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8  
 9 **IN THE UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10  
 11  
 12 MARJANIQUE ROBINSON and  
 13 ARIANA SKURAUSKIS, individually and  
 on behalf of all similarly situated persons,

14  
 15 Plaintiffs,

16 v.

17 JC PENNEY COMPANY, INC. a  
 18 Delaware corporation and PENNEY OPCO  
 19 LLC, a Virginia limited liability company,

20 Defendants.  
 21

Case No. 3:24-cv-06243

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiffs Marjanique Robinson (“Robinson”) and Ariana Skurauskis  
2 (“Skurauskis”) (collectively, “Plaintiffs”) bring this class action complaint individually  
3 and on behalf of all others similarly situated against Defendant Old COPPER Company,  
4 Inc. f/k/a J. C. Penney Company, Inc. (“Old Copper”) and Defendant Penney OpCo  
5 LLC (“Penney OpCo”) (collectively, “Defendants” or “JC Penney”). The allegations  
6 contained in this class action complaint are based on Plaintiffs’ personal knowledge of  
7 facts pertaining to themselves and upon information and belief, including further  
8 investigation conducted by Plaintiffs’ counsel, as to the remainder.

### 9 I. NATURE OF THE ACTION

10 1. Advertised “sale” prices are important to consumers. Consumers are more  
11 likely to purchase a product if they believe that they are getting a good deal or  
12 purchasing that item at a “bargain” price. Further, if consumers believe that the reduced  
13 price will end soon, they are more likely to buy now, rather than wait or comparison  
14 shop, and buy something else. (*See*, Ngwe, Donald, “Fake Discounts Drive Real  
15 Revenues in Retail,” Harvard Business School Working Paper (2018), at 1-2.)

16 2. While legitimate sales are entirely proper and legal, deceptive sales—i.e.  
17 “sales” with fictitious original or former prices, made-up discounts, and made-up  
18 expirations—are misleading and illegal.

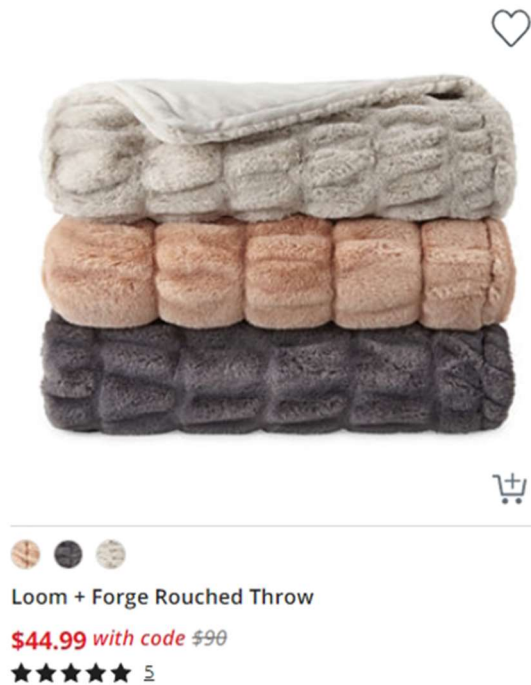
19 3. This is an action against Defendants for false reference pricing on their  
20 website, [www.jcpenney.com](http://www.jcpenney.com) (the “Website”).

21 4. By way of background, a marketing strategy that businesses often use to  
22 promote sales is known as “strikethrough pricing” or “false reference pricing,” whereby  
23 a seller advertises the “former” price of a product, which is then crossed out and replaced  
24 with a purportedly “discounted” price, either next to the stricken price or revealed after  
25 a consumer adds the item to his or her online shopping cart. Such schemes have at least  
26 two purposes: (1) to induce consumers to make a purchase under the false belief that  
27 they are getting a bargain, and (2) to create a false sense of urgency that the purported  
28 “sale” will end and then the consumer will have to pay the “full” price for the item. In  
reality, however, the consumer is not getting a bargain—he is simply buying it at or

1 around the prevailing market price—and the “sale” is perpetual because the lower “sale”  
2 price rarely, if ever, returns to the higher “former” price.

3 5. False reference pricing violates state and federal law. Yet, sellers, including  
4 Defendants, continue to engage in this tactic because they know they will be able to  
5 increase sales and profits by tricking consumers into making purchasing decisions based  
6 on the advertised reference prices. Consumers generally lack full information about  
7 products because the information available to consumers varies for different types of  
8 products. Thus, consumers are left to rely on sellers and their pricing disclosures to  
9 make their purchasing decisions.

10 6. To illustrate, below is a screengrab from Defendants’ Website for the  
11 Loom + Forged Rouched Throw Blanket purchased by Plaintiff Skurauskis on  
12 September 20, 2021, which has a “former” (strikethrough or false reference) price of  
13 \$90.00. Ms. Skurauskis added the item to her cart and purchased the blanket at a “sale”  
14 price of \$44.99.



27 7. However, as explained further herein, it appears that Defendants *never*  
28 advertised or sold this item for \$90.00 in the three months before Ms. Skurauskis

1 purchased it on September 20, 2021.<sup>1</sup> That is, the price at which Defendants actually  
2 sold this item fluctuated between \$44.99 (a 50% “discount”) and \$67.50 (a 25%  
3 “discount”) the entire time, meaning the \$90.00 “former” price was fake and the 25-  
4 50% “discount” was also fake.

5 8. The creation of a fake “sale” or “discount” creates a false sense of urgency  
6 which induces customers to purchase the item out of concern that the non-existent “sale”  
7 will end and they will lose out on the “discount,” meaning many consumers forego  
8 waiting until that item *actually* goes on sale. Based on Defendants’ representations,  
9 Plaintiffs believed that they were purchasing products for which the regular price and  
10 market value was the purported “regular” or “former” price that Defendants advertised,  
11 that they were receiving a substantial discount, and that the opportunity to get that  
12 discount was seemingly time limited. These reasonable beliefs were what led Plaintiffs  
13 to buy from Defendants when they did.

14 9. In reality, however, Defendants’ represented prices were not true. The  
15 purported “regular” prices were not the true regular prices, the purported “discounts”  
16 were not the true discounts, and the “discounts” were not necessarily time limited.

17 10. This conduct artificially increases demand for the deceptively priced  
18 products and induces customers to pay more based on an impression of the products’  
19 falsely inflated value.

20 11. The products at issue include all goods that have at any time been offered  
21 by Defendants, either on their Website or at one of Defendants’ store locations, at a sale  
22 or discounted price from a higher “former” or “regular” price, including, but not limited  
23 to: apparel, home, jewelry, and beauty products.

24 12. Consumers who visit Defendants’ Website and buy an item on “sale” from  
25 a stricken former or “reference” price are being misled by Defendants. This is because  
26 that item has not been advertised for sale or sold, during the relevant statutory period,

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27 <sup>1</sup> The “prevailing market price” of a product sold exclusively by one retailer is the price of the  
28 product at which the retailer offered that product over the three months immediately preceding the  
advertisements. Cal. Bus. & Prof. Code § 17501; *Spann v. J.C. Penney Corp.*, 307 F.R.D. 508, 525  
(C.D. Cal. 2015).

1 at the former price. Defendants’ use of inflated reference prices, strikethrough pricing  
2 and “discounting,” and purported limited time sales, all lead reasonable consumers to  
3 believe that the products in fact had been listed for sale and sold by Defendants at the  
4 former price, during, at a minimum, the relevant statutory period, or for a substantially  
5 longer period of time.

6 13. On information and belief, all or nearly all the strikethrough prices on  
7 Defendants’ Website and in their stores are false and misleading. They are not former  
8 or “regular” prices at which the products were offered for sale in the relevant statutory  
9 period or for a substantial time, if at all. They are inflated prices advertised to entice  
10 consumers into purchasing items from Defendants.

11 14. Moreover, as shown below, Defendants frequently advertise purported  
12 “sales” with end dates to lead consumers to believe such “sales” will end and the prices  
13 for the items being offered at a discount during the sale period will revert to the inflated  
14 reference prices when the sale ends.



26 In reality, however, all or nearly all of the items remain substantially discounted after  
27 the purported sale’s end date, i.e., none or almost none of them items revert back to the  
28

1 reference prices advertised by JC Penney. This is intended to create a false sense of  
2 urgency and prompt consumers to make purchases they would not have otherwise made.

3 15. In addition, on information and belief, even when Defendants do not  
4 advertise a certain end date to their purported sales, Defendants frequently advertise  
5 sales with deep discounts that reasonable consumers would reasonably believe are  
6 limited in duration because the items appear to be marked down so significantly that no  
7 reasonable consumer would believe that such “sales” would continue indefinitely.

8 16. Reasonable consumers reasonably believe that the “regular” prices  
9 Defendants advertise represent the true market value of the products and are the  
10 prevailing prices for those products, and that they are receiving reductions from those  
11 “regular” prices in the amounts advertised. Accordingly, when consumers purchased  
12 these products at a manufactured “discounted” price, consumers did not receive the  
13 product they believed they received at full value and purchased at a discount. To  
14 illustrate, assume a consumer is willing to purchase an item for \$35. But to motivate  
15 consumers psychologically, and thus increase revenue and capture market share, the  
16 company advertises the product as having a “regular” price of \$80 and being on “sale”  
17 at 50% off (i.e., \$40 off). Because consumers value products based on the false reference  
18 price, a product falsely advertised at 50% off leads the consumer to believe he is getting  
19 an item worth \$80 for \$40. The consumer thinks he is getting a good deal, but he has  
20 been fleeced because he actually paid \$5 more for the item that he otherwise would have  
21 been willing to pay due to Defendants’ psychological manipulation regarding the  
22 “regular” price or value of the item. The misrepresentation also creates a false sense of  
23 urgency. Thus, consumers make purchases they would not otherwise have made.

24 17. As a result of this psychological baiting, consumers are not only deceived  
25 into spending money they otherwise would not have spent, but also purchasing items  
26 they would not have purchased, and spending more money for an item than they  
27 otherwise would have, had Defendants not engaged in false advertising.

28 18. Consumers also rely on retailers to provide accurate reference prices. For  
infrequently purchased luxuries such as home appliances, decor, or jewelry, consumers

1 do not have reference points to gauge accurate pricing. Deception is likely to be greater  
2 in this context due to a lack of pricing knowledge.

3 19. The damage to any single consumer in any single transaction related to the  
4 purchase of a single item may seem relatively small. However, when multiplied by  
5 millions of sales transactions over the course of several years, Defendants deceptively  
6 and unlawfully walk away with tens, if not hundreds, of millions of dollars in additional  
7 revenue compared to a business model that does not employ such deceptive advertising  
8 practices. The enhanced revenue likely explains why Defendants have a long history of  
9 engaging in false reference pricing despite the fact that in the last decade they have  
10 acknowledged the unlawfulness of the practice and have been sued for such practices  
11 repeatedly. *See Infra* Section IV.H.

## 12 II. PARTIES

### 13 Plaintiffs

14 20. Plaintiff Marjanique Robinson is a resident of the State of California and  
15 County of Alameda. She was present in Alameda County at the time she made her  
16 purchase from Defendants' Website.

17 21. Plaintiff Ariana Skurauskis is a resident of the State of California and  
18 County of Santa Clara. She was present in Santa Clara County at the time she made her  
19 purchase from Defendants' Website.

### 20 Defendants

21 22. On information and belief, Defendants operate both JC Penney's stores and  
22 ecommerce Website, jcpenny.com, and advertise, market, distribute, and/or sell  
23 apparel, home, jewelry, and beauty products throughout the United States, including  
24 California.

25 23. Old COPPER Company, Inc. f/k/a J.C. Penney Company, Inc. ("JC  
26 Penney") was a Delaware corporation with its headquarters located at 6501 Legacy  
27 Drive, Plano, TX 75024-3698.<sup>2</sup> JC Penney sold merchandise to consumers through

28 <sup>2</sup> See <https://www.naics.com/company-profile-page/?co=5483>

1 department stores and its e-commerce Website. On May 15, 2020, JC Penney filed for  
 2 Chapter 11 Bankruptcy, and on December 7, 2020, JC Penney completed the sale of all  
 3 of its retail and operating assets to Penney OpCo LLC—an entity formed and under the  
 4 joint control of Simon Property Group, L.P. and Brookfield Asset Management Inc.<sup>3</sup>

5 24. Penney OpCo, LLC (“Penney OpCo”) is a Virginia limited liability  
 6 company<sup>4</sup> with its principal executive offices located at 6501 Legacy Drive, Plano, TX  
 7 75024-3698.<sup>5</sup> Penney OpCo is a private company doing business as JCPenney outside  
 8 of the Chapter 11 bankruptcy process.<sup>6</sup> For further context, Penney OpCo LLC is an  
 9 entity that was formed by and is under the joint control of Simon Property Group, L.P.  
 10 and Brookfield Asset Management Inc.<sup>7</sup> All retail operations of Old COPPER  
 11 Company, Inc. ended effective with the sale of its operating assets.<sup>8</sup>

### 12 III. JURISDICTION & VENUE

13 25. This Court has jurisdiction over this lawsuit under the Class Action  
 14 Fairness Act, 28 U.S.C. § 1332(d)(2), because this is a proposed class action in which:  
 15 (i) there are at least 100 Class members; (ii) the aggregate amount in controversy  
 16 exceeds \$5,000,000, exclusive of interest and costs; and (iii) at least one putative class  
 17 member and one Defendant are citizens of different states.

18 26. This Court also has subject matter jurisdiction over this Action pursuant to  
 19 28 U.S.C. § 1332(a) because the amount in controversy in this case exceeds \$75,000  
 20 and this action is between citizens of different states. Plaintiffs are residents of  
 21 California whereas Defendants are Virginia and Delaware entities with their principal

22 <sup>3</sup> See *J.C. Penney Company, Inc. – Investor Relations*,  
 23 <https://www.loc.gov/item/lcwaN0016642/#:~:text=Summary,and%20Brookfield%20Asset%20Management%2C%20Inc>

24 <sup>4</sup><https://cis.scc.virginia.gov/EntitySearch/BusinessInformation?businessId=11128073&source=FromEntityResult&isSeries%20=%20false>

25 <sup>5</sup> See *Penney OpCo LLC – Company Profile*, <https://www.globaldata.com/company-profile/jc-penney-company-inc/>

26 <sup>6</sup> See *J.C. Penney Company, Inc. – Investor Relations*,  
 27 <https://www.loc.gov/item/lcwaN0016642/#:~:text=Summary,and%20Brookfield%20Asset%20Management%2C%20Inc>

28 <sup>7</sup> *Id.*

<sup>8</sup> *Id.*



1 places of business in Texas.

2 27. Defendants are subject to specific personal jurisdiction in this State  
3 because a substantial part of the events and conduct giving rise to Plaintiffs' claims  
4 occurred in this State, including Defendants' marketing to Plaintiffs, sales to Plaintiffs,  
5 and Defendants' ownership and operation of approximately 63 stores within the State  
6 of California. Accordingly, Defendants have sufficient minimum contacts in California  
7 to render the exercise of jurisdiction by the California courts consistent with traditional  
8 notions of fair play and substantial justice.

9 28. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because  
10 Defendants named in this Action transacts business within this district and a substantial  
11 part of the events or omissions giving rise to the claims herein occurred in this judicial  
12 district.

#### 13 **IV. GENERAL ALLEGATIONS**

##### 14 **A. Company Background**

15 29. JC Penney is a department store that was “founded in 1902.”<sup>9</sup> JC Penney  
16 is “one of the nation’s largest retailers of apparel, home, jewelry, and beauty  
17 merchandise, [and] JCPenney has a portfolio of private and national brands” as well as  
18 “private brands like Liz Claiborne®, Stafford®, okie dokie™, and Worthington™.”<sup>10</sup>  
19 Furthermore, JC Penney has more than 650 stores in the U.S. and Puerto Rico and is  
20 “making the shopping experience easy and seamless across all channels and devices  
21 with a mobile-first design of our website, new and innovative in-store experiences and  
22 formats, and multiple fulfillment methods such as in-store and curbside pickup, and ship  
23 to home.”<sup>11</sup>

24 30. Defendants, through their Website and in-store, have sold millions of units  
25 of merchandise to consumers nationwide.

26  
27 <sup>9</sup> <https://www.jcpenney.com/m/company-info>

28 <sup>10</sup> *Id.*

<sup>11</sup> *Id.*

**B. Defendants’ Pricing Scheme Is False and Deceptive Because The Products Are Not Sold at JC Penney at the Former Reference Prices**

31. Defendants’ business model relies on deceiving consumers with false or misleading advertisements.

32. On any given date, many products at JC Penney are represented as being discounted from a substantially higher reference or former price. On information and belief, products are offered at the same prices both in-store and on JC Penney’s Website. On JC Penney’s Website, for example, the supposed markdowns are represented to the consumer by prominently displaying a “crossed-out” reference price next to the sale price, which is displayed in bold red font. A representative example is shown below. (For some products, the sale prices are only shown when added to a customer’s cart to further incentivize a purchase.)



Mutual Weave Mens Adaptive 8" Chino Short  
**DOORBUSTER!**  
**\$14.99 sale** ~~40~~

33. Defendants employ these deceptive tactics to falsely convey to customers that the product was formerly listed or sold on the Website at the reference price in the recent past and for a substantial period of time, but is now being listed and sold to the customer at a substantial discount.

34. By way of background, the way false reference pricing is evaluated depends significantly on whether the product is exclusive or non-exclusive. Exclusive

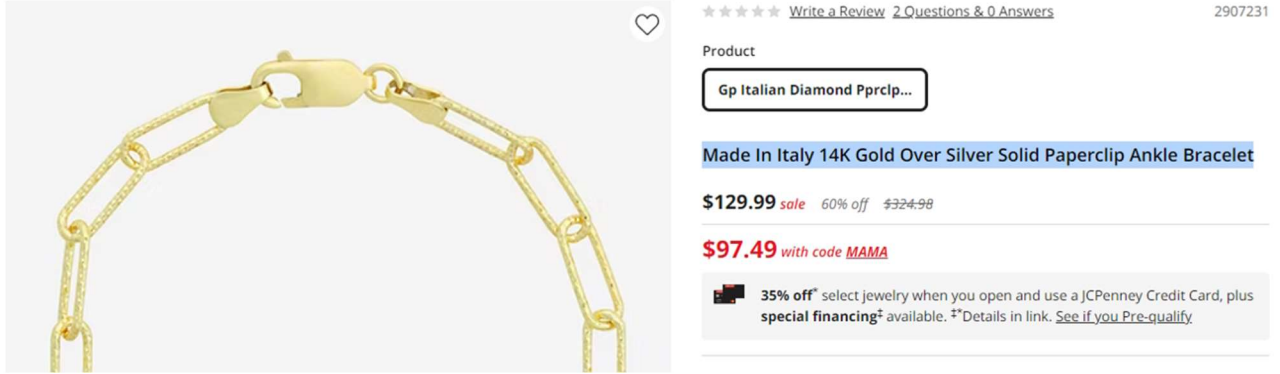
1 products are products that are sold exclusively by one retailer. The “prevailing market  
2 price” of an exclusive product is the price of the product at which the retailer offered  
3 that product over the three months immediately preceding the advertisements. Cal. Bus.  
4 & Prof. Code § 17501; *Spann v. J.C. Penney Corp.*, 307 F.R.D. 508, 525 (C.D. Cal.  
5 2015). Thus, if the advertised reference price of the exclusive item exceeds that  
6 prevailing market price, then the advertisement is deceptive.<sup>12</sup> *Spann*, 307 F.R.D. at 525.  
7 On the other hand, non-exclusive products are products that are sold by multiple  
8 retailers. The “prevailing market price” of a non-exclusive product is determined by the  
9 prices at which multiple retailers in the market offered that product over the three  
10 months immediately preceding the advertisements. Cal. Bus. & Prof. Code § 17501;  
11 *Sperling v. Stein Mart, Inc.*, 291 F. Supp. 3d 1076, 1085 (C.D. Cal. 2018).

12 35. Regardless of whether the item is exclusive or non-exclusive to JC Penney,  
13 the higher reference price that Defendants advertise is typically a falsely inflated price  
14 because they rarely, if ever, list or sell items at the advertised reference price. The sole  
15 purpose of the false reference price is to mislead customers into believing that the  
16 displayed reference price is a former or regular price at which Defendants or competitors  
17 sold the item in the recent past. As a result, Defendants falsely convey to customers that  
18 they are receiving a substantial markdown or discount, thus inducing them to make a  
19 purchase before the “sale” ends. Representative examples of such false and misleading  
20 advertising, i.e., products having never been sold at the false reference price over the  
21 course of several months, are shown below.

22 1. Made in Italy 14K Gold Over Silver Solid Paperclip Ankle Bracelet

23 i. 05/13/2024: \$129.99 (sale price), marked down to \$97.49  
24 with a “discount code”; \$324.98 (former price)

25  
26 <sup>12</sup> For example, “[a] furniture dealer runs [an] advertisement which offers a couch which he claims  
27 was formerly selling for \$100 but is now selling for \$50. Unless the price which he advertises as the  
28 former price actually coincides with the “prevailing market price” of the couch within the next  
preceding three months ... the advertisement is again false and deceptive.” *Spann*, 307 F.R.D. at 525  
(quoting Attorney General Opinion No. 57–126).

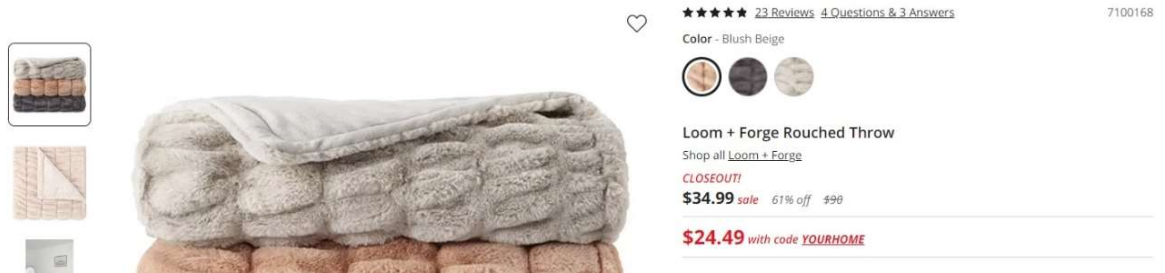


ii. 12/28/2023: \$109.37 (sale price); \$324.98 (former price)

iii. 01/03/2023: \$97.49 (sale price); \$324.98 (former price)

2. Loom + Forged Rouched Throw Blanket

i. 05/15/2024: \$34.99 (sale price), marked down to \$24.49 with a “discount code”; \$90.00 (former price)



ii. 10/02/2022: \$67.50 (sale price); \$90.00 (former price)

iii. 11/7/2021: \$44.99 (sale price); \$90.00 (former price)

iv. 08/13/2021: \$67.50 (sale price); \$90.00 (former price)

36. On information and belief, as discussed further *Infra* Section IV.H, this is not a new or isolated sales practice by Defendants, but a practice that has continued consistently for years throughout the statutory period and is still ongoing.

37. These pricing and advertising practices are deceptive and pressure consumers into purchasing products from Defendants at an inflated price out of fear that they will miss out on a limited-time sale. Defendants intend to mislead consumers into believing that they are getting a bargain by buying products from JC Penney on sale and at a substantial discount. Defendants do so with the intention of promoting sales,

1 increasing sales revenue, and for the purpose of disposing of products that it has in  
2 inventory. For many products, Defendants do not offer or sell the products at the  
3 reference price for a substantial time, if at all. The reference price is, therefore,  
4 artificially inflated, and the advertised discounts are deceptive.

5 **C. JC Penney’s Intentions Underlying Its False-Reference Pricing**  
6 **Scheme**

7 38. Defendants knew or should have known that its use of false reference  
8 prices were misleading consumers to believe that they were receiving a “bargain” when  
9 they, in fact, were not.

10 39. Moreover, Defendants intended for reasonable consumers to understand  
11 the “sale” prices to be prices that JC Penney had reduced from JC Penney’s “regular”  
12 or “former” prices. Defendants intentionally failed to disclose to Plaintiffs and Class  
13 members the truth about their reference prices, i.e. that they were fabricated, and that  
14 Defendants never offered the items at the reference prices during the relevant statutory  
15 period. Defendants intentionally sought to convey to consumers that they were receiving  
16 a true markdown.

17 40. Defendants intentionally and deliberately implemented a pricing scheme  
18 that was designed to mislead its customers to believe that the reference prices it used  
19 were: (a) the prices that the advertised product was formerly listed at; and/or (b) the  
20 prevailing market rate of the advertised product.

21 **D. Plaintiffs’ Experiences**  
22 **Plaintiff Robinson’s Purchase from the Website**

23 41. On December 28, 2023, Plaintiff Robinson visited the JC Penney Website  
24 and purchased a “Made in Italy 14K Gold Over Silver Solid Paperclip Ankle Bracelet”  
25 (the “Ankle Bracelet”).<sup>13</sup> Based on and consistent with archived copies of the Website,

26 <sup>13</sup> Although Plaintiff Robinson purchased the Ankle Bracelet through JC Penney’s Website,  
27 Plaintiff Robinson does not have a JCPenney online account, is not a Rewards program member, and  
28 used the guest checkout option. Additionally, Plaintiff Robinson Does not have a JCPenney credit  
card.

1 Plaintiff Robinson saw on the listing page a former price of \$324.98 which was stricken  
2 through. She added the Ankle Bracelet to her cart then proceeded to purchase the  
3 product for \$109.37 with the understanding that she was receiving all advertised  
4 discounts off the former price charged by Defendants. The product was shipped to her  
5 address in Alameda County, California.

6 42. Plaintiff Robinson relied on the representation of Defendants' reference  
7 pricing and believed that the reference price was actually a former price in the  
8 marketplace within the statutory period. She relied on the fact that the Ankle Bracelet  
9 was discounted, and that she was getting a "deal." This made the purchase more  
10 attractive and more urgent. Defendants led her to believe she was getting a discount on  
11 an item worth \$324.98, but, in reality, this was not the prevailing market price for the  
12 statutory period.

13 43. That sale was false and misleading. Based on archived copies of  
14 Defendants' Website, the product was regularly offered on the Website at a  
15 "discounted" price.

16 A. 05/13/2024: \$129.99 (sale price); \$324.98 (former price)

17 B. 01/03/2023: \$97.49 (sale price) ; \$324.98 (former price)

18 44. Plaintiff Robinson thus viewed and relied on the Website's purported then-  
19 current and, possibly limited time, "sale." She relied on the above representations that  
20 the product (1) had a former price of the advertised strikethrough price, and (2) had been  
21 offered for sale *on the Website* at the stated reference price, in the recent past, at least  
22 for the statutory period, on a regular basis, and for a substantial time. And she relied on  
23 the representations that the product was truly on sale and being sold at a substantial  
24 markdown.<sup>14</sup>

25 45. Contrary to the message that Defendants tried to convey with strikethrough  
26 pricing, the above-listed product that Plaintiff Robinson purchased was not marked

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27 <sup>14</sup> The Ankle Bracelet that Plaintiff Robinson purchased was exclusively sold at JC Penney, thus,  
28 there are not any other retailers to compare JC Penney's pricing of the Ankle Bracelet to for the  
purposes of determining the prevailing market price.

1 down or discounted substantially, and any discount she received had been grossly  
2 exaggerated.

3 46. Moreover, for at least the three-month period prior to Plaintiff Robinson's  
4 purchase, and on information and belief months and years more, Defendants very rarely,  
5 if ever, offered any of the discounted items sold on the Website at the reference prices.

6 47. Plaintiff Robinson would not have purchased the item at the advertised  
7 price, or would not have paid as much as she did, had Defendants been truthful—she  
8 would have waited for the product to *actually* go on sale. Plaintiff Robinson was  
9 persuaded to make her purchase because of the misleading sale based on false reference  
10 prices.

11 48. Plaintiff Robinson continues to be interested in purchasing jewelry,  
12 clothing, and products that are available for purchase at JC Penney and offered at  
13 discounted prices, but she will be unable to trust and rely on Defendants' advertising,  
14 and so will not purchase the products from Defendants unless she has assurances that  
15 Defendants' deceptive pricing practices have been rectified. Absent injunctive relief,  
16 Robinson cannot know whether Defendants' former and regular prices represent honest  
17 prices at which the products were listed for sale on the Website, on a regular basis for a  
18 reasonably substantial period of time, or if Defendants' false sales practices are  
19 perpetual.

#### 20 **Plaintiff Skurauskis' Purchase from the Website**

21 49. On September 20, 2021, Plaintiff Skurauskis visited the JC Penney  
22 Website and purchased a Loom + Forged Rouched Throw Blanket ("Loom Blanket").  
23 Based on and consistent with archived copies of the Website, Plaintiff Skurauskis saw  
24 on the listing page a former price of \$90.00 which was stricken through. She added the  
25 Loom Blanket to her cart then proceeded to purchase the product for \$44.99 with the  
26 understanding that she was receiving all advertised discounts off the former price  
27 charged by Defendants. The product was shipped to her address in Santa Clara County,  
28 California.

50. Plaintiff Skurauskis relied on the representation of Defendants' reference

1 pricing and believed that it was actually a former price in the marketplace within the  
2 statutory period. She relied on the fact that the Loom Blanket was discounted, and that  
3 she was getting a “deal.” This made the purchase more attractive and more urgent.  
4 Defendants led her to believe she was getting a discount on an item worth \$90.00, but  
5 this was not the prevailing market price for the statutory period.

6 51. That sale was false and misleading. Based on archived copies of  
7 Defendants’ Website, the product was regularly offered on the Website at a  
8 “discounted” price.

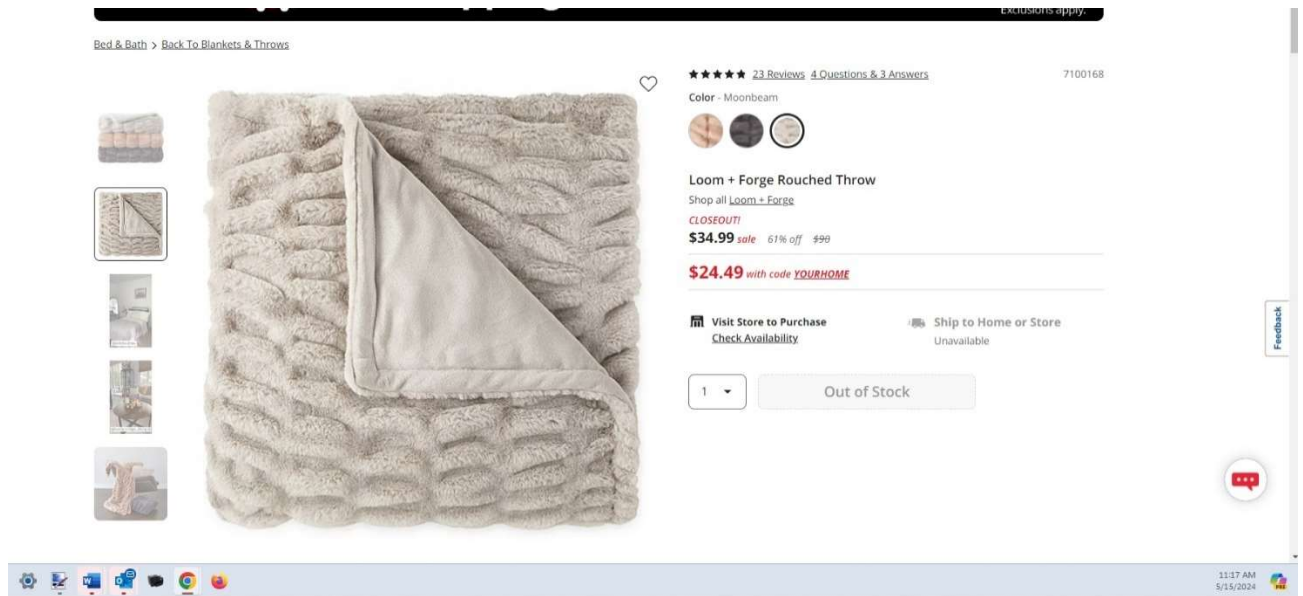
- 9 a. 05/15/2024: \$34.99 (sale price) / \$90.00 (former price)
- 10 b. 10/02/2022: \$67.50 (sale price) / \$90.00 (former price)
- 11 c. 11/7/2021: \$44.99 (sale price) / \$90.00 (former price)
- 12 d. 08/13/2021: \$67.50 (sale price) / \$90.00 (former price)

13 52. Plaintiff Skurauskis thus viewed and relied on the Website’s purported  
14 then-current and limited time “sale.” She relied on the above representations that the  
15 product (1) had a former price of the advertised strikethrough price, and (2) had been  
16 offered for sale *on the Website* at the stated reference price, in the recent past, at least  
17 for the statutory period, on a regular basis, and for a substantial time. And she relied on  
18 the representations that the product was truly on sale and being sold at a substantial  
19 markdown.<sup>15</sup>

20 53. A screenshot of the product listing dated May 15, 2024 is below. As of that  
21 date, the product was still on sale for \$34.99, or for \$24.99 with a discount code.

22  
23  
24  
25  
26  
27 <sup>15</sup> The Loom Blanket that Plaintiff Robinson purchased was exclusively sold at JC Penney, thus,  
28 there are not any other retailers to compare JC Penney’s pricing of the Loom Blanket to for the  
purposes of determining the prevailing market rate.





54. Contrary to the message that Defendants tried to convey with strikethrough pricing, the above-listed product that Plaintiff Skurauskis purchased was not marked down or discounted substantially, and any discount she received had been grossly exaggerated.

55. Moreover, for at least the three-month period prior to Plaintiff Skurauskis' purchase, and on information and belief months and years more, Defendants very rarely, if ever, offered any of the discounted items sold on its Website at the reference prices.

56. Plaintiff Skurauskis would not have purchased the item at the advertised price, or would not have paid as much as she did, had Defendants been truthful—she would have waited for the product to *actually* go on sale. Plaintiff Skurauskis was persuaded to make her purchase because of the misleading sale based on false reference prices.

57. Plaintiff Skurauskis continues to be interested in purchasing products that are available for purchase at JC Penney and offered at discounted prices, but she will be unable to trust and rely on Defendants' advertising, and so will not purchase the products from Defendants unless she has assurances that Defendants' deceptive pricing practices have been rectified. Absent injunctive relief, Skurauskis cannot know whether Defendants' former and regular prices represent honest prices at which the products were listed for sale on the Website, on a regular basis for a reasonably substantial period

1 of time, or if Defendants’ false sales practices are perpetual.

2 **E. Research Shows That Reference Price Advertising Influences**  
3 **Consumer Behavior and Perceptions of Value**

4 58. Deceptive pricing practices have drawn the scrutiny and analysis of  
5 mainstream media and several academic studies.

6 59. Retailers like Defendants can benefit substantially from false discounting  
7 schemes because “framing a price increase as a discount can not only allow the firm to  
8 get *higher margins*, but also *increase sales*.” Staelin et al., *Competition and the*  
9 *Regulation of Fictitious Pricing*, 87 J. MKTG., 826, 835 (2023) (emphasis added).

10 60. Retailers “mark up the prices and then offer seemingly deep discounts to  
11 make the deals look more attractive,” reports Jie Zhang, a professor of marketing at the  
12 University of Maryland. “This is a form of deceptive pricing.”<sup>16</sup> This tactic is meant to  
13 trick shoppers into thinking they are getting a better price than usual.

14 61. Consumers’ Checkbook, a nonprofit consumer-advocacy publication,  
15 tracked the prices of more than 25 items at 24 major retailers over 33 weeks last year.  
16 Researchers concluded that at eight companies, more than half of the items they tracked  
17 “were offered at false discounts every week or almost every week we checked.”<sup>17</sup>

18 62. Luc Wathiue, a professor of marketing at Georgetown University, says that  
19 this is an effective technique because shoppers usually aren’t tracking prices that  
20 closely. “As consumers, we don’t know what the right price should be, so we use cues  
21 in the environment to determine whether the price that we have in front of us is  
22 advantageous.”<sup>18</sup>

23 63. “By creating an impression of savings, the presence of a higher reference  
24  
25

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26 <sup>16</sup> Jaclyn Peiser, *A common, illegal tactic retailers use to lure consumers*, The Washington Post  
27 (Nov. 21, 2023), available: <https://www.washingtonpost.com/business/2023/11/21/fake-sale-deceptive-pricing/> (“Washington Post Article”).

28 <sup>17</sup> *See id.*

<sup>18</sup> *See id.*

1 price enhances subjects' perceived value and willingness to buy the product."<sup>19</sup> Thus,  
2 "empirical studies indicate that, as discount size increases, consumers' perceptions of  
3 value and their willingness to buy the product increase, while their intention to search  
4 for a lower price decreases."<sup>20</sup>

5 64. "[D]ecades of research support the conclusion that advertised reference  
6 prices do indeed enhance consumers' perceptions of the value of the deal."<sup>21</sup> According  
7 to academic studies, "[c]onsumers are influenced by comparison prices even when the  
8 stated reference prices are implausibly high."<sup>22</sup>

9 65. According to Jie Zhang, the "psychological effect works" for tricking  
10 consumers into believing that they are receiving a good deal. "It's a very strong and  
11 robust effect, so I'm not surprised those retailers actually resorting to this tactic, because  
12 time and time again it works."<sup>23</sup>

13 66. Another academic journal explains that "[r]eference price ads strongly  
14 influence consumer perceptions of value . . . . Consumers often make purchases not  
15 based on price but because a retailer assures them that a deal is a good bargain. This  
16 occurs when . . . the retailer highlights the relative savings compared with the prices of  
17 competitors . . . [T]hese bargain assurances (BAs) change consumers' purchasing  
18 behavior and may deceive consumers."<sup>24</sup>

19 67. "[R]esearch has shown that retailer-supplied reference prices clearly  
20 enhance buyers' perceptions of value" and "have a significant impact on consumer

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21 <sup>19</sup> Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Informative or Deceptive?*,  
22 11 J. PUB. POL'Y & MKTG. 52, 55 (Spring 1992). "[P]rice is materially utilized in the formation of  
23 perceptions of the product's value and influences the decision to purchase the product or to continue  
24 to search for a lower price." *Id.*; Patrick J. Kaufmann et al, *Deception in Retailer High-Low Pricing:  
A "Rule of Reason" Approach*, 70 J. RETAILING 115, 118 (1994) ("[R]eference to a retailer's normal  
or regular price in retail sale price advertising provides the consumer with information used to  
determine perceived value").

<sup>20</sup> *Id.* at 56.

25 <sup>21</sup> Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Believe It Or Not*, J. OF  
26 CONSUMER AFFAIRS, Vol. 36, No. 2, at 287 (Winter 2002).

<sup>22</sup> *Id.*

27 <sup>23</sup> Washington Post Article.

28 <sup>24</sup> Joan Lindsey-Mullikin & Ross D. Petty, *Marketing Tactics Discouraging Price Search:  
Deception and Competition*, 64 J. OF BUS. RESEARCH 67 (January 2011).

1 purchasing decisions.”<sup>25</sup>

2 68. “[R]eference prices are important cues consumers use when making the  
3 decision concerning how much they are willing to pay for the product.”<sup>26</sup> This study  
4 also concluded that “consumers are likely to be misled into a willingness to pay a higher  
5 price for a product simply because the product has a higher reference price.”<sup>27</sup>

6 69. According to a OnePoll survey, 67% of respondents said the cost-of-living  
7 pressures made them more desperate to find the best deals, and 71% believe they are  
8 “saving money” by buying products that are on sale, even if the price reduction is not  
9 genuine.<sup>28</sup>

10 70. Additionally, a product’s “price is also used as an indicator of product  
11 quality.”<sup>29</sup> In other words, consumers view Defendants’ deceptive advertised reference  
12 prices as a proxy for product quality.

13 71. As such, research confirms that deceptive advertising through false  
14 reference pricing is intended to, and, in fact does, influence consumer behavior. By  
15 artificially inflating consumer perceptions of an item’s value and causing consumers to  
16 spend money they otherwise would not have, consumers purchase items they otherwise  
17 would not have, and/or purchase products from a specific retailer believing that they are  
18 receiving a “discount.”

#### 18 **F. Consumers Suffered Economic Harm**

19 72. Based on Defendants’ advertisements, reasonable consumers would expect

20  
21 <sup>25</sup> Praveen K. Kopalle & Joan Lindsey-Mullikin, *The Impact of External Reference Price On  
Consumer Price Expectations*, 79 J. OF RETAILING 225 (2003).

22 <sup>26</sup> Jerry B. Gotlieb & Cyndy Thomas Fitzgerald, *An Investigation Into the Effects of Advertised  
Reference Prices On the Price Consumers Are Willing To Pay For the Product*, 6 J. OF APP’D BUS.  
23 RES. 1 (1990).

24 <sup>27</sup> *Id.*

25 <sup>28</sup> Megan Tatum, *Bargain debasement: why are ‘fake discounts’ on the rise?*, Raconteur (June  
26 23, 2023), available: <https://www.raconteur.net/economy-trends/fake-discounts-online-retail>.

27 <sup>29</sup> Grewal, *supra* note 8, at 54; see also Richard Thaler, *Mental Accounting and Consumer Choice*,  
28 MARKETING SCIENCE 4, no. 3 (1985): 199-214, p. 212 (“The [reference price] will be more successful  
as a reference price the less often the good is purchased. The [reference price] is most likely to serve  
as a proxy for quality when the consumer has trouble determining quality in other ways (such as by  
inspection)”).

1 that the listed former prices are the “regular” prices at which Defendants sell that  
2 product; that these are former prices that Defendants sold the product at before the  
3 discount was introduced, and that these are the prevailing prices at JC Penney and/or  
4 other nationwide retailers. Put another way, reasonable consumers reasonably believe  
5 that, prior to the supposedly time-limited sale, consumers had to pay the “regular” price  
6 to get the item and did not have the opportunity to get a discount from that “regular”  
7 price, through a sale or otherwise.

8 73. Reasonable consumers would also expect that, if they purchase during the  
9 sale, they will receive an item for which the regular price and/or market value is the  
10 advertised regular price and that they will receive the advertised discount from the  
11 regular purchase price.

12 74. Consumers, including Plaintiffs and putative Class members, paid a “price  
13 premium” for the products that they otherwise would not have paid if the reference  
14 prices that Defendants used were omitted from the product listings. Or consumers would  
15 not have purchased the products at all, and Defendants would not have been able to  
16 charge the prices they ultimately did.

17 75. Consumers who are presented with sale prices or discounts are more likely  
18 to make the purchase. Research shows that more than 64% of online consumers wait to  
19 buy things until they go on sale. Nearly two-thirds of consumers surveyed admitted that  
20 a promotion or a coupon often closes the deal, if they are wavering or are undecided on  
21 making a purchase.<sup>30</sup> As such, the lure of getting an item at a discount impacts a  
22 consumer’s decision as to whether to purchase a product or not.

23 76. Accordingly, Defendants’ advertisements harm consumers by inducing  
24 them to make purchases based on false information. In this same vein, Defendants’  
25 advertisements artificially increase consumer demand for Defendants’ products, putting  
26 upward pressure on the prices that Defendants can charge for its products.

27 <sup>30</sup> Khalid Saleh, *How Discounts Affect Online Consumer Buying Behavior*, INVESPRO (June 16,  
28 2024), available: <https://www.invespro.com/blog/how-discounts-affect-online-consumer-buying-behavior/>.

1 Consequently, Defendants can charge a price premium for their products that they  
2 would not be able to charge absent the misrepresentations about the former prices.  
3 Defendants' misrepresentations caused Plaintiffs to pay more for the products they  
4 purchased than they otherwise would have.

5 **G. Defendants' Deceptive Pricing Practice Violates the Law**

6 77. The Federal Trade Commission Act ("FTCA") prohibits the pricing  
7 scheme employed by Defendants regardless of whether the product advertisements and  
8 representations use the words "regular," "original," or "former" price. Under 16 C.F.R.  
9 § 233.1(e):

10 If the former price is set forth in the advertisement, *whether accompanied or*  
11 *not* by descriptive terminology such as "Regularly," "Usually," "Formerly,"  
12 etc., the advertiser should make certain that the former price is not a fictitious  
13 one. If the former price, or the amount or percentage of reduction, is not stated  
14 in the advertisement, as when the ad merely states, "Sale," the advertiser must  
15 take care that the amount of reduction is not so insignificant as to be  
16 meaningless. It should be sufficiently large that the consumer, if he knew what  
17 it was, would believe that a genuine bargain or saving was being offered. An  
18 advertiser who claims that an item has been "Reduced to \$9.99," when the  
19 former price was \$10, is misleading the consumer, who will understand the  
20 claim to mean that a much greater, and not merely nominal, reduction was  
21 being offered.

22 78. The FTCA also prohibits "unfair or deceptive acts or practices in or  
23 affecting commerce[.]" 15 U.S.C. § 45(a)(1). Under FTC regulations, false former  
24 pricing schemes like the ones employed by Defendants are deceptive practices that  
25 violate the FTCA.

26 79. Pursuant to 16 C.F.R. § 233.1, entitled Former Price Comparisons:

27 (a) One of the most commonly used forms of bargain advertising is to offer a  
28 reduction from the advertiser's own former price for an article. If the *former*

1 *price* is the actual, bona fide price at which the article was offered to the public  
2 on a *regular basis* for a *reasonably substantial period of time*, it provides a  
3 legitimate basis for the advertising of a price comparison. Where the former  
4 price is genuine, the bargain being advertised is a true one. If, on the other  
5 hand, the former price being advertised is not bona fide but fictitious – for  
6 example, where an *artificial, inflated price* was established for the purpose of  
7 enabling the subsequent offer of a large reduction – the “bargain” being  
8 advertised is a false one; the purchaser is not receiving the unusual value he  
9 expects. (Emphasis added).

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

18 (c) The following is an example of a price comparison based on a fictitious  
19 former price. John Doe is a retailer of Brand X fountain pens, which cost him  
20 \$5 each. His usual markup is 50 percent over cost; that is, his regular retail  
21 price is \$7.50. In order subsequently to offer an unusual “bargain,” Doe begins  
22 offering Brand X at \$10 per pen. He realizes that he will be able to sell no, or  
23 very few, pens at this inflated price. But he doesn’t care, for he maintains that  
24 price for only a few days. Then he “cuts” the price to its usual level—\$7.50—  
25 and advertises: “Terrific Bargain: X Pens, Were \$10, Now Only \$7.50!” *This*  
26 *is obviously a false claim*. The advertised “bargain” is not genuine. (Emphasis  
27 added).

1 (d) Other illustrations of fictitious price comparisons could be given. An  
2 advertiser might use a price at which he *never offered the article at all*; he  
3 might feature a price which was *not used in the regular course of business*,  
4 or which was *not used in the recent past* but at some *remote period in the*  
5 *past*, without making disclosure of that fact; he might use a price that was not  
6 openly offered to the public, or that was *not maintained for a reasonable*  
7 *length of time*, but was immediately reduced. (emphasis added).

8  
9 80. The FTCA also prohibits retailers from offering fake limited duration sales.  
10 *See* 16 C.F.R. § 233.5 which provides:

11 [Retailers] should not represent that they are selling at “factory” prices when  
12 they are not selling at the prices paid by those purchasing directly from the  
13 manufacturer. . . . They should not offer an advance sale under circumstances  
14 where they do not in good faith expect to increase the price at a later date, or  
15 make a ‘limited’ offer which, in fact, is not limited.

16 81. Plaintiffs Robinson and Skurauskis purchased their products online from  
17 their residences in California. Plaintiff Nelson purchased her product in a JC Penney  
18 store located in Concord, California. Defendants’ pricing practices also violate  
19 California law. Section 17500 of California’s False Advertising Law prohibits  
20 businesses from making statements they know or should know to be untrue or  
21 misleading. Cal. Bus. & Prof. Code § 17500. This includes statements falsely suggesting  
22 that a product is on “sale,” when it actually is not.

23 82. Moreover, section 17501 of California’s False Advertising Law  
24 specifically provides that “[n]o price shall be advertised as a former price . . . unless the  
25 alleged former price was the prevailing market price . . . within three months next  
26 immediately preceding” the advertisement. Cal. Bus. & Prof. Code § 17501.

27 83. Further, California’s Consumer Legal Remedies Act prohibits “advertising  
28 goods or services with the intent not to sell them as advertised” and specifically prohibits  
“false or misleading statements of fact concerning reasons for, existence of, or amounts



1 of price reductions.” Cal. Civ. Code § 1770(a)(9), (13).

2 84. Additionally, California’s unfair competition law bans unlawful, unfair,  
3 and deceptive business practices. Cal Bus. & Prof. Code § 17200.

4 85. As described herein, Defendants make false and misleading statements  
5 about their prices and discounts. Defendants advertise “regular” prices that are not  
6 actually their “regular” or former prices, and were not the prevailing market price in the  
7 three months immediately preceding the advertisements. Additionally, Defendants  
8 advertised goods or services with the intent not to sell them as advertised. For example,  
9 Defendants advertised that goods had certain former prices and/or market values even  
10 though they never intended to sell those goods at those former prices and/or market  
11 values. Defendants made false and/or misleading statements concerning the reasons for,  
12 existence of, and amounts of price reductions. Such false or misleading statements were  
13 made in the context of site-wide discounts, discounts on categories of items, and  
14 individual items. Defendants engaged in unlawful, unfair, and deceptive business  
practices by virtue of this deceptive pricing scheme.

15 **H. JC Penney Has a Repeated History of Engaging in this Fraudulent**  
16 **Pricing Scheme**

17 86. JC Penney’s conduct is not new or isolated. To the contrary, JC Penney has  
18 faced backlash for over a decade for engaging in nearly identical pricing schemes. Upon  
19 information and belief, in or around February 2012 JC Penney temporarily stopped  
20 using pricing comparison. This seemingly demonstrated an acknowledgement on the  
21 part of JC Penney that its misrepresentations of customer savings on transaction receipts  
22 with the words “*Your Total Savings Today*” was deceiving. Around this time was when  
23 JC Penney implemented a new pricing strategy known as “fair and square” by which it  
24 purported to offer products at everyday low prices. This ended up not being a profitable  
25 venture for JC Penney, as reports in the press showed a dip in revenues and profits for  
26 JC Penney.

27 87. Since the fair pricing strategy was not profitable for JC Penney, it deviated  
28 to its old ways in early 2013, reverting to displaying the false comparative price

1 advertising. This practice drew the scrutiny of consumer advocates and prompted  
2 several lawsuits against JC Penney, beginning around 2014. Upon information and  
3 belief, a total of four lawsuits were filed against JC Penney challenging the same  
4 deceitful pricing practices complained of herein. Indeed, in certifying the class in one  
5 such case, the court acknowledge the “crux of plaintiff’s claims, i.e., that the false  
6 advertising was a ‘scheme’ that was ‘rampant throughout California as part of a massive,  
7 years-long, pervasive campaign and was consistent across all of JC Penney’s private  
8 branded and exclusive branded apparel and accessories.” *Spann v. J.C. Penney Corp.*,  
9 No. 12-cv-0215 (C.D. Cal. May 18, 2015) (ECF No. 209).

10 88. JC Penney later represented to the Federal District Court in *Spann* that it  
11 would cease engaging in such deceptive practices, by entering into a settlement  
12 agreement which promised: “JC Penney agrees that any former price to which JCPenney  
13 refers in its price comparison advertising will be the actual, bona fide price at which the  
14 item was openly and actively offered for sale, for a reasonably substantial period of  
15 time, in the recent, regular course of business, honestly and in good faith.”<sup>31</sup> Therein, JC  
16 Penney also represented that it had, in fact “implemented a new price-comparison  
17 advertising policy” as of November 2015.<sup>32</sup>

18 89. Despite these public representations, JC Penney persisted in engaging in  
19 false pricing schemes designed to maximize its profits at the expense of unsuspecting  
20 consumers. Accordingly, JC Penney was the target of another lawsuit challenging the  
21 exact same practices in *The People of the State of California v. J.C. Penney Corp., Inc.*,  
22 BC 643036 (Cal. Super Dec. 8, 2016). The complaint in that case acknowledged JC  
23 Penney’s settlement in *Spann*, pointing out the fact that JC Penney was continuing to  
24 engage in the very conduct that it publicly represented it had stopped.

25 90. Further litigation still did not deter JC Penney’s deceitful pricing practices.

26 <sup>31</sup> See *Span v. J.C. Penney Corp., Inc.*, No. 12-cv-0215 (C.D. Cal. Nov. 10, 2015), Settlement  
27 Agreement (ECF No. 246-3), at pp. 14-15.

28 <sup>32</sup> See *Span*, at ECF No. 267 (J.C. Penney Response to Objection to Class Settlement), dated July  
28, 2016.

1 In fact, following its involvement in *People v. J.C. Penney Corp.*, JC Penney was sued  
2 in a shareholder derivative action in 2018, alleging that JC Penney’s directors “breached  
3 their fiduciary duty of loyalty by consciously disregarding their responsibility to oversee  
4 JC Penney’s compliance with California laws governing price-comparison advertising.”  
5 *Rojas v. J.C. Penney Co., Inc.*, No. 2018-0755 (Del. Ch. Ct. July 29, 2019), at 1. The  
6 central allegation in that case was that the directors “failed to ensure that the company  
7 abided by the terms of the *Spann* settlement.”

8 91. JC Penney still was not deterred. Just last year, JC Penney faced another  
9 lawsuit stemming from the exact same false reference pricing scheme that formed the  
10 basis of the earlier lawsuits. *See Carranza v. Old Copper Co., Inc. f/k/a J.C. Penney*  
11 *Co., Inc.*, No. 23-cv-0276 (S.D. Cal. Feb. 13, 2023) (ECF No. 1).

12 92. Defendants are repeat bad actors. They continue to make their profits a  
13 priority by continuing to engage in deceptive and illegal pricing practices. Defendants  
14 have been the subject of litigation time and again for deceiving consumers with their  
15 false reference pricing scheme, and yet they continue these practices to this day.

16 93. Even though JC Penney formerly represented that it had changed its pricing  
17 practices (*see Spann Settlement Agreement*), the allegations and evidence herein  
18 demonstrates that it is continuing to engage in the exact same conduct, demonstrating a  
19 blatant disregard for its prior commitments and the law.

## 20 V. CLASS ACTION ALLEGATIONS

21 94. Plaintiffs bring this action on behalf of themselves, and all persons  
22 similarly situated pursuant to Rule 23(b)(2), 23(b)(3), and 23(c)(4) of the Federal Rules  
23 of Civil Procedure and seek certification of the following classes (collectively, the  
24 “Class”):

25 **Nationwide Class**: All persons who purchased one or more items from JC  
26 Penney during the Class Period at a discount from an advertised higher  
27 reference price (the “Nationwide Class” or “Class”).

28 **California Subclass**: All persons in California who purchased one or more  
items from JC Penney during the Class Period at a discount from an advertised

1 higher reference price (the “California Subclass”).

2 95. Excluded from the Class are Defendants, as well as their officers, directors,  
3 employees, agents or affiliates, parent companies and/or subsidiaries, and each of their  
4 respective officers, employees, agents or affiliates, and any judge who presides over this  
5 action. Also excluded from the Class are persons or entities that purchased products  
6 from Defendants for purposes of resale.

7 96. The “Class Period” is the time period beginning on the date established by  
8 the Court’s determination of any applicable statute of limitations, after consideration of  
9 any tolling, discovery, concealment, and accrual issues, and ending on the date of entry  
10 of judgment.<sup>33</sup>

11 97. Plaintiffs reserve the right to expand, limit, modify, or amend the class  
12 definitions stated above, including the addition of one or more subclasses, in connection  
13 with a motion for class certification, or at any other time, based upon, among other  
14 things, changing circumstances, or new facts obtained during discovery.

15 98. **Numerosity.** The Class is so numerous that joinder of all members in one  
16 action is impracticable. The exact number and identities of the members of the Class is  
17 unknown to Plaintiffs at this time and can only be ascertained through appropriate  
18 discovery, but on information and belief, Plaintiffs allege that there are at least tens of  
19 thousands of members of the Class.

20 99. **Typicality.** Plaintiffs’ claims are typical of the claims of the Class  
21 members because, inter alia, all Class members have been deceived (or were likely to  
22 be deceived) by Defendants’ false and deceptive price advertising scheme, as alleged  
23 herein. Plaintiffs are advancing the same claims and legal theories on behalf of  
24 themselves and all Class members.

25 100. **Adequacy of Representation.** Plaintiffs are adequate representatives of  
26 the Class and will fairly and adequately protect the interests of the Class. Plaintiffs have  
27 retained attorneys who are experienced in the handling of complex consumer class

28 <sup>33</sup> The Class Period begins at minimum 4 years from the date of filing of this action, but based on  
tolling, may extend beyond that date.

1 action litigation, and Plaintiffs and their counsel intend to vigorously prosecute this  
2 action. Plaintiffs have no antagonistic or adverse interest to those of the Class.

3 **101. Existence and Predominance of Common Questions of Law or Fact.**

4 Common questions of law and fact exist as to all members of the Class that predominate  
5 over any questions affecting only individual members of the Class. These common legal  
6 and factual questions, which do not vary among members of the Class, and which may  
7 be determined without reference to the individual circumstances of any member of the  
8 Class, include, but are not limited to, the following:

- 9 A. Whether, during the Class Period, Defendants advertised false reference  
10 prices on products offered on the Website.
- 11 B. Whether, during the Class Period, the original price advertised by  
12 Defendants was the prevailing market price for the products in question  
13 during the three-month period preceding the dissemination and/or  
14 publication of the advertised former prices.
- 15 C. Whether, during the Class Period, Defendants advertised price  
16 discounts from false reference prices on products offered on the  
17 Website.
- 18 D. Whether the products listed on Defendants' Website during the Class  
19 Period were offered at their reference prices for any reasonably  
20 substantial period of time prior to being offered at prices that were  
21 discounted from their reference prices.
- 22 E. Whether Defendants' alleged conduct constitutes violations of the laws  
23 asserted.
- 24 F. Whether Defendants engaged in false or misleading advertising.
- 25 G. Whether Defendants' deceptive pricing scheme using false reference  
26 prices constitute an "unlawful," "unfair," or "fraudulent" business  
27 practice in violation of the California Unfair Competition Law, Cal. Bus  
28 & Prof. Code § 17200, et seq.
- H. Whether Defendants' deceptive pricing scheme using false reference

1 prices constitutes false advertising in violation of the California False  
2 Advertising Law under Business & Professions Code § 17500, et seq.

3 I. Whether Defendants' use of false reference prices on products offered  
4 on their Website during the Class Period was material.

5 J. Whether Defendants had a duty to conspicuously disclose to customers  
6 that the reference prices were false former/regular prices.

7 K. Whether the members of the Class are entitled to damages and/or  
8 restitution.

9 L. Whether injunctive relief, including public injunctive relief, is  
10 appropriate and necessary to enjoin Defendants from continuing to  
11 engage in false or misleading advertising.

12 M. Whether Defendants' conduct was undertaken with conscious disregard  
13 of the rights of the members of the Class and was done with fraud,  
14 oppression, and/or malice.

15 N. Whether members of the Class are entitled to an award of reasonable  
16 attorneys' fees, interest, and costs of suit.

17 102. **Superiority.** A class action is superior to other available methods for the  
18 fair and efficient adjudication of this controversy because individual litigation of the  
19 claims of all members of the Class is impracticable. Requiring each individual class  
20 member to file an individual lawsuit would unreasonably consume the damages that  
21 may be recovered. Even if every member of the Class could afford individual litigation,  
22 the adjudication of at least tens of thousands of identical claims would be unduly  
23 burdensome to the courts. Individualized litigation would also present the potential for  
24 varying, inconsistent, or contradictory judgments and would magnify the delay and  
25 expense to all parties and to the court system resulting from multiple trials of the same  
26 factual issues. By contrast, the conduct of this action as a class action, with respect to  
27 some or all of the issues presented herein, presents no management difficulties,  
28 conserves the resources of the parties and of the court system, and protects the rights of  
the members of the Class. Plaintiffs anticipate no difficulty in the management of this

1 action as a class action. The prosecution of separate actions by individual members of  
2 the Class may create a risk of adjudications with respect to them that would, as a  
3 practical matter, be dispositive of the interests of the other members of the Class who  
4 are not parties to such adjudications, or that would substantially impair or impede the  
5 ability of such non-party Class members to protect their interests.

6 103. **Substantial Similarity.** The products at issue in the action are  
7 substantially similar in all material respects. Namely, the products were all advertised  
8 with a false reference price, advertised with a strikethrough reference price, and  
9 advertised with a false sale price. The products are also all sold by Defendants on the  
10 Website and in-store and fall under the umbrella of apparel, home goods, jewelry,  
11 beauty products, and many other categories.

12 104. **Ascertainability.** Upon information and belief, Defendants keep extensive  
13 records of its customers through their online sales data, as well as through, inter alia,  
14 general marketing programs. Defendants have one or more databases through which all,  
15 or a significant majority of, Class members may be identified and ascertained, and they  
16 maintain contact information, including email and home address, through which notice  
17 of this action could be disseminated in accordance with due-process requirements.

## 18 **VI. TOLLING OF THE STATUTE OF LIMITATIONS AND DELAYED 19 DISCOVERY**

20 105. All applicable statutes of limitations have been tolled by the delayed  
21 discovery doctrine. Plaintiffs and Class members could not have reasonably discovered  
22 Defendants' practice of running perpetual and/or extended sales, based on deceptive  
23 reference prices and deceptive sale prices, at any time prior to commencing this class  
24 action litigation.

25 106. A reasonable consumer viewing the Website on multiple occasions would  
26 simply believe that a product is on sale for the time period represented on the Website.  
27 Short of visiting and checking the Website for months continuously, or using an internet  
28 archival device, a reasonable consumer would not suspect that Defendants' sales and  
pricing practices were false and misleading. Nor would a reasonable consumer be able

1 to ascertain the market value of the products being sold absent extensive investigation,  
2 which reasonable consumers would not be on notice to have to do.

3 107. Plaintiffs did not learn of Defendants' deceptive practices alleged herein  
4 until commencing this action.

5 108. As a result, any and all applicable statutes of limitations otherwise  
6 applicable to the allegations herein have been tolled.

7 **FIRST CAUSE OF ACTION**  
8 **FRAUD (INTENTIONAL MISREPRESENTATION AND OMISSION)**  
9 **(On Behalf of Plaintiffs and the Nationwide Class or, Alternatively, the California**  
10 **Subclass)**

11 109. Plaintiffs re-allege and incorporate by reference all preceding paragraphs  
12 as if fully set forth herein.

13 110. As alleged more fully above, Defendants made false or misleading  
14 statements of fact and material omissions concerning the existence of and the amounts  
15 of price reductions. These representations were false because: (a) Defendants falsely  
16 represent the products as on sale for limited time when in truth a new substantially  
17 equivalent sale is promptly instituted after the expiration of an existing sale; and (b) the  
18 false reference prices advertised in connection with products offered on the Website  
19 misled and continue to mislead customers into believing the products were previously  
20 sold on the Website at the higher reference prices on a regular basis for a reasonably  
21 substantial period of time. Defendants knew that these representations were false at the  
22 time that they made them and/or acted recklessly in making the misrepresentations.

23 111. Defendants had a duty to conspicuously disclose the truth about their  
24 pricing deception, including that the reference prices advertised on their Website and  
25 in-store were not prices at which Defendants' items were listed or sold on the Website  
26 in the recent past on a regular basis for a reasonably substantial period of time, and in  
27 truth, Defendants' products are typically not offered or sold on the Website (and/or in  
28 the marketplace) at the advertised reference prices. Reasonable consumers were likely  
to be deceived by Defendants' failure to disclose material information.

112. Defendants knew that the items Plaintiffs and the Class purchased had



1 rarely, if ever, been offered or sold on the Website at the substantially higher reference  
2 price in the recent past.

3 113. Defendants' representations were made with the intent that Plaintiffs and  
4 the Class would rely on the false representations and spend money they otherwise would  
5 not have spent, purchase items they otherwise would not have purchased, and/or spend  
6 more money for an item than they otherwise would have absent the deceptive marketing  
7 scheme.

8 114. Defendants' conduct was made with the intent to maximize its profits at  
9 the detriment of reasonable consumers.

10 115. Defendants intended that Plaintiffs and the Class rely on these  
11 representations. Plaintiffs and the Class reasonably relied on Defendants'  
12 representations. Absent Defendants' misrepresentations, Plaintiffs and the Class would  
13 not have purchased the items they purchased from Defendants, or, at the very least, they  
14 would not have paid as much for the items as they ultimately did. Plaintiffs and the  
15 Class's reliance was a substantial factor in causing them harm.

16 116. Had the omitted information been disclosed, Plaintiffs and the Class  
17 reasonably would have behaved differently. Among other things, they would not have  
18 purchased the items they purchased from Defendants or, at the very least, would not  
19 have paid as much for the items as they ultimately did.

20 117. As a direct and proximate result of the above, Plaintiffs and the Class have  
21 suffered damages because (a) they would not have purchased Defendants' products if  
22 they had known that the representations were false, and/or (b) they overpaid for the  
23 products because the products were sold at a price premium due to the  
24 misrepresentations.

25 118. Plaintiffs and the Class are also entitled to punitive or exemplary damages.  
26 Defendants, through their senior executives and officers, undertook the illegal acts  
27 intentionally or with conscious disregard of the rights of Plaintiffs and the Class, and  
28 did so with fraud, malice, and/or oppression. Based on the allegations above,  
Defendants' actions were fraudulent because Defendants intended to and did deceive

1 and injure Plaintiffs and the Class. Based on the allegations above, Defendants' conduct  
2 was made with malice because Defendants acted with the intent to and did cause injury  
3 to Plaintiffs and the Class, and because Defendants willfully and knowingly disregarded  
4 the rights of Plaintiffs and the Class.

5 **SECOND CAUSE OF ACTION**  
6 **NEGLIGENT MISREPRESENTATION**  
7 **(On Behalf of Plaintiffs and the Nationwide Class or, Alternatively, the California**  
8 **Subclass)**

8 119. Plaintiffs re-allege and incorporate by reference all preceding paragraphs  
9 as if fully set forth herein.

10 120. As alleged more fully herein, Defendants made false or misleading  
11 statements and/or material omissions of fact concerning the existence of and the  
12 amounts of price reductions because, as previously explained: (a) Defendants falsely  
13 represent the products as on sale for limited time when in truth a new substantially  
14 equivalent sale is promptly instituted after the expiration of an existing sale; and (b) the  
15 false reference prices advertised in connection with products misled and continue to  
16 mislead customers into believing the products were offered for sale and/or previously  
17 sold at the higher reference prices on a regular basis for a reasonably substantial period  
18 of time. When Defendants made these misrepresentations, they knew or should have  
19 known that they were false. Defendants had no reasonable grounds for believing that  
20 these representations were true when made.

21 121. Defendants had a duty to conspicuously disclose the truth about its pricing  
22 deception, including that: (a) the reference prices advertised and published on the  
23 Website were not prices at which Defendants' items had been offered and/or sold on the  
24 Website or in Defendants' stores in the recent past on a regular basis for a reasonably  
25 substantial period of time; and (b) the expiration of any given sale would be followed  
26 by a substantially equivalent sale.

27 122. Defendants knew their sales were falsely advertised as being of limited  
28 duration. Defendants also knew or should have known that the reference prices were not  
the prevailing market prices. And Defendants knew that the items Plaintiffs and the

1 Class purchased had rarely, if ever, been offered or sold on the Website at the  
2 substantially higher reference price in the recent past.

3 123. Defendants had no good faith or reasonable basis to believe that their  
4 representations were true when made.

5 124. Defendants' representations were made with the intent that Plaintiffs and  
6 the Class rely on the false representations and spend money they otherwise would not  
7 have spent, purchase items they otherwise would not have purchased, and/or spend more  
8 money for an item than they otherwise would have absent the deceptive marketing  
9 scheme.

10 125. Class-wide reliance can be inferred because Defendants'  
11 misrepresentations were material, i.e. a reasonable consumer would consider them  
12 important in deciding whether to buy Defendants' products.

13 126. Defendants' misrepresentations were a substantial factor and proximate  
14 cause in causing damage and losses to Plaintiffs and Class members.

15 127. Defendants engaged in this fraud to the Plaintiffs and the Class's detriment  
16 to increase Defendants' own sales and profits.

17 128. Plaintiffs and the Class reasonably relied on Defendants' representations.  
18 Absent Defendants' misrepresentations, Plaintiffs and the Class would not have  
19 purchased the items they purchased from Defendants, or, at the very least, they would  
20 not have paid as much for the items as they ultimately did. Plaintiffs and the Class's  
21 reliance was a substantial factor in causing them harm.

22 129. Had the omitted information been disclosed, Plaintiffs and the Class  
23 reasonably would have behaved differently. Among other things, they would not have  
24 purchased the items they purchased from Defendants or, at the very least, would not  
25 have paid as much for the items as they did.

26 130. As a direct and proximate result of the above, Plaintiffs and the Class have  
27 suffered damages because (a) they would not have purchased Defendants' products if  
28 they had known that the representations were false, and/or (b) they overpaid for the  
products because the products were sold at a price premium due to the

1 misrepresentations.

2 **THIRD CAUSE OF ACTION**  
3 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**  
4 **(CAL. BUS. & PROF. CODE § 17200, et seq.)**  
5 **(On Behalf of Plaintiffs and the California Subclass)**

6 131. Plaintiffs re-allege and incorporate by reference all preceding paragraphs  
7 as if fully set forth herein.

8 132. Plaintiffs bring this cause of action on behalf of themselves and members  
9 of the California Subclass.

10 133. California Business and Professions Code section 17200 et seq., known as  
11 the California Unfair Competition Law (“UCL”), prohibits acts of “unfair competition,”  
12 including any “unfair or fraudulent business act or practice” as well as “unfair,  
13 deceptive, untrue or misleading advertising.”

14 134. Defendants have violated California’s UCL by engaging in fraudulent,  
15 unfair and unlawful conduct (i.e. violating each of the three prongs of the UCL).

16 ***Fraudulent***

17 135. Under the UCL, a business act or practice is “fraudulent” or deceptive if it  
18 actually deceives or is likely to deceive members of the consuming public.

19 136. Defendants’ conduct as alleged above is likely to deceive reasonable  
20 consumers. As alleged in detail above, Defendants affirmatively misrepresented that  
21 their products were on sale by artificially representing much higher reference prices, or  
22 “strikethrough” prices which gave the illusion of a discount. Defendants’ deceptive  
23 marketing gave consumers the false impression that their products were regularly listed  
24 or sold on the Website for a substantially higher price.

25 137. Defendants had a duty to disclose the truth about their pricing deception,  
26 including that the reference prices advertised on its Website were not, in fact, prices at  
27 which Defendants’ items were listed or sold on the Website in the recent past for a  
28 reasonably substantial period of time, but in truth, the products never (or rarely) were  
offered or sold at the reference prices. Reasonable consumers were likely to be deceived

1 by this material omission.

2 138. Defendants' conduct was and continues to be fraudulent because it has the  
3 effect of deceiving consumers into believing they are receiving a product that is worth  
4 more than it actually is, by presenting a fake sale price.

5 139. Defendants' representations were materially misleading to Plaintiffs and  
6 other reasonable consumers. Consumers are heavily influenced by price, including  
7 significant price reductions of purported limited duration, as employed by Defendants'  
8 high-pressure sales tactics.

9 140. Plaintiffs relied on Defendants' misleading representations and omissions,  
10 as detailed above, believing that they were receiving a genuine discount of limited  
11 duration from a prevailing and genuine regular and former price.

12 141. Absent Defendants' misrepresentations, Plaintiffs and the Class would not  
13 have purchased the items they purchased from Defendants, or, at minimum, they would  
14 not have paid as much for the items as they ultimately did. Plaintiffs and the Class's  
15 reliance was a substantial factor in causing them harm.

16 142. Had the omitted information been disclosed, Plaintiffs would have been  
17 aware of it and reasonably would have behaved differently. Among other things,  
18 Plaintiffs would not have purchased the items they purchased from Defendants, or, at  
19 minimum, would not have paid as much for the items as they did.

20 143. As a result of Defendants' fraudulent business acts and practices,  
21 Defendants have and continue to fraudulently obtain money from Plaintiffs and  
22 members of the Class.

23 ***Unfairness***

24 144. Under the UCL, a business act or practice is "unfair" if its conduct is  
25 substantially injurious to consumers, offends public policy, and is immoral, unethical,  
26 oppressive, and unscrupulous, as the benefits for committing such acts or practices are  
27 outweighed by the gravity of the harm to the alleged victims.

28 145. As alleged in detail above, Defendants committed "unfair" acts through  
their deceptive marketing tactics which gave consumers the false impression that their

1 products were regularly listed or sold on the Website for a substantially higher price in  
2 the recent past than they actually were and, thus, consumers were led to believe that  
3 Defendants' products were worth more than they were.

4 146. Defendants violated established public policy by violating the CLRA, the  
5 FAL and the FTCA as alleged herein. The unfairness of this practice is tethered to a  
6 legislatively declared policy (i.e. that of the CLRA, the FAL, and the FTCA).

7 147. The harm to Plaintiffs and the Class greatly outweighs the public utility of  
8 Defendants' conduct. There is no public utility to misrepresenting the price of a consumer  
9 product.

10 148. Defendants' conduct was and continues to be of no benefit to reasonable  
11 consumers. It is misleading, unfair, unlawful, and is injurious to consumers. It is also  
12 against public policy, as it harms fair competition. For example, the FTCA and  
13 implementing regulations prohibit advertising a former price "for the purpose of  
14 establishing a fictitious [] price on which a deceptive comparison might be based" (16  
15 C.F.R. § 233.1) and prohibit "offer[ing] an advance sale under circumstances where  
16 they do not in good faith expect to increase the price at a later date" (16 C.F.R. § 233.5).  
17 Similarly, the Lanham Act prohibits "commercial advertising or promotion" that  
18 "misrepresents the nature, characteristics, qualities, or geographic origin of his or her or  
19 another person's goods, services, or commercial activities." 41 U.S.C. § 1125(a).

20 149. Misleading consumer products only injures healthy competition and harms  
21 consumers. Defendants are luring sales away from sellers who compete fairly on price  
22 and do not promote false former prices and fake sales of limited duration.

23 150. The harm to Plaintiffs and members of the California Subclass outweighs  
24 the utility of Defendants practices. There were reasonably available alternatives to  
25 further Defendants' legitimate business interests, other than the unfair conduct  
26 described herein.

27 151. As a result of Defendants' unfair business acts and practices, Defendants  
28 have and continue to unfairly obtain money from Plaintiffs and members of the proposed  
Class.

1 ***Unlawful***

2 152. A cause of action may be “unlawful” for purposes of the UCL if a practice  
3 violates another law. Such action borrows violations of other laws and treats these  
4 violations as unlawful practices independently actionable under the UCL.

5 153. By engaging in false advertising, as well as the false, deceptive, and  
6 misleading conduct alleged above, Defendants engaged in unlawful business acts and  
7 practices in violation of the UCL, including violations of state and federal laws and  
8 regulations. Specifically, as detailed herein, Defendants violated 16 C.F.R. §§ 233.1 and  
9 233.5, and California Business & Professions Code section 17501.

10 \* \* \*

11 154. Plaintiffs seek damages and, in the alternative, restitution. Plaintiffs are  
12 permitted to seek equitable remedies in the alternative because they have no adequate  
13 remedy at law.

14 155. A legal remedy is not adequate because it is not as certain as an equitable  
15 remedy. The elements of Plaintiffs’ equitable claims are different and do not require the  
16 same showings as Plaintiffs’ legal claims.

17 156. In the alternative to claims seeking remedies at law, Plaintiffs and Class  
18 members allege that there is no plain, adequate, and complete remedy that exists at law  
19 to address Defendants’ unlawful and unfair business practices. The legal remedies  
20 available to Plaintiffs are inadequate because they are not “equally prompt and certain  
21 and in other ways efficient” as equitable relief. *American Life Ins. Co. v. Stewart*, 300  
22 U.S. 203, 214 (1937).

23 157. Equitable claims may be tried by the court, whereas legal claims are tried  
24 by jury, and the need for a jury trial may result in delay and additional expense. A jury  
25 trial will take longer, and be more expensive, than a bench trial. Additionally, unlike  
26 damages, the Court has broad discretion to fashion equitable relief, which can be  
27 awarded in situations where the entitlement to damages may prove difficult. Thus,  
28 restitution would allow recovery even when normal consideration associated with

1 damages would not. Furthermore, the standard, showing, and necessary elements for a  
2 violation of the UCL “unlawful” and “unfair” prongs are different from those that  
3 govern legal claims.

4 158. Plaintiffs, on behalf of themselves and the members of the Class, seek  
5 restitution and restitutionary disgorgement of all moneys received by Defendants  
6 through the conduct described above.

7 159. Plaintiffs, on behalf of themselves and the members of the Class, seek a  
8 public injunction from this Court prohibiting Defendants from engaging in the patterns  
9 and practices described herein, including putting a stop to the deceptive advertisements  
10 and false reference prices in connection with the sale of products on the Website.  
11 Plaintiffs seek an injunction on behalf of themselves, the putative class of similarly  
12 situated California residents, and the general public, prohibiting Defendants from  
13 making material omissions and misrepresentations to the public about its deceptive  
14 pricing practices. Plaintiffs seek a public injunction requiring Defendants to notify the  
15 public at large about its deceptive pricing practices, including through corrective  
16 advertising. The public injunction is essential to eradicating Defendants’ deceptive  
17 scheme. In the absence of an injunction, Defendants will remain free to continue to  
18 mislead unsuspecting members of the public about its pricing scheme, causing  
19 consumers to believe they are getting items at a discount or sale price, when, in reality,  
20 they are not.

21 160. Plaintiffs and Class members are entitled to public injunctive relief. On  
22 information and belief, the dissemination of Defendants’ false and misleading  
23 advertising is ongoing. The public injunctive relief will protect the public from JC  
24 Penney’s deceitful marketing practices which misrepresent and omit material facts  
25 about Defendants’ pricing practices.

26 **FOURTH CAUSE OF ACTION**  
27 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW**  
28 **CAL. BUS. & PROF. CODE § 17500, et seq.**  
**(On Behalf of Plaintiffs and the California Subclass)**

161. Plaintiffs re-allege and incorporate by reference all preceding paragraphs



1 as if fully set forth herein.

2 162. Plaintiffs bring this cause of action on behalf of themselves and members  
3 of the California Subclass.

4 163. Defendants have violated Sections 17500 and 17501 of the Business and  
5 Professions Code.

6 164. The California False Advertising Law, codified at California Business &  
7 Professions Code section 17500, et seq. (the “FAL”) provides that it is unlawful for any  
8 business, with intent directly or indirectly to dispose of personal property, to make or  
9 disseminate in any “manner or means whatever, including over the Internet, any  
10 statement, concerning that . . . personal property . . . which is untrue or misleading, and  
11 which is known, or which by the exercise of reasonable care should be known, to be  
12 untrue or misleading[.]” Cal. Bus. & Prof. Code § 17500. The “intent” required by  
13 section 17500 is the intent to dispose of property, and not the intent to mislead the public  
14 in the disposition of such property.

15 165. A separate section of the FAL, Cal Bus. & Prof. Code § 17501, provides:

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

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

26 166. As used in Cal Bus. & Prof. Code § 17501:  
27  
28

1 The term “advertised thing” refers to the exact same product offered—*not* an  
2 equivalent or similar product. *People v. Superior Ct. (J.C. Penney Corp.)*, 34  
3 Cal. App. 5th 376, 412 (2019) (“if the advertisement specifies a precise item—  
4 say, by reference to name, brand, or other distinctive features . . . the market  
5 and therefore the market price is potentially determined on the basis of sales  
6 of *that item only*.”) (emphasis added).

7  
8 The term “‘former price’ . . . includes but is not limited to the following words  
9 and phrases when used in connection with advertised prices; ‘formerly—,’  
10 ‘regularly—,’ ‘usually—,’ ‘originally—,’ ‘reduced from \_\_,’ ‘was \_\_ now  
11 \_\_,’ ‘\_\_% *off*.’” 4 Cal. Code Regs., § 1301 (emphasis added).

12 The term “prevailing market price” refers to the “retail [price] if the offer is at  
13 retail.” Cal Bus. & Prof. Code § 17501. (emphasis added)

14  
15 167. Defendants have violated, and continue to violate, Section 17500 of the  
16 Business & Professions Code by disseminating untrue and misleading advertisements  
17 over the internet and in stores to Plaintiffs and members of the California Subclass.

18 168. As explained above, Defendants regularly advertised false and misleading  
19 reference prices for the products offered for sale on the Website and in its stores,  
20 including to Plaintiffs and members of the California Subclass. Defendants do this by,  
21 for example, crossing out a higher price or by displaying a discount price next to the  
22 “regular” price. Reasonable consumers would understand prices denoted as “regular”  
23 prices from which time-limited discounts are calculated to denote a “former” price of  
24 that product, i.e. the prices that Defendants charged before the limited time discount or  
25 sale went into effect.

26 169. Additionally, Defendants have violated, and continue to violate, Section  
27 17501 of the Business & Professions Code by advertising former prices that were not  
28 the prevailing market price within three months immediately preceding the

1 advertisements.

2 170. Defendants rarely, if ever, offered products on the Website at the reference  
3 prices within the three months immediately preceding the publication of the reference  
4 prices. Moreover, the reference prices shown were not the prevailing market prices for  
5 the products in the three months immediately preceding the publication, as demonstrated  
6 by a sampling of competitor's pricing of the same products.

7 171. On information and belief, Defendants did not verify that the advertised  
8 reference prices were the prevailing market prices within the preceding three months.  
9 And Defendants' former price advertisements do not state clearly, exactly, and  
10 conspicuously when, if ever, the former prices prevailed. Defendants' advertisements  
11 do not indicate whether or when the purported former prices were ever offered at all.

12 172. Defendants' deceptive marketing practice gave consumers the false  
13 impression that their products were regularly offered and sold for a substantially higher  
14 price in the recent past than they were and, thus, led to the false impression that  
15 Defendants' products were worth more than they were and were being offered at  
16 discounted rates.

17 173. Defendants knew that its advertised reference prices for the products sold  
18 on its Website were untrue and/or misleading. Defendants knew that such products had  
19 rarely, if ever, been offered or sold on the Website or in store at the reference prices.

20 174. Defendants' practices were intended to induce reliance, and Plaintiffs saw,  
21 read, and reasonably relied on the misrepresentations when purchasing JC Penney's  
22 products. Defendants' misrepresentations were a substantial factor in Plaintiffs'  
23 purchasing decisions.

24 175. Additionally, Class-wide reliance can be inferred because Defendants'  
25 misrepresentations were material, i.e. a reasonable consumer would consider them  
26 important in deciding whether to buy Defendants' products.

27 176. As a direct and proximate result of Defendants' misleading and false  
28 advertisements, Plaintiffs and members of the California Class have suffered injury in  
fact and have lost money. Plaintiffs request restitution and an injunction prohibiting

1 Defendants from continuing their false and misleading advertising practices in violation  
2 of California law in the future.

3 177. Plaintiffs and California Subclass members are entitled to injunctive relief,  
4 including public injunctive relief. On information and belief, the dissemination of  
5 Defendants' false and misleading advertising is ongoing. Plaintiffs seek an injunction  
6 on behalf of themselves, the putative class of similar situated California residents, and  
7 the general public, prohibiting JC Penney from making material omissions and  
8 misrepresentations to the public about its deceptive pricing practices. Plaintiffs seek a  
9 public injunction requiring Defendants to notify the public at large about its deceptive  
10 pricing practices, including through corrective advertising. The public injunction is  
11 essential to eradicating Defendants' deceptive scheme. In the absence of an injunction,  
12 Defendants will remain free to continue to mislead unsuspecting members of the public  
13 about its pricing scheme, causing consumers to believe they are getting items at a  
14 discount or sale price, when, in reality, they are not.

15 178. In the alternative to those claims seeking remedies at law, Plaintiffs and  
16 Class members allege that there is no plain, adequate, and complete remedy that exists  
17 at law to address Defendants' unlawful and unfair business practices. The legal remedies  
18 available to Plaintiffs are inadequate because they are not "equally prompt and certain  
19 and in other ways efficient" as equitable relief. *American Life Ins. Co. v. Stewart*, 300  
20 U.S. 203, 214 (1937). For example, equitable claims may be tried by the court, whereas  
21 legal claims are tried by jury, and the need for a jury trial may result in delay and  
22 additional expense. A jury trial will take longer and be more expensive than a bench  
23 trial. Additionally, unlike damages, the Court's has broad discretion to fashion equitable  
24 relief, which can be awarded in situations where the entitlement to damages may prove  
25 difficult. Thus, restitution would allow recovery even when normal consideration  
26 associated with damages would not. Furthermore, the standard, showing, and necessary  
27 elements for a violation of the FAL under Cal Bus. & Prof. Code § 17501 are different  
28 from those that govern legal claims.

///

1 **FIFTH CAUSE OF ACTION**  
2 **VIOLATION OF THE CALIFORNIA**  
3 **CONSUMER LEGAL REMEDIES ACT, CAL. CIV. CODE § 1750, et seq.**  
4 **(On Behalf of Plaintiffs and the California Subclass)**

5 179. Plaintiffs re-allege and incorporate by reference all preceding paragraphs  
6 as if fully set forth herein.

7 180. Plaintiffs bring this claim on behalf of themselves and members of the  
8 California Class.

9 181. The Consumer Legal Remedies Act, Cal. Civ. Code sections 1750 *et seq.*  
10 (the “CLRA”), is a California consumer protection statute which allows plaintiffs to  
11 bring private civil actions for “unfair methods of competition and unfair or deceptive  
12 acts or practices undertaken by any person in a transaction . . . which results in the sale  
13 or lease of goods or services to any consumer.” Cal. Civ. Code § 1770(a).

14 182. Plaintiffs and members of the California Subclass are “consumers” as  
15 defined in California Civil Code § 1761(d).

16 183. The products purchased by Plaintiffs and the class are “goods” within the  
17 meaning of California Civil Code section 1761(a).

18 184. Defendants’ sale of products on the Website to Plaintiffs and the Class  
19 were “transactions” within the meaning of California Civil Code section 1761(e).

20 185. Defendants violated and continue to violate the CLRA by engaging in the  
21 following practices prohibited by California Civil Code section 1770(a) in transactions  
22 with Plaintiffs and the Class which were intended to result in, and did result in, the sale  
23 of Defendants’ products:

- 24 A. Representing that goods do have characteristics they do not actually  
25 have (Cal. Civ. Code § 1770(a)(5));
- 26 B. Misrepresenting that goods are of a particular standard, quality, or grade  
27 (Cal. Civ. Code § 1770(a)(7));
- 28 C. Advertising goods or services with intent not to sell them as advertised  
(Cal. Civ. Code § 1770(a)(9));
- D. Making false or misleading statements of fact concerning reasons for,

1 existence of, or amounts of price reductions (Cal. Civ. Code §  
2 1770(a)(13)).

3 186. With regards to section 1770(a)(5), (7), and (9), Defendants advertised and  
4 represented products on the Website with the “intent not to sell” them as advertised and  
5 misrepresenting product characteristics and standard because: (a) the false reference  
6 prices advertised in connection with products offered on the Website misled and  
7 continue to mislead customers into believing (i) the merchandise was previously offered  
8 for sale and/or sold *on the Website* at the higher reference prices on a regular basis for  
9 a reasonably substantial period of time, and (ii) were valued in the market at the  
10 advertised “regular” price; and (b) Defendants falsely represent the products as on sale  
11 for limited time when in truth a new substantially equivalent sale is promptly instituted  
12 after the expiration of an existing sale.

13 187. With respect to section 1770(a)(13), Defendants made false or misleading  
14 statements of fact concerning the “existence of” and the “amounts of price reductions”  
15 because: (a) no true price reductions existed in that Defendants’ merchandise was rarely,  
16 if ever, offered for sale and/or sold at the higher reference prices, let alone on a regular  
17 basis for a reasonably substantial period of time; (b) the reference prices Defendants  
18 advertised in connection with its products were not prevailing market prices because,  
19 on information and belief, the products were not previously sold by Defendant at the  
20 reference prices for a reasonably substantial period of time; and (c) Defendants falsely  
21 represents the products as on sale for limited time when in truth a new substantially  
22 equivalent sale is promptly instituted after the expiration of an existing sale.

23 188. Additionally, Defendants had a duty to conspicuously disclose the truth  
24 about their pricing deception, including that the reference prices advertised on the  
25 Website were not prices at which Defendants’ items were listed or sold on the Website  
26 or in Defendant’s stores in the recent past on a regular basis for a reasonably substantial  
27 period of time, and in truth, Defendants’ products are typically not offered or sold on  
28 the Website (and/or in Defendant’s stores) at the advertised reference prices. Defendants  
also failed to disclose that the expiration of any given sale would be followed by a

1 substantially equivalent sale.

2 189. Defendants' representations were likely to deceive, and did deceive,  
3 Plaintiffs and reasonable consumers. Defendants knew or should have known through  
4 the exercise of reasonable care that these statements were false and misleading.

5 190. Defendants' misrepresentations were intended to induce, and did induce,  
6 reliance. Plaintiffs saw, read, and reasonably relied on the misrepresentations when  
7 purchasing JC Penney's products.

8 191. Defendants' misrepresentations were a substantial factor in Plaintiffs'  
9 purchasing decisions. Absent Defendants' misrepresentations, Plaintiffs and the Class  
10 would not have purchased the items they purchased from Defendants, or, at the very  
11 least, they would not have paid as much for the items as they did. Plaintiffs and the  
12 California Class's reliance was a substantial factor in causing them harm.

13 192. Had the omitted information been disclosed, Plaintiffs and the California  
14 Class reasonably would have been aware of it and behaved differently. Among other  
15 things, Plaintiffs and the California Class would not have purchased the items they  
16 purchased from Defendants or, at the very least, would not have paid as much for the  
17 items as they did.

18 193. Contemporaneous with the filing of this Complaint, Plaintiffs, through  
19 counsel, will provide notice to Defendants pursuant to Cal. Civ. Code § 1782(a) via  
20 certified mail. As the 30-day response period has not yet lapsed, Plaintiffs claim no  
21 damages pursuant to this count, but will timely amend this Complaint after expiration  
22 of the response period to seek money damages and punitive damages under the CLRA.  
23 At this time, Plaintiffs seek only injunctive or other equitable relief under the CLRA as  
24 described above.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiffs, individually and on behalf of the proposed Class,  
27 respectfully pray for following relief:

28 A. Certification of this case as a class action on behalf of the proposed

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- Class and any subclasses defined above, appointment of Plaintiffs as Class representatives, and appointment of their counsel as Class counsel;
- B. An award to Plaintiffs and the proposed Class and subclasses of restitution and/or other equitable relief, including, without limitation, restitutionary disgorgement of all profits Defendants obtained from Plaintiffs and the proposed Class as a result of its unlawful, unfair and fraudulent business practices described herein;
  - C. An injunction, including public injunctive relief as described herein, ordering Defendants to cease the false advertising and unfair business practices complained of herein;
  - D. An award of all economic, monetary, actual, consequential, and compensatory damages caused by Defendants' conduct;
  - E. An award of nominal, punitive, and statutory damages where available;
  - F. Reasonable expenses and attorneys' fees;
  - G. Pre- and post-judgment interest, to the extent allowable; and
  - H. For such further relief that the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs, individually and on behalf of the proposed Class, demand a trial by jury for all claims so triable.

Date: September 4, 2024

Respectfully submitted,

/s/Jonathan Shub  
Jonathan Shub (SBN 237708)  
Samantha E. Holbrook (*pro hac vice*  
forthcoming)  
Andrea L. Bonner (*pro hac vice* forthcoming)  
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