

1 **LYNCH CARPENTER LLP**
Todd D. Carpenter (CA 234464)
2 todd@lcllp.com
Scott G. Braden (CA 305051)
3 scott@lcllp.com
1234 Camino Del Mar
4 Del Mar, California 92014
Telephone: (619) 762-1900
5 Facsimile: (724) 656-1556

6 *Attorneys for Plaintiff and*
Proposed Class Counsel
7

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
12/07/2023 at 03:36:17 PM
Clerk of the Superior Court
By Bernabe Montijo, Deputy Clerk

8 **IN THE SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**

10 CHRISTINA CALCAGNO, on behalf of herself
and all others similarly situated,

11 Plaintiff,

12 vs.

13 ASICS America Corporation, a California
14 Corporation, and DOES 1-50, inclusive,

15 Defendant.
16
17
18
19
20
21
22
23
24
25
26
27
28

CLASS ACTION COMPLAINT

Violations of: 37-2023-00053041-CU-BT-CTL

1. California's Unfair Competition Laws ("UCL"), CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. California Consumer Legal Remedies Act ("CLRA"), CAL. BUS. & PROF. CODE §§ 17200, *et seq.*

[DEMAND FOR JURY TRIAL]

1 Plaintiff Christina Calcagno (“Plaintiff”) brings this action, on behalf of herself and all others
2 similarly situated, against Defendant ASICS America Corporation (“Asics” or “Defendant”), and states:

3 **I. NATURE OF ACTION**

4 1. Prices reflect a perceived value to consumers.¹ False advertising of prices can be used to
5 manipulate consumers’ value perception of products and cause consumers to overpay for them. Aware of
6 the intertwined connection between consumers’ buying decision processes and price, retailers like
7 Defendant lure consumers with advertised discounts that promise huge savings and high value. But the
8 promised savings are false, and the product’s value reflected in its price is incorrect when the retailer
9 inflates its prices due to advertised discounts off of some higher, made-up “original” price that no one ever
10 pays. Defendant has continually advertised false price discounts for merchandise sold throughout its Asics
11 outlet stores. This class action seeks monetary damages, restitution, and declaratory and injunctive relief
12 from Defendant arising from its deceptive business practice of advertising fictitious “original” prices and
13 corresponding phantom discounts on shoes, apparel, accessories, and other items sold in its Asics outlet
14 stores.

15 2. False reference pricing occurs when a seller fabricates a false “original” price for a product
16 and then offers that product at a substantially lower price under the guise of a discount. The resulting
17 artificial price disparity misleads consumers into believing the product they are buying has a higher market
18 value, and it induces them into purchasing the product. This practice artificially inflates the true market
19 price for these products by raising consumers’ internal reference price and in turn the perceived value
20 consumers ascribe to these products (i.e., demand).² Consequently, false reference pricing schemes enable
21 retailers, like Defendant, to sell products above their true market price and value—and consumers are left
22

23
24 ¹ “[P]rice is materially utilized in the formation of perceptions of the product’s value and influences the
25 decision to purchase the product or to continue to search for a lower price.” Dhruv Grewal & Larry D.
26 Compeau, *Comparative Price Advertising: Informative or Deceptive?*, 11 J. PUB. POL’Y & MKTG. 52, 55
27 (1992); “[R]eference to a retailer’s normal or regular price in retail sale price advertising provides the
28 consumer with information used to determine perceived value” Patrick J. Kaufmann, N. Craig Smith, &
Gwendolyn K. Ortmeier, *Deception in Retailer High-Low Pricing: A “Rule of Reason” Approach*, 70 J.
RETAILING 115, 118 (1994).

² Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Informative or Deceptive?*, 11 J.
Pub. Pol’y & Mktg. 52, 55 (Spring 1992) (“By creating an impression of savings, the presence of a higher
reference price enhances subjects’ perceived value and willingness to buy the product.”).

1 to pay the inflated price. Consumers are thus damaged by not receiving the promised discounts for products
2 advertised with false reference pricing.

3 3. The following example of a hypothetical DVD seller, which is parallel to Defendant's
4 deceptive business practice, illustrates the illegal false reference pricing scheme and its attendant harm to
5 consumers. A seller knows it can sell a particular DVD at \$5.00, which represents both the market price
6 and the price at which the seller could regularly offer the DVD and make a profit. Instead, however, the
7 seller creates a "original" price for the DVD of \$100.00 and advertises the DVD as "on sale" at *90% off*
8 rendering the "*sale*" price of the DVD \$10.00. When a consumer purchases the DVD, he presumes he got
9 a "good deal" on a DVD previously sold—i.e., valued by others in the market—at an "original" price of
10 \$100.00. The consumer's presumption and purchase stem directly from the seller's purposeful deception.
11 For example, if the seller tried to sell that same DVD for \$10.00 *without* referencing a false original price
12 of \$100.00, and the attendant 90% off discount, that seller would not be able to sell any DVDs at \$10.00
13 because the true, original market price of the DVD is \$5.00. In contrast, by presenting consumers with a
14 false "original" price of \$100.00, consumers will purchase the DVD at \$10.00; the seller thus has fabricated
15 an increase in demand for the DVD through the *perceived value* of both the DVD itself and the substantial
16 discount of \$90.00. Consumers' increased willingness and demand to pay \$10.00 for the DVD will in turn
17 impact the overall market price of the DVD. Therefore, the seller can create a false market price for the
18 DVD at \$10.00 by advertising a false "original" price and a corresponding phantom discount of 90% off.
19 Plaintiff's case seeks to remedy this deception, its attendant harm to consumers, and that disparity—the
20 inflated market price through Defendant's application of an illegal discounting scheme compared to the
21 lower, more accurate market price without any false reference pricing.

22 4. Through its false and misleading marketing, advertising, and pricing scheme alleged herein,
23 Defendant violated, and continues to violate, California and federal law. Specifically, Defendant violated
24 and continues to violate: California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
25 (the "UCL") and California's Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*, as well as
26 the Federal Trade Commission ("FTC") Act ("FTCA"), which prohibits "unfair or deceptive acts or
27 practices in or affecting commerce" (15 U.S.C. § 45(a)(1)) and false advertisements (15 U.S.C. § 52(a)).
28

1 5. Plaintiff brings this action on behalf of herself and other similarly situated consumers who
2 have purchased one or more shoes, apparel, accessories, or other items at Defendant’s Asics outlet stores
3 that were deceptively represented as discounted from a false advertised reference price. Plaintiff seeks to
4 halt the dissemination of this false, misleading, and deceptive pricing scheme, to correct the false and
5 misleading perception it has created in the minds of consumers, and to obtain redress for those who have
6 overpaid for merchandise tainted by this deceptive pricing scheme. Plaintiff also seeks to enjoin Defendant
7 from using false and misleading misrepresentations regarding former price comparisons in its labeling and
8 advertising permanently. Further, Plaintiff seeks to obtain damages, restitution, reasonable costs and
9 attorney’s fees, and other appropriate relief in the amount by which Defendant was unjustly enriched as a
10 result of its sales of merchandise offered a false discount.

11 **II. JURISDICTION AND VENUE**

12 6. This Court has jurisdiction over Defendant and the claims set forth below pursuant to Code
13 of Civil Procedure § 410.10 and the California Constitution, Article VI § 10, because Defendant is
14 incorporated and maintains its headquarters in California and the case is a cause not given by statute to the
15 other trial courts.

16 7. Venue is proper in the Superior Court of California, County of San Diego, because Plaintiff
17 resides in this County, the acts and transactions giving rise to her causes of action occurred in this County,
18 and Defendant has conducted business and sold its outlet merchandise throughout California, including in
19 the County of San Diego, which has caused both obligations and liability of Defendant to arise in the
20 County of San Diego.

21 8. The amount in controversy exceeds the jurisdictional minimum of this Court.

22 **III. GENERAL ALLEGATIONS**

23 **A. Retailers Benefit from False Reference Pricing Schemes.**

24 9. Defendant engages in a false and misleading reference price scheme in the marketing and
25 selling of its Asics outlet merchandise at its Asics outlet stores.

26 10. Retailers, including Defendant, substantially benefit from employing false reference pricing
27 schemes and experience increased sales because consumers use advertised reference prices to make
28

1 purchase decisions. The information available to consumers varies for different types of products.³
 2 Nonetheless, consumers frequently lack full information about products and as a result often use
 3 information from sellers to make purchase decisions.⁴

4 11. Defendant's deceptive advertised reference prices are thus incorporated into consumers'
 5 decision process. First, a product's "price is also used as an indicator of product quality."⁵ In other words,
 6 consumers view Defendant's deceptive advertised reference prices as a proxy for product quality. Second,
 7 reference prices "appeal[] to consumers' desire for bargains or deals."⁶ Academic researchers note how
 8 consumers "sometimes expend more time and energy to get a discount than seems reasonable given the
 9 financial gain involved," and "often derive more satisfaction from finding a sale price than might be
 10 expected on the basis of the amount of money they actually save."⁷ Under this concept, coined as
 11 "transaction utility" by Noble Prize-winning economist Richard Thaler, consumers place some value on
 12 the psychological experience of obtaining a product at a perceived bargain.⁸

13
 14
 15 ³ Even within a product, consumers may have imperfect information on the individual attributes.
 16 Economists describe "search goods" as those whose attributes "can be ascertained in the search process
 17 prior to purchase" (e.g., style of a shirt), "experience goods" as those whose attributes "can be discovered
 18 only after purchase as the product is used" (e.g., longevity of a shirt), and "credence goods" as those whose
 19 attributes "cannot be evaluated in normal use" (e.g., whether the shirt's cotton was produced using organic
 20 farming methods). Darby, Michael R., and Edi Karni. "Free Competition and the Optimal Amount of
 21 Fraud." *The Journal of Law and Economics* 16 no. 1 (1973): 67-88, pp. 68-69.

22 ⁴ "Not only do consumers lack full information about the prices of goods, but their information is probably
 23 even poorer about the quality variation of products simply because the latter information is more difficult
 24 to obtain". Nelson, Phillip. "Information and Consumer Behavior." *Journal of Political Economy* 78, no. 2
 25 (1970): 311-29, pp. 311-12.

26 ⁵ Grewal, Dhruv, and Larry D. Compeau. "Comparative price advertising: Informative or deceptive?"
 27 *Journal of Public Policy & Marketing* (1992): 52-62, p. 54. Also see Thaler, Richard. "Mental Accounting
 28 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)").

⁶ Grewal, Dhruv, and Larry D. Compeau. "Comparative price advertising: Informative or deceptive?"
Journal of Public Policy & Marketing (1992): 52-62, p. 52.

⁷ Darke, Peter and Darren Dahl. "Fairness and Discounts: The Subjective Value of a Bargain." *Journal of
 Consumer Psychology* 13, no 3 (2003): 328-338, p. 328.

⁸ "To incorporate ... the psychology of buying into the model, two kinds of utility are postulated:
acquisition utility and *transaction utility*. The former depends on the value of the good received compared
 to the outlay, the latter depends solely on the perceived merits of the 'deal'". Thaler, Richard. "Mental
 Accounting and Consumer Choice." *Marketing Science* 4, no. 3 (1985): 199-214, p. 205.

1 12. Research in marketing and economics has long recognized that consumer demand can be
2 influenced by “internal” and “external” reference prices.⁹ Internal reference prices are “prices stored in
3 memory” (e.g., a consumer’s price expectations adapted from past experience) while external reference
4 prices are “provided by observed stimuli in the purchase environment” (e.g., a “suggested retail price,” or
5 other comparative sale price).¹⁰ Researchers report that consumer’s internal reference prices adjust toward
6 external reference prices when valuing a product.¹¹ For infrequently purchased products, external reference
7 prices can be particularly influential because these consumers have little or no prior internal reference.¹²
8 In other words, “[t]he deceptive potential of such advertised reference prices are likely to be considerably
9 higher for buyers with less experience or knowledge of the product and product category.”¹³ Academic
10 literature further reports that “there is ample evidence that consumers use reference prices in making brand
11 choices”¹⁴ and publications have summarized the empirical data as follows:

12 Inflated reference prices can have multiple effects on consumers. They can increase
13 consumers’ value perceptions (transaction value and acquisition value), reduce their search
14 intentions for lower prices, increase their purchase intentions, and reduce their purchase
15 intentions for competing products ... Inflated and/or false advertised reference prices

16 ⁹ Empirical results “suggest that internal reference prices are a significant factor in purchase decisions. The
17 results also add empirical evidence that external reference prices significantly enter the brand-choice
18 decision.” Mayhew, Glenn E. and Russell S. Winer. “An Empirical Analysis of Internal and External
19 Reference Prices using Scanner Data.” *Journal of Consumer Research* 19, no. 1 (1992): 62-70, p. 68.

20 ¹⁰ Mayhew, Glenn E. and Russell S. Winer. “An Empirical Analysis of Internal and External Reference
21 Prices using Scanner Data.” *Journal of Consumer Research* 19, no. 1 (1992): 62-70, p. 62.

22 ¹¹ “Buyers’ internal reference prices adapt to the stimuli prices presented in the advertisement. That is,
23 buyers either adjust their internal reference price or accept the advertised reference price to make judgments
24 about the product’s value and the value of the deal.” Grewal, Dhruv, Kent B. Monroe, and Ramayya
25 Krishnan. “The Effects of Price-Comparison Advertising on Buyers’ Perceptions of Acquisition Value,
26 Transaction Value, and Behavioral Intentions.” *The Journal of Marketing* 62 (1998): 46-59, p. 48.

27 ¹² As Thaler notes, “the [suggested retail price] will be more successful as a reference price the less often
28 the good is purchased.” Thaler, Richard. “Mental Accounting and Consumer Choice.” *Marketing Science*
4, no. 3 (1985): 199-214, p. 212.

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.

¹⁴ Kalyanaram, Gurumurthy, and Russell S. Winer. “Empirical Generalizations from Reference Price
Research.” *Marketing Science* 14, no. 3 (1995): G161-G169, p. G161. *See also* Gotlieb, Jerry B. and Cyndy
Thomas Fitzgerald. “An Investigation into the Effects of Advertised Reference Prices on the Price
Consumers are Willing to Pay for the Product.” *Journal of Applied Business Research* 6, no. 1 (1990): 59-
69, at pp. 65-66. (“The results of this research provide support for the position that [external] reference
prices are important cues consumers use when making the decision concerning how much they are willing
to pay for the product.”).

1 enhance consumers' internal reference price estimates and, ultimately, increase their
2 perceptions of value and likelihood to purchase[.]¹⁵

3 13. Retailers, including Defendant, understand that consumers are susceptible to a perceived
4 bargain, and therefore, they have a substantial financial interest in making consumers believe they are
5 receiving a bargain, even if they are not. Contrary to the illusions of bargains in Defendant's
6 advertisements, consumers are actually overpaying for Defendant's products and not receiving any
7 promised discounts due to the relationship between Defendant's deceptive price comparisons, consumer
8 purchase decisions, and the economic principles of demand and price.

9 **B. Defendant's Fraudulent Price Discounting Scheme Violates California State Law and**
10 **Federal Regulations.**

11 14. Defendant has continually engaged in a false reference pricing scheme injurious to
12 consumers by advertising apparel, accessories, and other items at discounted, "sale" prices. Defendant
13 marketed the "sale" prices as discounts from the "original" prices set forth on the products' price tags for
14 merchandise sold at Defendant's Asics outlet stores. However, the advertised discounts are nothing more
15 than phantom markdowns because (1) the represented "original" prices, *i.e.*, the prices listed on the price
16 tags for the merchandise, are artificially inflated; (2) the products are never offered for sale at the full
17 original price for any substantial period of time, (if at all); and (3) the original prices are never the true
18 market price for the products Defendant sells.

19 15. Defendant marks each item with a price tag that sets forth the "original" price at which the
20 item was purportedly offered for sale. That original price is printed on the item's price tag. Defendant then
21 display large sale-discount signage on top of or alongside each rack of clothing or accessories, advertising
22 a "discounted % off," or a discounted whole-price reduction for the item, which is substantially less than
23 the original price listed on the price tag.

24 16. The percentage-off discounts advertised in Defendant's Asics outlet stores promise to
25 consumers that if they purchase certain items, then they will receive a specific percentage-off discount of
26 those items, which are represented as being valued at their higher advertised "original" price. In actuality,
27

28 ¹⁵ 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 the percentage-off discounts are not true discounts, as they are applied to an advertised “original” price
2 that was completely fabricated by Defendant and that does not represent a price at which Defendant
3 regularly sold the item in the normal course of business. Consequently, consumers do not receive the
4 discount they were promised by Defendant when they purchase items from Defendant at a purportedly
5 discounted price.

6 17. Federal pricing regulations governing the advertisement of former price comparisons, such
7 as the “original” prices advertised at Asics outlets, state that the advertised former price must be an “actual,
8 bona fide price at which the article was offered to the public on a regular basis for a reasonably substantial
9 period of time.” 16 C.F.R. § 233.1(a). However, the advertised “original” prices at Defendant’s Asics
10 outlets are not “actual” or “bona fide” former prices because Defendant have never offered its Asics outlet
11 merchandise to the public at those prices, much less offered them “on a regular basis for a reasonably
12 substantial period of time.” *Id.*

13 18. Rather, the products sold at Asics outlet stores are either (1) made exclusively for sale at its
14 outlet stores, or (2) regular Asics retail merchandise that is substantially outdated. The reason why the
15 original price is either false or misleading is because Defendant either: (1) has never offered the outlet
16 goods for sale at the original price (in the case of its made-for-outlet merchandise) or (2) has offered the
17 goods for sale at their original price at some time period in the distant past for an insubstantial period of
18 time—in violation of the federal regulation requiring the advertised former price comparison to an “actual,
19 bona fide price at which the article was offered to the public on a regular basis for a reasonably substantial
20 period of time.” 16 C.F.R. § 233.1(a).

21 19. Defendant conveys its deceptive pricing scheme to consumers through promotional
22 materials, in-store displays, and print advertisements. For example, in Defendant’s Asics outlet stores, the
23 pricing scheme is prominently displayed, advertising deep discounts on various items throughout the store.
24 Specifically, the represented discounts are advertised on placards placed at, on, or above the particular
25 products being discounted. They are printed on card stock with bold print offering the advertised “_% off”.
26 The placards appear as follows:



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15 20. Defendant’s pricing scheme is intended to increase sales but has the effect of depriving
16 consumers of the benefit of their bargain. The clothing items and attire listed at “regular” or “original”
17 prices were never offered for sale at those prices for a substantial period of time. The original or price tag
18 price is not the price at which Defendant expects to sell its merchandise; it is merely a basis for misleading
19 consumers into believing they are receiving a substantial discount from the false original price.

20 21. Nowhere in Defendant’s Asics outlet stores does Defendant disclose that the reference or
21 original prices used are not recent, regularly offered former prices, despite being presented as such. The
22 omission of this disclosure, coupled with Defendant’s use of fictitious advertised reference prices, renders
23 Defendant’s pricing inherently misleading to reasonable consumers, including Plaintiff.

24 22. The advertised reference prices are false and induce consumers into believing that Asics
25 outlet merchandise was once sold at the reference price, in the near term, and will be again if the consumer
26 does not make a purchase at the “bargain” price. Defendant engages in this practice knowing full well that
27 the advertised products are never actually offered or sold at the advertised reference prices.
28

1 23. Furthermore, Defendant advertises the false reference prices to induce consumers into
2 believing that Asics outlet merchandise is worth the inflated, false reference price such that the lower “sale”
3 price represents a limited time discount. Customers, however, do not enjoy any such advertised discount
4 when they purchase items from Defendant’s Asics outlet stores.

5 24. Defendant advertises constant discounts in its Asics outlet stores for nearly all items they
6 offer for sale, and Defendant’s employment of perpetual false discounts deprives consumers of a fair
7 opportunity to fully evaluate the offers and to make purchase decisions based on accurate information.
8 Consumers have no way of discerning that Defendant’s pricing and discount representations throughout
9 its Asics outlet stores are false and misleading.

10 25. Defendant’s systematic and pervasive pricing policy and conduct as described herein is in
11 direct violation of California law and federal pricing regulations. Defendant’s advertised discounts from
12 former prices are fictitious because the reference prices do not represent a *bona fide* former price at which
13 Defendant previously sold or offered to sell the products, on a regular basis, for a reasonably substantial
14 period of time, as required by the FTC. *See* 16 C.F.R. § 233.1, *et seq.*

15 26. Defendant’s perpetual discounting of its Asics outlet merchandise constitutes false,
16 fraudulent, and deceptive advertising because the “original” reference price listed is substantially higher
17 than those prices actually offered by Defendant. The reference prices are a total fiction used exclusively as
18 a benchmark from which the false discount and corresponding “sale” price is derived. Defendant’s scheme
19 has the effect of tricking consumers into believing they are getting a significant deal by Asics outlet
20 merchandise at a steep discount, when, in reality, consumers are now overpaying for Asics outlet
21 merchandise. Defendant’s deceptive pricing scheme has artificially raised the prices actually paid by
22 consumers by creating the false impression of a bargain.

23 27. The process of how Defendant’s false reference pricing scheme injures consumers proceeds
24 as follows: Defendant advertised its merchandise with false reference prices, which then caused consumers
25 to be deceived into overvaluing those products. As a result, consumers’ demand for the Asics outlet
26 merchandise has artificially increased. This artificial, illusory increase in consumers’ demand further
27 resulted in an increase in the price of Defendant’s Asics outlet merchandise. This resultant price increase
28 has been reflected in the “discounted sale” price at which consumers, including Plaintiff, paid for the Asics

1 outlet merchandise. Consumers thus unknowingly purchased the Asics outlet merchandise at inflated prices
2 all caused by Defendant’s deceptive false reference pricing scheme. The Asics outlet merchandise is worth
3 less than the inflated prices at which they are offered as a “discount.” Without the false reference pricing
4 scheme, the Asics outlet merchandise would *not* command the higher, inflated prices. Consumers like
5 Plaintiff have therefore overpaid for Asics outlet merchandise—which, to circle back, was caused by
6 Defendant’s deception.

7 28. Thus, Defendant’s scheme intends to, and does, provide harmful misinformation to
8 customers. This misinformation communicates to consumers, including Plaintiff, that the products sold in
9 Defendant’s Asics outlet stores have a greater value than the advertised discounted price.

10 **C. Defendant’s Fraudulent Price Discounting Scheme Harms All Consumers**

11 29. All consumers are harmed by Defendant’s conduct as alleged herein. The impact of
12 Defendant’s conduct pervades the entire market for its Asics outlet merchandise irrespective of individual
13 consumer’s beliefs or purchasing decision processes because, as explained below, the artificially increased
14 demand generated by Defendant’s false reference pricing scheme results in increased actual sales prices
15 beyond the prices Defendant could command in the absence of the false reference pricing scheme.
16 Accordingly, consumers’ subjective beliefs about the value of Asics outlet merchandise are
17 inconsequential to the injury they face when purchasing said merchandise. To be harmed by Defendant, it
18 matters not whether consumers believe they will receive a discount on Asics outlet merchandise when they
19 purchase it, nor does it matter why consumers purchased Asics outlet merchandise. Likewise, consumers
20 need not have any certain perceptions about Defendant’s pricing nor need they any insight into the true
21 market prices for shoes, apparel, accessories, and other related items to have been harmed by Defendant’s
22 false discount pricing scheme.

23 30. When consumers purchase Asics outlet products, they will all overpay, and they will all not
24 receive the benefit of the promised discounts. The process of how Defendant’s false reference pricing
25 scheme injures consumers demonstrates how all consumers are harmed. In short, Defendant’s false
26 reference pricing caused an illusory, artificial increase in the demand and attendant price for Asics outlet
27 merchandise resulting in all consumers, including Plaintiff, having no choice but to overpay for said
28

1 merchandise at the resultant inflated prices. When consumers like Plaintiff now purchase Asics outlet
2 merchandise, the merchandise is worth less than the inflated price at which it is purchased.

3 31. A product's reference price matters to consumers because it serves as a baseline upon which
4 consumers perceive a product's value.¹⁶ Empirical studies thus "suggest that consumers are likely to be
5 misled into a willingness to pay a higher price for a product simply because the product has a higher
6 reference price."¹⁷ As to Defendant's products, consumers are misled and incorrectly overvalue them due
7 to Defendant's false price comparisons. The price at which consumers purchase Defendant's products
8 reflects consumers' overvaluation of the products as Defendant can get away with commanding an inflated
9 price due to this overvaluation. Academic researchers have documented this relationship between reference
10 prices, and consumers' attendant behaviors and the harm inflicted on them by deceptive retailers as follows:

11 [A]dvertised reference prices in these deal-oriented advertisements can enhance buyers'
12 internal reference prices These enhanced internal reference prices, when compared
13 with the lower selling price, result in higher transaction value perceptions. The increase in
14 perceived transaction value enhances purchases and reduces search behavior for lower
15 prices. If sellers intentionally increase the advertised reference prices above normal retail
16 prices, this is, inflate advertised reference prices, the resulting inflated perceptions of
17 transaction value would be deceptive. Harm to both buyers and competitors could result
18 from the effect of the inflated transaction value on buyers' search and purchase behaviors.¹⁸

19 32. To further explain, the false pricing information in Defendant's advertisements, in-store
20 displays, and promotional materials first caused consumers to perceive they were receiving a bargain on
21 Asics outlet merchandise when purchased at its "sale" price. This consumer perception resulted in these
22 consumers gaining an additional "transaction value"¹⁹ for their Asics outlet purchases, which they would

23 ¹⁶ Thaler, Richard, "Mental Accounting and Consumer Choice," *Marketing Science* 4, no. 3 (1985): 199-
24 214, at p. 212.

25 ¹⁷ Gotlieb, Jerry B. and Cyndy Thomas Fitzgerald. "An Investigation into the Effects of Advertised
26 Reference Prices on the Price Consumers are Willing to Pay for the Product." *Journal of Applied Business
27 Research* 6, no. 1 (1990): 59-69, at p. 66. Moreover, "if a higher reference price encourages consumers to
28 pay a higher price for a product than the consumer was willing to pay for the identical product with a lower
reference price, then the practice of using high reference prices would be deceptive." *Id.* at p. 60.

¹⁸ 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, at p.46.

¹⁹ "To incorporate . . . the psychology of buying into the model, two kinds of utility are postulated:
acquisition utility and transaction utility. The former depends on the value of the good received
compared to the outlay, the latter depends solely on the perceived merits of the 'deal'." Thaler, Richard.
"Mental Accounting and Consumer Choice." *Marketing Science* 4, no. 3 (1985): 199-214, p. 205; Dhruv

1 not have otherwise gained absent Defendant's false reference pricing scheme. Consumers' valuation of
2 Asics outlet merchandise thus increased. This increase in consumers' perceived valuation of Asics outlet
3 merchandise then caused an artificial increase in the aggregate demand of said merchandise. This artificial
4 increase in the aggregate demand then caused an attendant illusory increase in the price of Asics outlet
5 merchandise. Defendant's false reference pricing scheme has thus disrupted the natural market for its Asics
6 outlet merchandise, and Defendant has been able to charge all consumers inflated prices, as reflected in
7 both the "sale" and "original" prices. Everyone is now forced to pay above-market prices for Asics outlet
8 merchandise should they decide to make a purchase at any of Defendant's retail or outlet stores. All
9 consumers will thus pay an inflated price for Asics outlet products regardless of the reason for their
10 purchase.

11 33. Fundamental economics concepts and principles provide a foundation upon which the
12 uniform harm of Defendant's false reference pricing scheme is based. One such principle is that cost and
13 demand conditions determine market prices all consumers pay for products.²⁰ The aggregate demand curve
14 for a product, including those sold by Defendant, represents consumers' valuation of the product, and as
15 consumers' valuation increases, the demand curve shifts outward. When the aggregate demand curve of a
16 product shifts outward, the market price for the product will increase. Specific individual's willingness to
17 pay for a product will not negate how market prices, as determined by aggregate demand, dictate what all
18 consumers purchasing a given product will pay.

19 34. Therefore, Defendant's conduct alleged herein has impacted the market prices of its Asics
20 outlet products, and any one individual consumer's subjective beliefs or idiosyncratic rationales will not
21 isolate them from the resultant inflation in Asics outlet prices. Economic theory ensures that as the
22 aggregate demand curve for Asics outlet merchandise moved outward, all consumers must pay a higher
23

24 Grewal & Larry D. Compeau, Comparative Price Advertising: Informative or Deceptive?, 11 J. Pub.
25 Pol'y & Mktg. 52, 55 (Spring 1992) ("By creating an impression of savings, the presence of a higher
26 reference price enhances subjects' perceived value and willingness to buy the product."); 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.

27 ²⁰ "[P]rice and quantity are determined by all buyers and sellers as they interact in the marketplace"
28 (Mankiw, N. *Essentials of Economics*. Eighth Edition. Boston, MA: Cengage Learning, 2015, at p. 66).
See also, Varian, Hal R. *Microeconomics Analysis*. Third Edition. New York, NY: W. W. Norton &
Company, 1992, at pp. 23-38, 144-157, 233-353, and 285-312.

1 price for Asics outlet products than they would have paid absent Defendant's false reference pricing
2 scheme. Plaintiff and members of the proposed Class thus suffered a common impact from Defendant's
3 ability to sell Asics outlet merchandise at inflated prices, and it was Defendant who caused the inflation
4 and chose to sell its Asics outlet products at the inflated prices—and who continues to sell Asics outlet
5 products at inflated prices to the detriment of all purchasers.

6 **D. Investigation**

7 35. Plaintiff's counsel has conducted a large-scale, comprehensive investigation into the
8 Defendant's pricing practice at Asics outlet stores across California. Plaintiff's counsel first tracked items
9 in Defendant's outlet stores beginning in September of 2021 and concluding in December of 2021. Every
10 product observed in Defendant's Asics outlet stores remained on sale for the duration of this tracking
11 period, discounted against a false reference price. The 2021 investigation revealed that the prices on
12 Defendant's products were uniform at every location. Plaintiff's counsel again initiated a similar
13 investigation beginning in February of 2022 and concluding in September of 2022. That investigation
14 revealed the same results—every product observed at every location was continuously discounted against
15 a false reference price.

16 36. In sum, Plaintiff's counsel's investigation also revealed that the "original" or "price tag"
17 price of the item Plaintiff purchased was never the true market price at Asics outlet preceding Plaintiff's
18 purchase. Instead, Defendant continuously offered the items for sale at the falsely "discounted" prices,
19 including the product purchased by Plaintiff. Plaintiff's counsel's investigation revealed that this was a
20 pervasive practice at the Asics outlet stores, as hundreds of items remained continuously discounted from
21 their "original" or "price tag" price and they were not offered for sale at their original price. Defendant
22 engages in a systematic scheme to continuously "discount" its merchandise without ever offering the
23 merchandise for sale at their "original" or "price tag" prices.

24 37. To reiterate, Plaintiff's counsel's investigation of Defendant's Asics outlet stores revealed
25 that its merchandise is priced uniformly. That is, merchandise sold at Defendant's Asics outlet stores bear
26 a price tag with a false original price and a substantially discounted "___% Off," sale price. Plaintiff's
27 counsel's investigation confirmed that the merchandise purchased by Plaintiff was priced with a false
28 reference price and a corresponding discounted price, which was in fact an inflated price.

1 38. Therefore, the “original” prices on the merchandise sold at Asics outlet stores are either
2 false original prices or severely outdated prices that have never been offered in the relevant market.

3 39. Despite Plaintiff’s counsel’s best efforts at investigation, the full extent of Defendant’s false
4 and deceptive pricing scheme can only be revealed through a full examination of records exclusively in
5 the possession of Defendant.

6 **IV. PARTIES**

7 **Plaintiff**

8 40. Chistina Calcagno resides in San Diego, California. On January 18, 2022, Plaintiff went
9 shopping for some new clothes at the Asics outlet store located at 4459 Camino de la Plaza, #464, San
10 Ysidro, CA 92173 (the “Las Americas Outlets”). In reliance on Defendant’s false and deceptive
11 advertising, marketing and discount pricing scheme, Plaintiff purchased the following item of clothing
12 from the Las America Outlets on January 18, 2022:

No.	Item:	False Reference Price:	Purchase Price:
1	DECOY SS 889436761439	\$21.98	\$10.99

13
14
15
16 41. Plaintiff examined several items at the Las Americas Outlets before deciding on what item
17 to purchase. After reviewing the advertised sale prices for the item listed above, Plaintiff examined the
18 “Decoy SS” shirt further and picked out a size that she knew would fit. During her time at the Las Americas
19 Outlets on January 18, 2022, Plaintiff noticed numerous signs within the Asics Outlet store advertising
20 “30%, 40% and 50% Off” discounts on various items throughout the store. After observing the original
21 prices of the item and the accompanying sale price, Plaintiff believed she was receiving a significant
22 discount on the item she had chosen. Because she liked the item, felt that the discounted price would likely
23 not last, and believed she was getting a significant bargain on the merchandise, she proceeded to the register
24 and purchased the product. The discount was a material representation to Plaintiff, and she relied upon it
25 in making her purchase decision. She paid a pre-tax total of \$10.99 for the “Decoy SS” shirt she purchased
26 at the Asics outlet store. However, Plaintiff did not receive the benefit of her bargain.

1 42. Plaintiff would not have made her purchases without the misrepresentations made by
2 Defendant. As a result, Plaintiff has suffered economic injury as a direct result of Defendant's unlawful,
3 unfair, and fraudulent conduct.

4 **Plaintiff's Damages**

5 43. Plaintiff has been injured and incurred quantifiable actual damages as a result of
6 Defendant's fraudulent pricing scheme, which can be calculated, *inter alia*, through the use of regression
7 analysis.

8 44. Plaintiff overpaid for the products she purchased as described herein. And it was
9 Defendant's false reference pricing scheme and attendant deception that caused Plaintiff to overpay.
10 Despite Plaintiff's original belief that the product she purchased was discounted, and, thus, that its value
11 was significantly greater than the sale price at which it was purchased, Plaintiff in actuality paid an *inflated*
12 price for the product she purchased.

13 45. Specifically, the "original" price of \$21.98 and the "sale" price of \$10.99 were both inflated
14 for the "DECOY SS" shirt she purchased. The shirt was worth less than the amount Plaintiff paid for the
15 item because were it not for Defendant employing the falsely advertised "original" price for the shirt
16 Plaintiff purchased, then that item would not have commanded such a high, inflated price.

17 46. Plaintiff was damaged in her purchase because Defendant's false reference price
18 discounting scheme inflated the final selling price of the items she purchased, such that Defendant's false
19 reference price discounting scheme caused Plaintiff to pay a price premium. Defendant's false reference
20 price discounting scheme artificially inflated consumer demand, such that each consumer who purchased
21 the corresponding product paid higher prices when compared to what they would have paid had Defendant
22 not engaged in a false reference pricing scheme. Plaintiff would not have purchased the merchandise, or
23 would have paid less for it, but for Defendant's representations regarding the false reference prices and
24 purported discounts of the merchandise. Plaintiff was misled into believing that she was receiving
25 substantial savings on the purchase of Defendant's product, which was implied by the falsely advertised
26 reference prices.

27 47. Objective measures demonstrate that Plaintiff overpaid for the Asics outlet merchandise she
28 purchased. The difference between the sale price paid by Plaintiff due to the artificially increased demand

1 for the product—caused by Defendant’s false reference pricing scheme—and the market sale price that the
2 product would have commanded without Defendant’s deception provides an objective measure by which
3 Plaintiff was overcharged and injured by Defendant. The amount of inflation of the prices for the Asics
4 outlet merchandise Plaintiff purchased caused by Defendant’s deception thus measures how much Plaintiff
5 overpaid. This amount can be quantified using regression analysis based on Defendant’s historic pricing
6 data.

7 48. Plaintiff is susceptible to this reoccurring harm because she cannot be certain that Defendant
8 has corrected this deceptive pricing scheme, and she desires to shop at Defendant’s Asics outlet stores in
9 the future. Plaintiff would like to shop at the Asics outlet stores in the future because she likes the brand
10 of shoes and clothing that they offer. The Asics outlet stores also offer seasonal apparel items that are only
11 offered during certain times of the year, and they often offer new merchandise for sale that Defendant has
12 not sold before. Due to the enormous, fluctuating variety of styles and sizes of merchandise offered at
13 Asics outlet stores, Plaintiff will be unable to parse what prices are inflated and untrue, and what prices are
14 not.

15 49. Plaintiff would like to purchase different Asics outlet shoes or other items in the future other
16 than the item she purchased as described herein; however, Plaintiff does not know if Defendant will
17 accurately or inaccurately represent the true prices for the distinct apparel items she would like to buy in
18 the future. Plaintiff is not knowledgeable about Defendant’s pricing practices with regards to its apparel
19 items that have not yet been offered for sale at Defendant’s Asics outlet stores. Therefore, Plaintiff cannot
20 be certain of the veracity or falsity of Defendant’s advertised bargains for the wide selection of apparel and
21 other products, including shoes and accessories, offered at Defendant’s Asics outlet stores. Plaintiff may
22 again purchase a falsely discounted product at one of the Asics outlet stores under the reasonable
23 impression that the advertised reference price represented a *bona fide* former price at which the item was
24 previously offered for sale by Defendant.

25 **Defendant**

26 50. Plaintiff is informed and believes, and upon such information and belief alleges, Defendant
27 ASICS America Corporation is a California corporation with its principal executive offices in Irvine,
28 California. Plaintiff is informed and believes that Defendant owns and operates Asics outlet stores in

1 California, and advertises, markets, distributes, and/or sells shoes, apparel, and related accessories in
2 California, and throughout the United States.

3 51. Plaintiff does not know the true names or capacities of the persons or entities sued herein
4 as Does 1-50, inclusive, and therefore sues such defendants by such fictitious names. Plaintiff is informed
5 and believes, and upon such information and belief alleges, that each of the Doe defendants is, in some
6 manner, legally responsible for the damages suffered by Plaintiff and members of the proposed the Class
7 as alleged herein. Plaintiff will amend this Complaint to set forth the true names and capacities of these
8 defendants when they have been ascertained, along with appropriate charging allegations, as may be
9 necessary.

10 52. The reference prices listed and advertised on products sold at Defendant's Asics outlet
11 stores are false reference prices, utilized only to perpetuate Defendant's false discount scheme.

12 53. Defendant knows that its reference price advertising is false, deceptive, misleading,
13 unconscionable, and unlawful under California and federal law.

14 54. Defendant fraudulently concealed from, and intentionally failed to disclose to Plaintiff and
15 other members of the proposed Class, the truth about its advertised discount prices and former reference
16 prices. Defendant concealed from consumers the true nature and quality of the products sold at its Asics
17 outlet stores.

18 55. Defendant intentionally concealed, and failed to disclose material facts regarding, the truth
19 about false former price advertising in order to provoke Plaintiff and the proposed Class to purchase Asics
20 outlet products in its stores.

21 56. At all relevant times, Defendant has been under a duty to Plaintiff and the Class to disclose
22 the truth about its false discounts.

23 57. Plaintiff reasonably relied upon Defendant's artificially inflated reference prices and false
24 discounts when purchasing the item described herein at Defendant's Asics outlet stores. Plaintiff would
25 not have made such purchase but for Defendant's representations of fabricated "original" prices and false
26 discounts being offered on the merchandise she purchased.

27 58. Plaintiff and the Class reasonably and justifiably acted and relied on the substantial price
28 differences that Defendant advertised, and made purchases believing that they were receiving a substantial

1 discount on items of greater value than its actual value. Plaintiff, like other Class members, was lured in,
2 relied on, and was damaged by the deceptive pricing scheme that Defendant carried out.

3 **V. CLASS ALLEGATIONS**

4 59. Plaintiff brings this action individually and on behalf of all other similarly situated Class
5 members pursuant to Code of Civil Procedure § 382, which Class is defined as follows:

6 All persons, within the State of California, who, within the applicable statute of limitations
7 preceding the filing of this action (the “Class Period”), purchased from an Asics Outlet
8 store one or more products at discounts from an advertised reference price and who have
not received a refund or credit for their purchase(s).

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

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

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

22 a. whether, during the Class Period, Defendant used falsely advertised reference prices
23 on its Asics outlet product labels and falsely advertised price discounts on merchandise sold in its
24 outlet stores;

25 b. whether Defendant ever offered items for sale or sold items at their advertised
26 reference price;

1 c. whether, during the Class Period, the advertised reference prices advertised by
2 Defendant were actual, bona fide prices at which the articles were offered to the public on a regular
3 basis for a reasonably substantial period of time;

4 d. whether Defendant's purported sale prices advertised in its Asics outlet stores
5 reflected any actual discounts or savings;

6 e. whether Defendant's purported percentage-off discounts advertised in its Asics
7 outlet stores reflected any actual discounts or savings;

8 f. whether Defendant's alleged conduct constitutes violations of the laws asserted;

9 g. whether Defendant's alleged conduct constitutes violations of federal and/or
10 California pricing regulations;

11 h. whether Defendant engaged in an unconscionable commercial practice, and/or
12 employed deception or misrepresentation under the laws asserted;

13 i. whether Plaintiff and Class members are entitled to damages and the proper measure
14 of that loss; and

15 j. whether an injunction is necessary to prevent Defendant from continuing to use
16 false, misleading or illegal price comparison.

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

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

24 64. **Superiority:** The nature of this action and the nature of laws available to Plaintiff and the
25 Class make the use of the class action format a particularly efficient and appropriate procedure to afford
26 relief to her and the Class for the wrongs alleged. The damages or other financial detriment suffered by
27 individual Class members is relatively modest compared to the burden and expense that would be entailed
28 by individual litigation of their claims against Defendant. It would thus be virtually impossible for Plaintiff

1 and Class members, on an individual basis, to obtain effective redress for the wrongs done to them. Absent
2 the class action, Class members and the general public would not likely recover, or would not likely have
3 the chance to recover, damages or restitution, and Defendant will be permitted to retain the proceeds of its
4 fraudulent and deceptive misdeeds.

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

13 66. Plaintiff is informed that Defendant keeps extensive computerized records of its Asics outlet
14 customers through, *inter alia*, customer loyalty programs and general marketing programs. Defendant has
15 one or more databases through which a significant majority of Class members may be identified and
16 ascertained, and they maintain contact information, including email and home addresses, through which
17 notice of this action could be disseminated in accordance with due process requirements.

18 **VI. CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**

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

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

24 68. Plaintiff brings this claim individually and on behalf of the members of the proposed Class
25 against Defendant for violations of California’s UCL, CAL. BUS. & PROF. CODE §§ 17200, *et seq.*

26 69. The UCL defines “unfair business competition” to include any “unlawful, unfair or
27 fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. (CAL. BUS.
28 PROF. CODE § 17200.)

1 70. The UCL imposes strict liability. Plaintiff and members of the proposed Class need not
2 prove that Defendant intentionally or negligently engaged in unlawful, unfair, or fraudulent business
3 practices—but only that such practices occurred.

4 ***“Unfair” Prong***

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

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

14 73. The harm to Plaintiff and members of the proposed Class outweighs the utility of
15 Defendant’s practices because Defendant’s practice of advertising false discounts provides no utility. There
16 were reasonably available alternatives to further Defendant’s legitimate business interests other than the
17 misleading and deceptive conduct described herein.

18 ***“Fraudulent” Prong***

19 74. A business act or practice is “fraudulent” under the UCL if it is likely to deceive members
20 of the consuming public.

21 75. Defendant’s acts and practices alleged above constitute fraudulent business acts or practices
22 as they have deceived Plaintiff and members of the proposed Class and are highly likely to deceive
23 members of the consuming public. Plaintiff and members of the proposed Class relied on Defendant’s
24 fraudulent and deceptive representations regarding its false or outdated “original prices” for products sold
25 by Defendant at its Asics outlet stores. These misrepresentations played a substantial role in Plaintiff’s and
26 members of the proposed Class’s decision to purchase the product at a purportedly steep discount, and
27 Plaintiff and members of the proposed Class would not have purchased the product without Defendant’s
28 misrepresentations.

1 ***“Unlawful” Prong***

2 76. A business act or practice is “unlawful” under the UCL if it violates any other law or
3 regulation.

4 77. Defendant’s acts and practices alleged above constitute unlawful business acts or practices
5 as they have violated state and federal law in connection with its deceptive pricing scheme. The FTCA
6 prohibits “unfair or deceptive acts or practices in or affecting commerce” (15 U.S.C. § 45(a)(1)) and
7 prohibits the dissemination of any false advertisements. (15 U.S.C. § 52(a).) Under the FTC, false former
8 pricing schemes, like Defendant’s, are described as deceptive practices that would violate the FTCA:

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

15 (b) A former price is not necessarily fictitious merely because no sales at the advertised
16 price were made. The advertiser should be especially careful, however, in such a case, that
17 the price is one at which the product was openly and actively offered for sale, for a
18 reasonably substantial period of time, in the recent, regular course of his business, honestly
19 and in good faith - and, of course, not for the purpose of establishing a fictitious higher
price on which a deceptive comparison might be based. And the advertiser should
scrupulously avoid any implication that a former price is a selling, not an asking price (for
example, by use of such language as, “Formerly sold at \$ _____”), unless substantial sales
at that price were actually made.

20 16 C.F.R. § 233.1(a) and (b) (emphasis added).

21 78. As detailed in Plaintiff’ Second Cause of Action below, the CLRA, CAL. CIV. CODE
22 § 1770(a)(9), prohibits a business from “[a]dvertising goods or services with intent not to sell them as
23 advertised,” and subsection (a)(13) prohibits a business from “[m]aking false or misleading statements of
24 fact concerning reasons for, existence of, or amounts of price reductions.”

25 79. As detailed herein, the acts and practices alleged were intended to or did result in violations
26 of the FTCA and the CLRA.

27
28

1 80. Defendant's practices, as set forth above, misled Plaintiff, the proposed Class, and the
2 public in the past and will continue to mislead in the future. Consequently, Defendant's practices constitute
3 an unlawful, fraudulent, and unfair business practice within the meaning of the UCL.

4 81. Defendant's violations of the UCL, through its unlawful, unfair, and fraudulent business
5 practices, are ongoing and present a continuing threat that members of the proposed Class and the public
6 will be deceived into purchasing products based on price comparisons of arbitrary and inflated "reference"
7 prices and substantially discounted "sale" prices. These false comparisons created phantom markdowns
8 and lead to financial damage for consumers like Plaintiff and the members of the proposed Class.

9 82. Pursuant to the UCL, Plaintiff and members of the proposed Class are entitled to
10 preliminary and permanent injunctive relief enjoining Defendant from further engagement in this unfair
11 competition, as well as disgorgement and restitution to Plaintiff and the proposed Class of all Defendant's
12 revenues wrongfully obtained from them as a result of Defendant's unfair competition, or such portion of
13 those revenues as the Court may find equitable.

14 SECOND CAUSE OF ACTION

15 **Violation of California's Consumers Legal Remedies Act ("CLRA")** 16 **CAL. CIV. CODE § 1750, *et seq.***

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

19 84. Plaintiff brings this claim individually and on behalf of the members of the proposed Class
20 against Defendant for violations of the CLRA, CAL. CIV. CODE § 1750, *et seq.*

21 85. Plaintiff and each member of the proposed Class are "consumers" as defined by CAL. CIV.
22 CODE § 1761(d). Defendant's sale of products at its Asics Outlet stores were "transactions" within the
23 meaning of CAL. CIV. CODE § 1761(e). The products purchased by Plaintiff and members of the proposed
24 Class are "goods" or "services" within the meaning of CAL. CIV. CODE §§ 1761(a) - (b).

25 86. Defendant violated and continues to violate the CLRA by engaging in the following
26 practices proscribed by CAL. CIV. CODE § 1770(a) in transactions with Plaintiff and members of the
27
28

1 proposed Class which were intended to result in, and did result in, the sale of products sold at its Asics
2 Outlet stores:

- 3 a. advertising goods or services with intent not to sell them as advertised;
- 4 § 1770(a)(9); and
- 5 b. making false or misleading statements of fact concerning reasons for,
6 existence of, or amounts of price reductions; § 1770(a)(13).

7 87. On December 7, 2023, Plaintiff, through counsel, sent a CLRA demand letter to Defendant
8 that provided notice of Defendant's violation of the CLRA and demanded Defendant correct, repair,
9 replace, or otherwise rectify the unlawful, unfair, false, and deceptive practices complained of herein. The
10 letter also stated that if Defendant refused to do so, Plaintiff would file a complaint seeking damages in
11 accordance with the CLRA. If Defendant does not respond to Plaintiff's letter or agree to rectify the
12 problems associated with the actions detailed above and give notice to all affected consumers within
13 30 days of the date of written notice pursuant to § 1782, Plaintiff will amend the complaint to seek actual,
14 punitive, and statutory damages, as appropriate against Defendant.

15 88. Filed concurrently herewith is a declaration of venue pursuant to Cal. Civ. Code §1780(d).

16 **VII. PRAYER FOR RELIEF**

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

- 19 A. an order certifying the Class and designating Plaintiff as the Class Representatives and her
20 counsel as Class Counsel;
- 21 B. awarding Plaintiff and the proposed Class members damages, as appropriate;
- 22 C. awarding restitution and disgorgement of all profits and unjust enrichment that Defendant
23 obtained from Plaintiff and the Class members as a result of its unlawful, unfair, and fraudulent business
24 practices described herein;
- 25 D. awarding declaratory and injunctive relief as permitted by law or equity, including:
26 enjoining Defendant from continuing the unlawful practices as set forth herein, and directing Defendant to
27 identify, with Court supervision, victims of its misconduct and pay them all money they are required to
28 pay;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- E. ordering Defendant to engage in a corrective advertising campaign;
- F. awarding attorneys’ fees and costs; and
- G. for such other and further relief as the Court may deem necessary or appropriate.

VIII. DEMAND FOR JURY TRIAL

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

Dated: December 7, 2023

LYNCH CARPENTER, LLP

By: /s/ Todd D. Carpenter

Todd D. Carpenter (CA 234464)
 todd@lcllp.com
 Scott G. Braden (CA 305051)
 scott@lcllp.com
 1234 Camino Del Mar
 Del Mar, California 92014
 Telephone: (619) 762-1900
 Facsimile: (724) 656-1556

*Attorneys for Plaintiff and
Proposed Class Counsel*