

SHORT TITLE: Calcagno v. Kipling Apparel Corp.	CASE NUMBER: 25CU000125N
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4. Plaintiff (*name*):
 is doing business under the fictitious name (*specify*):
- and has complied with the fictitious business name laws.
5. Each defendant named above is a natural person
- a. **except** defendant (*name*): KIPLING APPAREL CORP., c. **except** defendant (*name*):
- (1) a business organization, form unknown. (1) a business organization, form unknown.
 (2) a corporation. (2) a corporation.
 (3) an unincorporated entity (*describe*): (3) an unincorporated entity (*describe*):
- (4) a public entity (*describe*): (4) a public entity (*describe*):
- (5) other (*specify*): (5) other (*specify*):
 A Delaware Corporation
- b. **except** defendant (*name*): d. **except** defendant (*name*):
- (1) a business organization, form unknown. (1) a business organization, form unknown.
 (2) a corporation. (2) a corporation.
 (3) an unincorporated entity (*describe*): (3) an unincorporated entity (*describe*):
- (4) a public entity (*describe*): (4) a public entity (*describe*):
- (5) other (*specify*): (5) other (*specify*):
- Information about additional defendants who are not natural persons is contained in Attachment 5.
6. The true names of defendants sued as Does are unknown to plaintiff.
- a. Doe defendants (*specify Doe numbers*): were the agents or employees of other
 named defendants and acted within the scope of that agency or employment.
- b. Doe defendants (*specify Doe numbers*): are persons whose capacities are unknown to
 plaintiff.
7. Defendants who are joined under Code of Civil Procedure section 382 are (*names*):
8. This court is the proper court because
- a. at least one defendant now resides in its jurisdictional area.
 b. the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.
 c. injury to person or damage to personal property occurred in its jurisdictional area.
 d. other (*specify*):
9. Plaintiff is required to comply with a claims statute, **and**
- a. has complied with applicable claims statutes, **or**
 b. is excused from complying because (*specify*):

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10. The following causes of action are attached and the statements above apply to each (*each complaint must have one or more causes of action attached*):

- a. Motor Vehicle
- b. General Negligence
- c. Intentional Tort
- d. Products Liability
- e. Premises Liability
- f. Other (*specify*):
 Violation of California's Consumer Legal Remedies Act ("CLRA"); CAL.CIV. CODE §§ 1750, et seq.
 Violation of California's False Advertising Laws ("FAL"); CAL.BUS. & PROF. CODE §§ 17500, et seq.
 Violation of California's Unfair Competition Laws ("UCL"); CAL.BUS. & PROF. CODE §§ 17200, et seq.

11. Plaintiff has suffered (*check all that apply*)

- a. wage loss.
- b. loss of use of property.
- c. hospital and medical expenses.
- d. general damage.
- e. property damage.
- f. loss of earning capacity.
- g. other damage (*specify*):
 Pecuniary loss according to proof

12. The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. listed in Attachment 12.
- b. as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. **Plaintiff prays** for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) compensatory damages.
- (2) punitive damages.
- b. The amount of damages is (*in cases for personal injury or wrongful death, you must check (1)*):
 (1) according to proof.
 (2) in the amount of: \$

15. The paragraphs of this complaint alleged on information and belief are as follows (*specify paragraph numbers*):

Date: January 2, 2025

Todd D. Carpenter

(TYPE OR PRINT NAME)



/s/ Todd D. Carpenter

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

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First **CAUSE OF ACTION—Fraud**

(number)

ATTACHMENT TO Complaint Cross-Complaint

(Use a separate cause of action form for each cause of action.)

FR- 1. Plaintiff (name): **Christina Calcagno**

alleges that defendant (name): **Kipling Apparel Corp.**

on or about (date): **January 18, 2022** defrauded plaintiff as follows:

FR-2. **Intentional or Negligent Misrepresentation**

a. Defendant made representations of material fact as stated in Attachment FR-2.a as follows:

Defendant violated California's Consumer Legal Remedies Act by fabricating an "original price" of products it sells to deceptively discount its products to induce consumers to purchase its products under the guise of a significant sale. Civ. Code § 1750, et seq. Specifically, defendant advertised goods or services with intent to not sell them as advertised. Civ. Code § 1770(a)(9). Defendant also made false or misleading statement of fact concerning reasons for existence of, or amount of price reductions. Civ. Code § 1770(a)(13).

b. These representations were in fact false. The truth was as stated in Attachment FR-2.b as follows:

The products were never sold at the "original price," and the advertised original price was inflated to depict a larger discount to consumers in order to deceive them into making a purchase on a perceived sale.

c. When defendant made the representations,

defendant knew they were false, or

defendant had no reasonable ground for believing the representations were true.

d. Defendant made the representations with the intent to defraud and induce plaintiff to act as described in item FIR-5. At the time plaintiff acted, plaintiff did not know the representations were false and believed they were true. Plaintiff acted in justifiable reliance upon the truth of the representations.

FR-3. **Concealment**

a. Defendant concealed or suppressed material facts as stated in Attachment FR-3.a as follows:

Defendant concealed the actual value of the products it sells, by inflating the products "original price."

b. Defendant concealed or suppressed material facts

defendant was bound to disclose.

by telling plaintiff other facts to mislead plaintiff and prevent plaintiff from discovering the concealed or suppressed facts.

c. Defendant concealed or suppressed these facts with the intent to defraud and induce plaintiff to act as described in item IFIR-5. At the time plaintiff acted, plaintiff was unaware of the concealed or suppressed facts and would not have taken the action if plaintiff had known the facts.

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First

(number)

CAUSE OF ACTION—FraudFR-4. **Promise Without Intent to Perform**

a. Defendant made a promise about a material matter without any intention of performing it as stated in Attachment FR-4.a as follows:

b. Defendant's promise without any intention of performance was made with the intent to defraud and induce plaintiff to rely upon it and to act as described in item FR-5. At the time plaintiff acted, plaintiff was unaware of defendant's intention not to perform the promise. Plaintiff acted in justifiable reliance upon the promise.

FR-5. In justifiable reliance upon defendant's conduct, plaintiff was induced to act as stated in Attachment FR-5 as follows:

Plaintiff was induced to purchase the discounted product in order to capture the perceived savings. Plaintiff would not have made a purchase knowing the true value of the product. Defendant's advertisements of discounts on merchandise at Kipling Apparel stores improperly leads consumers to believe that they are receiving a discount on their purchases.

FR-6. Because of plaintiff's reliance upon defendant's conduct, plaintiff has been damaged as stated in Attachment FR- 6 as follows:

Plaintiff was damaged by making purchases they would not have otherwise made, due to the deceptive discount. Furthermore, a result of Defendant's deceptive business practices, Plaintiff paid more than the actual value of the product purchased.

FIR - 7. Other:

All persons, within the State of California, who, between December 8, 2019 and the present (the "Class Period"), purchased from a Kipling Outlet store one or more products advertised at a purported discount from an advertised reference price and who have not received a refund or credit for their purchase(s). Excluded from the Class are Defendant, as well as its officers, employees, agents or affiliates, parent companies and/or subsidiaries, and each of their respective officers, employees, agents or affiliates, and any judge who presides over this action.

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Second **CAUSE OF ACTION—Fraud**
(number)

ATTACHMENT TO Complaint Cross-Complaint

(Use a separate cause of action form for each cause of action.)

FR- 1. Plaintiff (*name*): Christina Calcagno

alleges that defendant (*name*): Kipling Apparel Corp

on or about (*date*): January 18, 2022 defrauded plaintiff as follows:

FR-2. **Intentional or Negligent Misrepresentation**

a. Defendant made representations of material fact as stated in Attachment FR-2.a as follows:

Defendant violated California's False Advertising Law by fabricating a false "original" price of products it sells, to deceptively discount its products to induce consumers to purchase its products under the guise of a significant sale. Bus. & Prof. Code §§ 17500 et seq. Defendant also violated the 90-day rule under California's False Advertising Law. Bus & Prof. Code § 17501.

b. These representations were in fact false. The truth was as stated in Attachment FR-2.b as follows:

The products were never sold at the "original price," and the advertised original price was inflated to depict a larger discount to consumers in order to deceive them into making a purchase on a perceived sale.

c. When defendant made the representations,

defendant knew they were false, or

defendant had no reasonable ground for believing the representations were true.

d. Defendant made the representations with the intent to defraud and induce plaintiff to act as described in item FIR-5. At the time plaintiff acted, plaintiff did not know the representations were false and believed they were true. Plaintiff acted in justifiable reliance upon the truth of the representations.

FR-3. **Concealment**

a. Defendant concealed or suppressed material facts as stated in Attachment FR-3.a as follows:

Defendant concealed the actual value of the products it sells, by inflating the products "original price."

b. Defendant concealed or suppressed material facts

defendant was bound to disclose.

by telling plaintiff other facts to mislead plaintiff and prevent plaintiff from discovering the concealed or suppressed facts.

c. Defendant concealed or suppressed these facts with the intent to defraud and induce plaintiff to act as described in item IFIR-5. At the time plaintiff acted, plaintiff was unaware of the concealed or suppressed facts and would not have taken the action if plaintiff had known the facts.

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Second

(number)

CAUSE OF ACTION—Fraud

FR-4. **Promise Without Intent to Perform**

a. Defendant made a promise about a material matter without any intention of performing it as stated in Attachment FR-4.a as follows:

b. Defendant's promise without any intention of performance was made with the intent to defraud and induce plaintiff to rely upon it and to act as described in item FR-5. At the time plaintiff acted, plaintiff was unaware of defendant's intention not to perform the promise. Plaintiff acted in justifiable reliance upon the promise.

FR-5. In justifiable reliance upon defendant's conduct, plaintiff was induced to act as stated in Attachment FR-5 as follows:

Plaintiff was induced to purchase the discounted product in order to capture the perceived savings. Plaintiff would not have made a purchase knowing the true value of the product. Defendant's advertisements of discounts on merchandise at Kipling Apparel stores improperly leads consumers to believe that they are receiving a discount on their purchases.

FR-6. Because of plaintiff's reliance upon defendant's conduct, plaintiff has been damaged as stated in Attachment FR- 6 as follows:

Plaintiff was damaged by making purchases they would not have otherwise made, due to the deceptive discount. Furthermore, a result of Defendant's deceptive business practices, Plaintiff paid more than the actual value of the product purchased.

FIR - 7. Other:

All persons, within the State of California, who, between December 8, 2019 and the present (the "Class Period"), purchased from a Kipling Outlet store one or more products advertised at a purported discount from an advertised reference price and who have not received a refund or credit for their purchase(s). Excluded from the Class are Defendant, as well as its officers, employees, agents or affiliates, parent companies and/or subsidiaries, and each of their respective officers, employees, agents or affiliates, and any judge who presides over this action.

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Third **CAUSE OF ACTION—Fraud**
(number)

ATTACHMENT TO Complaint Cross-Complaint

(Use a separate cause of action form for each cause of action.)

FR- 1. Plaintiff *(name)*: Christina Calcagno

alleges that defendant *(name)*: Kipling Apparel Corp

on or about *(date)*: January 18, 2022 defrauded plaintiff as follows:

FR-2. **Intentional or Negligent Misrepresentation**

a. Defendant made representations of material fact as stated in Attachment FR-2.a as follows:

Defendant violated the "unlawful" prong of California's Unfair Competition Law, by violating California's False Advertising Law. Bus & Prof. Code §§ 17200, et seq., and California's Consumer Legal Remedies Act. Civ. Code §§ 1750 et seq. Defendant inflated the "original price" of its products in order to offer a significant discounts to deceive consumers into purchasing the products for the perceived savings.

b. These representations were in fact false. The truth was as stated in Attachment FR-2.b as follows:

The products were never sold at the "original price," and the advertised original price was inflated to depict a larger discount to consumers in order to deceive them into making a purchase on a perceived sale.

c. When defendant made the representations,

defendant knew they were false, **or**

defendant had no reasonable ground for believing the representations were true.

d. Defendant made the representations with the intent to defraud and induce plaintiff to act as described in item FIR-5. At the time plaintiff acted, plaintiff did not know the representations were false and believed they were true. Plaintiff acted in justifiable reliance upon the truth of the representations.

FR-3. **Concealment**

a. Defendant concealed or suppressed material facts as stated in Attachment FR-3.a as follows:

Defendant concealed the actual value of the products it sells, by inflating the products "original price."

b. Defendant concealed or suppressed material facts

defendant was bound to disclose.

by telling plaintiff other facts to mislead plaintiff and prevent plaintiff from discovering the concealed or suppressed facts.

c. Defendant concealed or suppressed these facts with the intent to defraud and induce plaintiff to act as described in item IFIR-5. At the time plaintiff acted, plaintiff was unaware of the concealed or suppressed facts and would not have taken the action if plaintiff had known the facts.

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Third

(number)

CAUSE OF ACTION—Fraud

FR-4. **Promise Without Intent to Perform**

a. Defendant made a promise about a material matter without any intention of performing it as stated in Attachment FR-4.a as follows:

b. Defendant's promise without any intention of performance was made with the intent to defraud and induce plaintiff to rely upon it and to act as described in item FR-5. At the time plaintiff acted, plaintiff was unaware of defendant's intention not to perform the promise. Plaintiff acted in justifiable reliance upon the promise.

FR-5. In justifiable reliance upon defendant's conduct, plaintiff was induced to act as stated in Attachment FR-5 as follows:

Plaintiff was induced to purchase the discounted product in order to capture the perceived savings. Plaintiff would not have made a purchase knowing the true value of the product. Defendant's advertisements of discounts on merchandise at Kipling Apparel stores improperly leads consumers to believe that they are receiving a discount on their purchases.

FR-6. Because of plaintiff's reliance upon defendant's conduct, plaintiff has been damaged as stated in Attachment FR- 6 as follows:

Plaintiff was damaged by making purchases they would not have otherwise made, due to the deceptive discount. Furthermore,, a result of Defendant's deceptive business practices, Plaintiff paid more than the actual value of the product purchased.

FIR - 7. Other:

All persons, within the State of California, who, between December 8, 2019 and the present (the "Class Period"), purchased from a Kipling Outlet store one or more products advertised at a purported discount from an advertised reference price and who have not received a refund or credit for their purchase(s). Excluded from the Class are Defendant, as well as its officers, employees, agents or affiliates, parent companies and/or subsidiaries, and each of their respective officers, employees, agents or affiliates, and any judge who presides over this action.