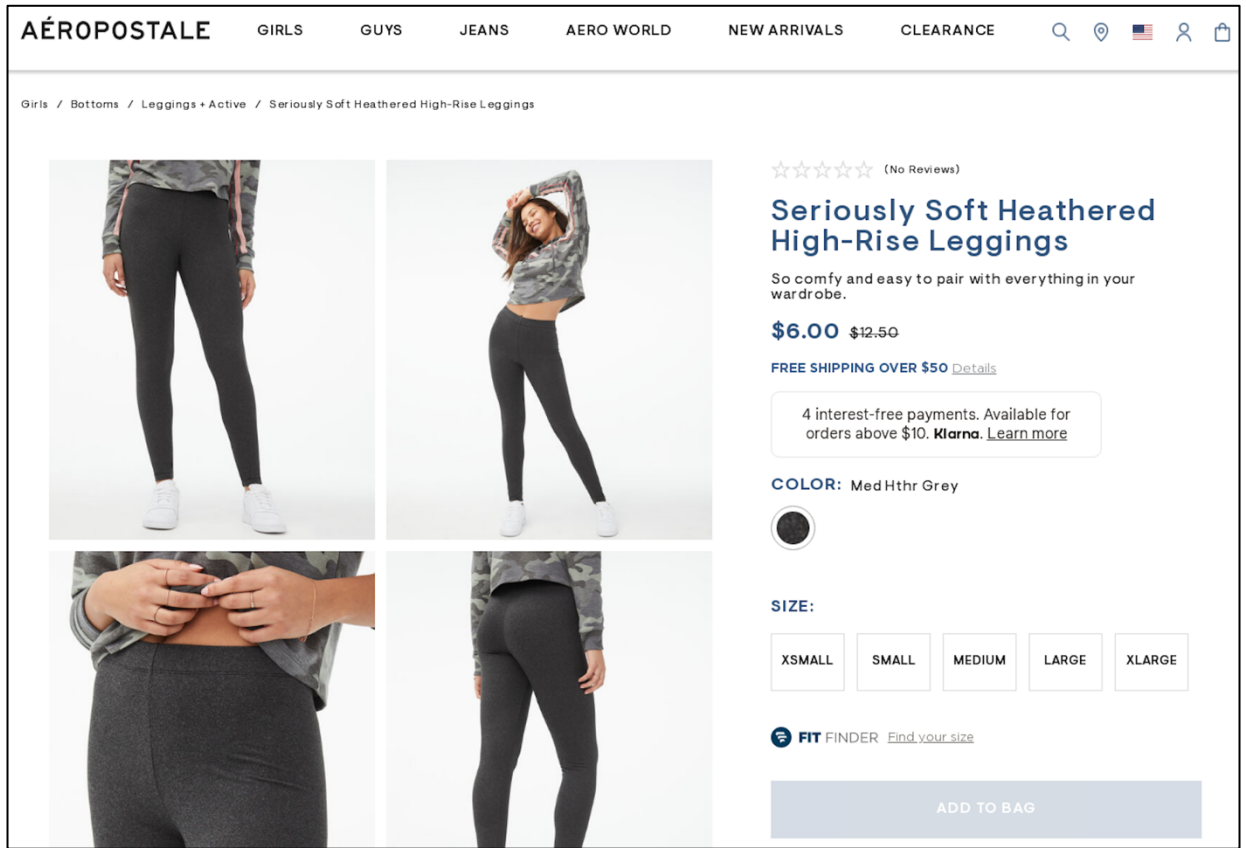
14 83. Ms. Montes has been a regular shopper at Aéropostale for many years.

15 84. Ms. Montes has made numerous purchases of products from  
16 Aéropostale’s website which were advertised with a discount (and also from  
17 Aéropostale’s retail store in Spokane Valley Mall, Spokane Washington).

18 85. For example, On January 9, 2021, Ms. Montes visited the Aéropostale  
19 website to shop for clothing items. Ms. Montes viewed and ultimately purchased  
20 several items from the website that day. For example, Ms. Montes viewed webpages  
21 advertising a Seriously Soft Heathered High-Rise Leggings, Item # 70411499 (the  
22 “Leggings”).



1 86. Below is a screenshot of the product webpage for the Leggings viewed  
 2 by Ms. Montes on January 9, 2021:



16 87. As reflected in the screenshot above, Ms. Montes viewed discount  
 17 pricing representations for the Leggings. Ms. Montes viewed a strike-through  
 18 reference price of “\$12.50.” Directly below this reference price, Ms. Montes viewed  
 19 the “sale” price of \$6.00.

20 88. Relying on Aéropostale’s representations, Ms. Montes reasonably  
 21 believed that the Leggings were regularly and normally offered for sale and sold by  
 22 Aéropostale for the \$12.50 reference price. Ms. Montes reasonably believed that the  
 23 Leggings were thereby worth and had a value of \$12.50. Ms. Montes reasonably  
 24 believed that the advertised “sale” price of \$6.00—a purported monetary discount of  
 25 \$6.50—represented a special bargain.

26 89. Relying on Aéropostale’s representations, Ms. Montes purchased one

1 pair of the Leggings.

2 90. However, the advertised regular price and discount for the Leggings—  
3 which were exclusively offered and sold by Aéropostale—were false and deceptive  
4 because, unbeknownst to Ms. Montes, Aéropostale had almost never offered the  
5 Leggings at the advertised regular price of \$12.50.

6 91. As part of its investigation, Plaintiffs’ counsel had tracked the online  
7 daily prices of the Leggings. Based on the daily data and screenshots collected by  
8 Plaintiffs’ counsel, for the six-month period June 23, 2020, through the date of  
9 Ms. Montes’s purchase on January 9, 2021, Aéropostale offered the Leggings on its  
10 website at the supposed regular price of \$12.50 for only a single day, on January 6,  
11 2021. For all other days, Aéropostale’s offering price ranged from \$5.00 (i.e., 17%  
12 less than what Ms. Montes paid) to \$6.00 (the same price that Ms. Montes paid).  
13 Based on information and belief, Aéropostale offered the Leggings at the \$12.50  
14 price on its website for that single day on January 6, 2021, in bad faith with the  
15 expectation of selling no or virtually no Leggings that day at that inflated price, solely  
16 for the purpose of “establishing” its list price in an attempt to exculpate itself from  
17 legal liability for its illegal pricing scheme.

18 92. Moreover, Aéropostale had no means to “establish” the \$12.50 list price  
19 for the Leggings in its brick-and-mortar retail stores. Based on the investigation of  
20 Plaintiff’s counsel, Aéropostale offered and advertised its products with identical list  
21 prices and at substantially the same sale prices both on the Aéropostale website and in  
22 its retail stores in Washington and throughout the nation. Aéropostale had rarely if  
23 ever offered the Leggings at the \$12.50 list price in *any* sales channel—whether  
24 online or in-store.

25 93. In fact, Ms. Montes placed the order for the Leggings online to be picked  
26 up in-store, and she then picked up the Leggings at her local Aéropostale store at

1 Spokane Valley Mall.

2 94. The Leggings purchased by Ms. Montes from Aéropostale were not in  
3 fact worth the advertised \$12.50 supposed “regular” price that Aéropostale had led  
4 Ms. Montes to believe. Contrary to Aéropostale’s representations, Ms. Montes did  
5 not enjoy the advertised and promised savings for the Leggings.

6 95. Aéropostale’s advertised false discount from a false former price was a  
7 material misrepresentation and inducement to Ms. Montes’s purchase.

8 96. As a direct and proximate result of Aéropostale’s acts and omissions,  
9 Ms. Montes was harmed, suffered an injury-in-fact, and lost money or property.

10 97. Ms. Montes reasonably relied on Aéropostale’s material  
11 misrepresentations. If Ms. Montes had known the truth, she would not have  
12 purchased the Leggings at the price she paid.

### 13 **VIII. CLASS ACTION ALLEGATIONS**

14 98. **Class Definition**: Plaintiff Shawna Montes brings this class-action  
15 lawsuit on behalf of herself and on behalf of the members of the following class (the  
16 “Class”):

17 **All citizens of the State of Washington who, since September 16,**  
18 **2016, purchased from the Aéropostale website one or more**  
19 **products which was advertised with a discount or “free” offer.**

20 99. The allegations of this Complaint only concern Aéropostale’s actions  
21 since September 16, 2016, during which time Defendant has owned and/or operated  
22 the Aéropostale business. The applicable limitations period extends back this entire  
23 period by application of the discovery rule. In fact, Counsel’s investigation shows  
24 that Aéropostale’s unlawful false discounting practices have been pervasive on its  
25 website—and have been at the core of its marketing plan—for years before that. By  
26 Aéropostale’s design, the false advertising scheme is by its very nature hidden and

1 impossible for the typical consumer to discover. Plaintiff and the members of the  
2 Class did not know, and could not have known, that the reference prices and  
3 advertised discounts on the Aéropostale website were false.

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

9 101. **Numerosity.** Plaintiff does not know the exact number of Class members  
10 but is informed and believes that the Class easily comprises of thousands of  
11 individuals. As such, Class members are so numerous that joinder of all members is  
12 impracticable.

13 102. **Commonality and Predominance.** Well-defined, nearly identical legal  
14 or factual questions affect the members of the Class. These questions predominate  
15 over questions that might affect individual Class members. These common questions  
16 include, but are not limited to, the following:

- 17 a) Aéropostale's policies and actions regarding its advertising;  
18 b) The accuracy of Aéropostale's advertised discounts and reference  
19 prices;  
20 c) The accuracy of Aéropostale's advertised "free" offers such as  
21 "Buy 1 Get 1 Free" and "Buy 1 Get 2 Free";  
22 d) Whether the alleged conduct of Aéropostale violates the  
23 Washington Consumer Protection Act (RCW Chapter 19.86);  
24 e) Whether the alleged conduct of Aéropostale violates 16 C.F.R.  
25 § 233.1 *et seq.* and 16 C.F.R. § 251.1; and  
26

1 f) Whether Plaintiff and the class have suffered injury as a result of  
2 Aéropostale's false discount advertising practices and misrepresentations.

3 103. **Typicality.** Plaintiff's claims are typical of Class members' claims.  
4 Plaintiff's claims and Class members' claims all arise from the same false discount  
5 advertising practices and misrepresentations and are based on the same legal theories.  
6 Plaintiff and Class members all sustained injury as a result of Defendant's practices  
7 and schemes.

8 104. **Adequacy.** Plaintiff will fairly and adequately protect Class members'  
9 interests. Plaintiff has no interests antagonistic to Class members' interests. Plaintiff  
10 has retained counsel who have considerable experience and success in prosecuting  
11 complex class action and consumer protection cases.

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

**CAUSES OF ACTION**

**COUNT I**

**Violation of the Washington Consumer Protection Act  
(RCW Chapter 19.86)**

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

107. The Washington Consumer Protection Act (the “CPA”), RCW 19.86, declares unfair methods of competition and unfair or deceptive acts or practices to be unlawful. RCW 19.86.020. A consumer may bring a private action to recover actual damages (which may be trebled), costs, and attorneys’ fees. RCW 19.86.090.

108. Defendant’s acts and omissions, including advertising false discounts, false former prices, and false “free” offers, constitute unfair methods of competition and/or unfair or deceptive acts or practices which directly or indirectly affect the people of the State of Washington, and which caused injury to Plaintiff and the Class members’ business or property. Defendant’s acts and practices are directly contrary to the FTC Rules by which the CPA states the Court should be guided, including the FTC rules on former price comparison advertising at 16 C.F.R § 233.1 *et seq.* and the FTC rules on “free” offers at 16 C.F.R. § 233.4 and 16 C.F.R. § 251.1 as further described above.

109. Defendant SPARC Group LLC d/b/a Aéropostale engages in the conduct of trade or commerce. For example, and without limitation, Defendant engages in the sale of assets (including the clothing and apparel products that Defendant sells) and engages in commerce directly affecting the people of Washington.

110. Defendant’s unlawful conduct intended to, or had the capacity to, deceive a substantial portion of the public.

111. Further, under Washington law, “[t]he capacity of a marketing technique to deceive is determined with reference to the least sophisticated consumers among

1 us.” *Keithly v. Intelius*, 764 F. Supp. 2d 1257, 1268 (W.D. Wash. 2011).

2 112. Defendant’s pricing misrepresentations are material, in that a reasonable  
3 person would attach importance to the information and would be induced to act on  
4 the information in making purchase decisions. Plaintiff and Class members  
5 reasonably relied on Aéropostale’s material misrepresentations.

6 113. As a direct, substantial, and proximate result of Defendant’s unlawful  
7 conduct, Plaintiff and Class members suffered injury to their business or property.

8 114. Plaintiff and the Class were harmed because they would not have  
9 purchased the items at the prices they paid had they known the items had not been  
10 regularly offered at the higher list price. They did not enjoy the actual discounts  
11 Aéropostale represented and promised them. Plaintiff and the Class were harmed  
12 because the items they purchased were not in fact worth the inflated amount that  
13 Aéropostale represented to them. In fact, the items did not normally sell for, and were  
14 not actually worth, the fictitious and invented “regular price” that Aéropostale listed  
15 on its website. Plaintiff and the Class were also harmed because they paid a price  
16 premium due to illegitimately inflated demand resulting from Aéropostale’s  
17 deceptive pricing scheme. But for the false advertising scheme, Aéropostale would  
18 have had to charge less money for its products in order to enjoy the same level of  
19 demand for its products.

20 115. The acts and omissions of Defendant pled herein are injurious to the  
21 public interest because said acts and omissions: (a) injured other persons in addition  
22 to Plaintiff; (b) had the capacity to injure other persons; or (c) has the capacity to  
23 injure other persons. *See* RCW 19.86.093(3).

24 116. The unlawful acts and omissions pled herein were committed in the  
25 course of Defendant’s business. The unlawful acts and omissions pled herein were,  
26 are and continue to be part of a pattern or generalized course of conduct. The acts and



1 omissions of Defendant pled herein were and are not reasonable in relation to the  
2 development and preservation of business.

3 117. With respect to any omissions, Aéropostale at all relevant times had a  
4 duty to disclose the information in question because, inter alia: (a) Aéropostale had  
5 exclusive knowledge of material information that was not known to Plaintiff and the  
6 Class; (b) Aéropostale concealed material information from Plaintiff and the Class;  
7 and (c) Aéropostale made partial representations which were false and misleading  
8 absent the omitted information.

9 **PRAYER FOR RELIEF**

10 Plaintiff Shawna Montes, on behalf of herself individually, and on behalf of  
11 the Class of all others similarly situated, hereby respectfully requests that this Court  
12 order relief and enter judgment against Defendant SPARC Group LLC d/b/a  
13 Aéropostale as follows:

- 14 1. Declare this action to be a proper class action, certify the proposed  
15 Class, and appoint Plaintiff and her counsel to represent the Class;
- 16 2. Declare that the discovery rule applies and that the applicable limitations  
17 period—and the corresponding class period—extends to September 16, 2016;
- 18 3. Order Defendant to pay damages, including actual damages, to Plaintiff  
19 and the Class in an amount to be determined at trial but which is more than \$5  
20 million, pursuant to, without limitation, RCW 19.86.090;
- 21 4. Declare an increase in the award of actual damages of up to treble the  
22 actual damages pursuant to, without limitation, RCW 19.86.090;
- 23 5. Order disgorgement or restitution, including, without limitation,  
24 disgorgement of all revenues, profits and/or unjust enrichment that Defendant  
25 obtained, directly or indirectly, from Plaintiff and the members of the Class or  
26 otherwise as a result of the unlawful conduct alleged herein;





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*\*Pro hac vice application to be submitted*

JS 44 (Rev. 10/20)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS SHAWNNA MONTES (b) County of Residence of First Listed Plaintiff Spokane, WA (c) Attorneys (Firm Name, Address, and Telephone Number) Daniel M. Hattis, Esq. | Hattis & Lukacs | (425) 233-8650 11711 SE 8th St., Ste 120, Bellevue, WA 98005 DEFENDANTS SPARC GROUP LLC County of Residence of First Listed Defendant Lyndhurst, NJ NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) 1 U.S. Government Plaintiff 2 U.S. Government Defendant 3 Federal Question (U.S. Government Not a Party) 4 Diversity (Indicate Citizenship of Parties in Item III) III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) Citizen of This State Citizen of Another State Citizen or Subject of a Foreign Country PTF DEF 1 1 2 2 3 3 4 4 5 5 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) CONTRACT 110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise REAL PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property TORTS PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury - Medical Malpractice PERSONAL INJURY 365 Personal Injury - Product Liability 367 Health Care/ Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability LABOR 710 Fair Labor Standards Act 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Employee Retirement Income Security Act IMMIGRATION 462 Naturalization Application 465 Other Immigration Actions FORFEITURE/PENALTY 625 Drug Related Seizure of Property 21 USC 881 690 Other BANKRUPTCY 422 Appeal 28 USC 158 423 Withdrawal 28 USC 157 PROPERTY RIGHTS 820 Copyrights 830 Patent 835 Patent - Abbreviated New Drug Application 840 Trademark 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS—Third Party 26 USC 7609 OTHER STATUTES 375 False Claims Act 376 Qui Tam (31 USC 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit (15 USC 1681 or 1692) 485 Telephone Consumer Protection Act 490 Cable/Sat TV 850 Securities/Commodities/ Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only) 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332(d)(2) Brief description of cause: Violation of the Washington Consumer Protection Act

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

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE September 15, 2022 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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

## Authority For Civil Cover Sheet

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

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

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

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
Eastern District of Washington

SHAWNNA MONTES,
on behalf of herself and all others similarly situated,

Plaintiff(s)

v.

SPARC GROUP LLC,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) SPARC Group LLC
125 Chubb Avenue, 5th Floor
Lyndhurst, New Jersey 07071

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Daniel M. Hattis (Attorney for Plaintiff Shawanna Montes)
Hattis & Lukacs
11711 8th St., Suite 120
Bellevue, WA 98005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date

SEAN F. McAVOY, Clerk