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Superior Court of California,

County of San Diego

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Clerk of the Superior Court

By M. Clemens ,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

HANNAH LACY, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

TERRAMAR CAPITAL, LLC, a Delaware
limited liability company, and DOES 1-50,
inclusive,

Defendants.

Case No.: 25CU024936N

CLASS ACTION COMPLAINT

[DEMAND FOR JURY TRIAL]

Plaintiff Hannah Lacy ("Plaintiff") brings this action, on behalf of herself and all others
similarly situated, against Terramar Capital, LLC ("Francesca's" or "Defendant") and states:

I. NATURE OF ACTION

1. "Protection of unwary consumers from being duped by unscrupulous sellers is an
exigency of the utmost priority in contemporary society." *Vasquez v. Superior Court*, 4 Cal. 3d
800, 808 (1971). This principle is as true today as it was over 50 years ago when it was penned by
Justice Mosk writing for a unanimous California Supreme Court. This putative class action is about
holding a multimillion-dollar company accountable to its customers who have been deceived by a
years-long campaign to trick them into paying more for Francesca's fashion merchandise through
the widespread and perpetual use of false reference and discount pricing. "In short, the higher

1 reference price stated alongside the selling price shift[s] the demand function outward, leading to
2 higher average prices and thus higher margins.” Staelin et al., *Competition and the Regulation of*
3 *Fictitious Pricing*, 87 J. Mktg., 826, 835 (2023).

4 2. Prices reflect a perceived value to consumers.¹ False advertising of prices can be
5 used to manipulate consumers’ value perception of products and cause consumers to overpay for
6 them. Aware of the intertwined connection between consumers’ buying decision processes and
7 price, retailers like Defendant lure consumers with advertised discounts that promise huge savings
8 and high value. But the promised savings are false, and the product’s value reflected in its price is
9 incorrect when the retailer advertises discounts off of some higher, made-up, and artificially
10 inflated “original” price that no one ever pays.

11 3. At all relevant times, Defendant has continually advertised false price discounts for
12 merchandise sold throughout its Francesca’s stores. In bringing this putative class action
13 complaint, Plaintiff seeks to remedy this deception and its attendant harm to consumers. Plaintiff
14 seeks monetary damages, restitution, and declaratory and injunctive relief from Defendant arising
15 from its false discounting scheme on apparel, accessories, shoes, and other items sold in its
16 Francesca’s stores.

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

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

² Grewal & Compeau, *Comparative Price Advertising*, *supra* n.1, at 55 (“By creating an impression of
savings, the presence of a higher reference price enhances subjects’ perceived value and willingness to buy
the product.”).

1 Consequently, false reference pricing schemes enable retailers, like Defendant, to sell products
2 above their true market price and value, leaving consumers to pay the inflated price regardless of
3 what they thought of the purported discount. Consumers are thus damaged not only by not
4 receiving the promised discount, but by paying a premium the products would not have
5 commanded but for the false reference pricing scheme.

6 5. The following example of a hypothetical DVD seller, which parallels Defendant's
7 practice, illustrates how false reference pricing schemes harm consumers: the seller knows it can
8 sell a particular DVD at \$5.00, which represents both the market price and the price at which the
9 seller could regularly make a profit. Instead, however, the seller creates a fake "original" price for
10 the DVD of \$100.00 and advertises the DVD as "on sale" at 90% off, creating a (fake) "sale" price
11 of \$10.00. Consumers purchase the DVD for \$10.00 believing they got a "good deal" since it was
12 previously sold—i.e., valued by others in the market—at an "original" price of \$100.00, and
13 presumably would be again soon.

14 6. The consumer's presumption and purchase stem directly from the seller's
15 deception. If the seller did not employ a false referencing pricing scheme, it would not be able to
16 sell many, if any, DVDs at \$10.00 because the true market value of the DVD is \$5.00. However,
17 the false reference pricing scheme enables the seller to fabricate an increase in consumer demand
18 for the DVD through the reasonable, but incorrect, *perceived value* of the DVD (\$100.00) in
19 connection with the substantial discount of \$90.00. The net effect of myriad consumers' increased
20 willingness to pay \$10.00 for the DVD. Thus the seller artificially inflates the market price for the
21 DVD to \$10.00 by advertising the false "original" price and corresponding fake discount.

22 7. Through its false and misleading marketing, advertising, and pricing scheme
23 alleged herein, Defendant violated, and continues to violate, California and federal law.
24 Specifically, Defendant violated and continues to violate: California's Unfair Competition Law,
25 Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"); California's False Advertising Law, Cal.
26 Bus. & Prof. Code §§ 17500, *et seq.* (the "FAL"); California's Consumers Legal Remedies Act,
27 Cal. Civ. Code §§ 1750, *et seq.* (the "CLRA"); the Federal Trade Commission ("FTC") Act
28 ("FTCA"), which prohibits "unfair or deceptive acts or practices in or affecting commerce" (15

1 U.S.C. § 45(a)(1)) and false advertisements (15 U.S.C. § 52(a)). Plaintiff also asserts claims under
2 the common law doctrines of unjust enrichment, fraudulent omission, and affirmative
3 misrepresentation.

4 8. Plaintiff brings this action on behalf of herself and other similarly situated
5 consumers who have purchased one or more of Defendant's items advertised at a purported
6 discount from a fictitious higher reference price from Francesca's stores. Plaintiff intends to halt
7 the dissemination and perpetuation of this false, misleading, and deceptive pricing scheme, to
8 correct the false and harmful perception it has created in the minds of consumers, and to obtain
9 redress for those who overpaid for merchandise tainted by this deceptive pricing scheme. Plaintiff
10 also seeks to permanently enjoin Defendant from engaging in this unlawful conduct. Further,
11 Plaintiff seeks to obtain all applicable damages, including actual, compensatory, benefit of the
12 bargain, statutory, and punitive; equitable restitution; reasonable costs and attorneys' fees; and
13 other appropriate relief in the amount by which Defendant was unjustly enriched as a result of its
14 sales of merchandise offered a false discount.

15 II. JURISDICTION AND VENUE

16 9. This Court has jurisdiction over the subject matter of this action pursuant to
17 California Code of Civil Procedure section 410.10 and Article VI, section 10 of the California
18 Constitution. This case is a cause of action not committed by statute to another tribunal and is
19 properly brought in a court of general jurisdiction.

20 10. This Court has personal jurisdiction over Defendant because Defendant is
21 authorized to do business in the State of California, has sufficient minimum contacts with
22 California, and has purposefully availed itself of the privileges and protections of California law.
23 Defendant is incorporated in Delaware and maintains its principal place of business in Los Angeles
24 County, California.

25 11. Venue is proper in this Court, and in particular the North County Division of the
26 San Diego Superior Court, because Plaintiff resides in Oceanside, California and was harmed in
27 this County by Defendant's conduct.

28 12. The amount in controversy exceeds the jurisdictional minimum of this Court.

III. GENERAL ALLEGATIONS

A. Retailers Benefit from False Reference Pricing Schemes.

13. Defendant engages in a false and misleading reference price scheme in the marketing and selling of its Francesca's merchandise at its stores.

14. Retailers like Defendant can and do benefit substantially from false discounting schemes because "framing a price increase as a discount can not only allow the firm to get *higher margins*, but also *increase sales*." Staelin et al., *supra*, at 835 (emphasis added). This is because consumers use advertised reference prices to make purchase decisions, particularly when the information available to consumers can vary among different types of products.³ Most often, as with retail clothing, consumers lack full information about the products and, as a result, often use information from sellers to make purchase decisions.⁴

15. Defendant's deceptive advertised reference prices are thus incorporated into consumers' decision process. First, a product's "price is also used as an indicator of product quality."⁵ In other words, consumers view Defendant's deceptive advertised reference prices as a proxy for product quality. Second, reference prices "appeal[] to consumers' desire for bargains or deals."⁶ Academic researchers note how consumers "sometimes expend more time and energy to get a discount than seems reasonable given the financial gain involved," and "often derive more satisfaction from finding a sale price than might be expected on the basis of the amount of money

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

⁴ "Not only do consumers lack full information about the prices of goods, but their information is probably even poorer about the quality variation of products simply because the latter information is more difficult to obtain". Phillip Nelson. *Information and Consumer Behavior*. 78, no. 2 J. POL. ECON. 311, 311-12 (1970).

⁵ Grewal & Compeau, *Comparative Price Advertising*, *supra* n.1, at 54; see also Richard Thaler. *Mental Accounting and Consumer Choice*, 4, no. 3 MKTG. SCI. 199, 212 (1985) [hereinafter Thaler, *Mental Accounting*] ("The [reference price] will be more successful as a reference price the less often the good is purchased. The [reference price] is most likely to serve as a proxy for quality when the consumer has trouble determining quality in other ways (such as by inspection)").

⁶ Grewal & Compeau, *Comparative Price Advertising*, *supra* n.1, at 52.

1 they actually save.”⁷ Under this concept, coined as “transaction utility” by Nobel Prize-winning
2 economist Richard Thaler, consumers place value on the psychological experience of obtaining a
3 product at a perceived bargain.⁸

4 16. Research in marketing and economics has long recognized that consumer demand
5 can be influenced by “internal” and “external” reference prices.⁹ Internal reference prices are
6 “prices stored in memory” (e.g., a consumer’s price expectations adapted from past experience)
7 while external reference prices are “provided by observed stimuli in the purchase environment”
8 (e.g., a “suggested retail price,” or other comparative sale price).¹⁰ Researchers report that
9 consumers’ internal reference prices adjust toward external reference prices when valuing a
10 product.¹¹ For infrequently purchased products, external reference prices can be particularly
11 influential because these consumers have little or no prior internal reference.¹² In other words,
12 “[t]he deceptive potential of such advertised reference prices are likely to be considerably higher
13 for buyers with less experience or knowledge of the product and product category.”¹³ Academic
14
15
16

17 ⁷ Peter Darke & Darren Dahl, *Fairness and Discounts: The Subjective Value of a Bargain*, 13 no 3 J. OF
18 CONSUMER PSYCH. 328 (2003).

19 ⁸ “To incorporate . . . the psychology of buying into the model, two kinds of utility are postulated:
20 *acquisition utility* and *transaction utility*. The former depends on the value of the good received compared
21 to the outlay, the latter depends solely on the perceived merits of the ‘deal.’” Richard Thaler, *Mental*
22 *Accounting*, *supra* n.6, at 205.

23 ⁹ Empirical results “suggest that internal reference prices are a significant factor in purchase decisions. The
24 results also add empirical evidence that external reference prices significantly enter the brand-choice
25 decision.” Glenn E. Mayhew & Russell S. Winer, *An Empirical Analysis of Internal and External Reference*
26 *Prices using Scanner Data*, 19 no. 1 J. OF CONSUMER RSCH. 62, 68 (1992) [hereinafter Mayhew & Winer,
27 *An Empirical Analysis*].

28 ¹⁰ Mayhew & Winer, *An Empirical Analysis*, *supra* n.10, at 62.

¹¹ “Buyers’ internal reference prices adapt to the stimuli prices presented in the advertisement. That is,
buyers either adjust their internal reference price or accept the advertised reference price to make judgments
about the product’s value and the value of the deal.” Dhruv Grewal et al., *The Effects of Price-Comparison*
Advertising on Buyers’ Perceptions of Acquisition Value, Transaction Value, and Behavioral Intentions.
62 J. OF MKTG. 46, 48 (1998) [hereinafter Grewal et al., *The Effects of Price-Comparison Advertising*].

¹² As Thaler notes, “the [suggested retail price] will be more successful as a reference price the less often
the good is purchased.” Richard Thaler, *Mental Accounting*, *supra* n.6, at 212.

¹³ Dhruv Grewal & Larry D. Compeau, *Pricing and public policy: A research agenda and an overview of*
the special issue, 18 no.1 J. PUB. POL’Y & MKTG. 3, 7 (1999) [hereinafter Grewal & Compeau, *Pricing and*
public policy].

1 literature further reports that “there is ample evidence that consumers use reference prices in
2 making brand choices”¹⁴ and publications have summarized the empirical data as follows:

3 Inflated reference prices can have multiple effects on consumers. They can
4 increase consumers’ value perceptions (transaction value and acquisition value),
5 reduce their search intentions for lower prices, increase their purchase intentions,
6 and reduce their purchase intentions for competing products ... Inflated and/or
false advertised reference prices enhance consumers’ internal reference price
estimates and, ultimately, increase their perceptions of value and likelihood to
purchase[.]¹⁵

7 17. In Staelin, *Regulation of Fictitious Pricing*, published just last year, authors Richard
8 Staelin, a Duke marketing professor since 1982, Joel Urbany, a Notre Dame marketing professor
9 since 1999, and Donald Ngwe, a senior principal economist for Microsoft and former marketing
10 professor for Harvard, built on their prior analytic work to explain the effects of false reference
11 pricing schemes and why their use has not dissipated as previously expected by the FTC, but rather
12 have become more prevalent in the absence of FTC regulation. Importantly, this new study cites
13 and confirms many of the same older consumer studies cited above¹⁶ and notes that the findings
14 of these “older” studies are still widely accepted relevant principles in the economic discipline.
15 *See id.*

16 18. Additionally, Staelin, *Regulation of Fictitious Pricing*, explains how the modern
17 development of consumer search behavior and options available to consumers (e.g., smartphones)
18 has actually *spread* the presence of fictitious reference pricing, not extinguished it.¹⁷ According to
19 Staelin and his co-authors, “disclosure of the true normal price charged may be the only solution
20 that could plausibly influence both consumer and firm behavior.” *Id.* at 826. *See also id.* at 831
21

22 ¹⁴ Gurumurthy Kalvanaram & Russell S. Winer, *Empirical Generalizations from Reference Price Research*,
23 14, no. 3 MKTG. SCI. G161 (1995); *see also* Jerry B. Gotlieb & Cyndy Thomas Fitzgerald, *An Investigation*
24 *into the Effects of Advertised Reference Prices on the Price Consumers are Willing to Pay for the Product*,
6 no. 1 J. OF APPLIED BUS. RSCH. 59, 65-66 (1990) [hereinafter Gotlieb & Fitzgerald, *An Investigation*]
25 (“The results of this research provide support for the position that [external] reference prices are important
cues consumers use when making the decision concerning how much they are willing to pay for the
product.”).

26 ¹⁵ Grewal & Compeau, *Pricing and public policy*, *supra* n.14, at 7.

27 ¹⁶ *See* Staelin et al., *supra*, at 826 (“*It is now well accepted* that many consumers get *extra utility*, beyond
that associated with consuming a product from purchasing it on deal [] and that magnitude of this utility is
a function of the size of the deal.”) (emphasis added).

28 ¹⁷ Staelin et al., *supra*, at 826 (explaining how the study “develop(s) a descriptive model explaining why
fictitious reference pricing has spread instead of being extinguished by competition.”).

1 (“Identical firms, selling identical products, make positive profits because of their obfuscation
2 strategy, and the likelihood of obfuscation grows as competition intensifies.”).

3 19. Consequently, retailers like Defendant, who understand that consumers are susceptible
4 to a bargain, have a substantial financial interest in making consumers think they *are* getting a bargain,
5 even when they are not. Contrary to the illusory bargains in Defendant’s advertisements, consumers
6 are not receiving *any* discount and are actually *overpaying* for Defendant’s product because, as Staelin
7 *et al.* put it, “[t]he magnitude of both real and fake discount[s] were significant predictors of demand
8 above the effects of the actual sales price, *with fake discounts having a substantially larger effect*
9 *than real discounts.*” *Id.* at 835 (emphasis added).

10 **B. Defendant Engages in a Fraudulent Price Discounting Scheme.**

11 20. Francesca’s is a specialty retailer of women’s clothing and accessories. Many of
12 the items sold at Francesca’s, including its “Blue Rain” line, are private-label products
13 manufactured exclusively for the brand and not sold in other retail stores.¹⁸ As a result, Francesca’s
14 controls both the design and pricing of the vast majority of its inventory, including the so-called
15 “original” prices listed on tags. For years, Defendant has engaged in a harmful fake discounting
16 scheme by advertising its Francesca’s merchandise at discounted “sale” prices in their stores
17 located in California and across the United States. Defendant’s scheme consists of marketing the
18 “sale” prices as discounts from the former, “original” prices listed on the products’ price tags. In
19 most cases, the items are accompanied, either individually or in a small group, by a placard in the
20 immediate vicinity advertising a certain percentage off (“__%”) the former, “original” price. In a
21 minority of other instances, the sale placards advertise a whole-price discount that is usually
22 substantially less than the “original” price tag price.

23 21. The percentage-off and whole-price reduction discount placard signs inside New
24 York and California Francesca’s stores are universally printed on black card stock with bold, white

25
26 ¹⁸ Francesca’s operates several in-house brands, with its primary private label being Blue Rain,
27 which offers a range of women’s apparel including dresses, tops, and skirts. These items are
28 designed and manufactured exclusively for Francesca’s and are not available through other
retailers. Another significant in-house brand is Franki by Francesca’s, targeting the tween
demographic with fashion-forward clothing and accessories. Additionally, in or around May 2023,
Francesca’s expanded its brand portfolio by acquiring Richer Poorer, a California-based lifestyle
brand known for its sustainable wardrobe essentials like sweats, tees, and loungewear.

1 lettering advertising the fake discount. Defendant does *not* advertise or otherwise disclose the date
2 on which any item was last offered for its “original” price.

3 22. The photos below demonstrate Francesca’s uniform storewide practice in place at
4 all Francesca’s stores.





23. As shown in the above photos, Defendant's "original" (a/k/a "ticket" or "price tag") prices are unadorned by any qualifying language that could arguably direct consumers to compare Defendant's reference price and purported discount to any *other* market outside of the particular Francesca's store where it is being advertised. This reasonable impression is reinforced by Defendant's pervasive use of percentage-off discounts and whole-price reduction (i.e., "Now ...") signs, which denote limited-time discounts from *former*, "*original*" prices.¹⁹ Thus, Defendant's reference and "discount" price advertisements are not advertising a comparison to any other stores.

24. What's more concerning is that Francesca's own price tags reveal that its purported discounts are illusory. In the upper-right corner of each tag, Francesca's prints a month—such as "July" in the last of the photo above—which, on information and belief, corresponds to the month the item was first placed on the sales floor. Plaintiff surmises that this internal coding allows Francesca's to track the release date of its products, yet Plaintiff's counsel's investigation reveals

¹⁹ See *Vizcarra v. Michaels Stores, Inc.*, 710 F. Supp. 3d 718, 725 (N.D. Cal. 2024) ("A reasonable consumer does not need language such as, 'Formerly \$9.99, Now 40% Off \$9.99,' or '40% Off the Former Price of \$9.99,' to reasonably understand '40% off' to mean 40% off the former price of the product.") (quoting *Knapp v. Art.com, Inc.*, No. 16-CV-00768-WHO, 2016 WL 3268995, at *4 (N.D. Cal. June 15, 2016)).

1 that these items are almost always advertised as being “on sale” from the moment they are
2 introduced to market, demonstrating that the so-called original or “regular” prices were never the
3 prevailing prices at which these items were offered to the public in good faith. Instead, the discount
4 is baked into the launch, misleading consumers into believing they are receiving a bargain when
5 they are not.

6 25. Moreover, because Defendant’s price tag reference prices convey a former,
7 “original” price, they are not styled as “Compare At” or “Comparable Value” pricing
8 representations, which could arguably put consumers on notice to look outside of that particular
9 store to understand the value of the purported discount. In those schemes an advertiser compares
10 its prices to those of competitors using words such as “compare at” or “comparable value” on its
11 price tags to qualify its reference prices. Accordingly, Plaintiffs are *not* required to “assert
12 evidence from which a rational trier of fact could infer that the *comparative* reference price was
13 inaccurate[,]” because “th[at] situation *only arises when the language of the advertisement*
14 *implies a comparison to another retailer.*” *Harris v. PFI W. Stores, Inc.*,
15 No. SACV192521JVSADSX, 2020 WL 3965022, at *4 (C.D. Cal. Apr. 9, 2020) (citing
16 *Sperling v. Stein Mart, Inc.*, 291 F. Supp. 3d 1076, 1085-86 (C.D. Cal. 2018) and *Horosny v.*
17 *Burlington Coat Factory of California, LLC*, No. CV1505005SJOMRWX, 2015 WL 12532178,
18 at *6 (C.D. Cal. Oct. 26, 2015) (emphasis added). Thus, because consumers are not put on notice
19 to check the Francesca’s prices against any outside market, it is irrelevant to Defendant’s liability
20 whether its items are sold in other markets.

21 26. Additionally, Plaintiff is informed and believes and thereon alleges that the
22 merchandise offered for sale and sold in Francesca’s stores in California and nationwide is the
23 same. There is also no meaningful difference in Defendant’s Francesca’s inventory in California
24 versus other states—the same products are sold at every store and the same fraudulent pricing
25 scheme is deployed uniformly.

26 27. Even if Defendant did offer the Francesca’s products at their full reference price (it
27 does not), that offering would do little to legitimize Defendant’s practice. This is because, for the
28 advertised former price to be “actual, bona fide” and “legitimate” it must be the “price at which

1 the article was offered to the public *on a regular basis for a reasonably substantial period of*
2 *time.*" 16 C.F.R. § 233.1(a) (emphasis added). Nor would such rare offerings constitute the
3 "prevailing market price" within the "three months next immediately preceding the publication of
4 the advertisement," as is required by the FAL, Cal. Bus. & Prof. Code § 17501, "unless the date
5 when the alleged former price did prevail is clearly, exactly and conspicuously stated in the
6 advertisement[.]" which Defendant also fails to do on *all* advertisements. Rather, the advertised
7 reference prices on Francesca's merchandise are *not* the price at which Defendant regularly (or
8 ever) sells, or expects to regularly sell, the merchandise; they are merely a basis for misleading
9 consumers into believing they are receiving a substantial discount.

10 28. In sum, Defendant's fake discount scheme is intended to (and does) increase
11 Defendant's sales while depriving consumers of the benefit of their bargain and causing them to
12 spend more money than the store items are actually worth—the price they could command in the
13 absence of the fake discount.²⁰ This conduct deprives consumers of a fair opportunity to fully
14 evaluate the offers and to make purchase decisions based on accurate information and results in
15 the illegal imposition of a price premium Francesca's store merchandise could not and would not
16 otherwise command, which consumers, like Plaintiff, are duped into paying.

17 **C. Defendant's Fraudulent Price Discounting Scheme Harms All Consumers.**

18 29. A product's reference price matters because it serves as a baseline upon which
19 consumers perceive its value.²¹ Empirical studies "suggest that consumers are likely to be misled
20 into a willingness to pay a higher price for a product simply because the product has a higher
21 reference price."²² Consumers are misled and incorrectly overvalue Defendant's products as a
22 result of the false price comparisons. The products' actual sales prices, therefore, reflect
23 consumers' overvaluation of them, which in turn permits Defendant to command inflated prices
24 for them beyond what the market would otherwise allow. As discussed above, academic

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26 ²⁰ See *supra* n.17.

27 ²¹ Thaler, *Mental Accounting and Consumer Choice*, *supra* n.6, at 212.

28 ²² Gotlieb & Fitzgerald, *An Investigation*, *supra* n.15, at 66. Moreover, "if a higher reference price encourages consumers to pay a higher price for a product than the consumer was willing to pay for the identical product with a lower reference price, then the practice of using high reference prices would be deceptive." *Id.* at 60.

1 researchers have documented the relationship between reference prices and consumer behavior, as
2 well as the resulting harm from *false* reference prices:

3 [A]dvertised reference prices in these deal-oriented advertisements can enhance
4 buyers' internal reference prices These enhanced internal reference prices,
5 when compared with the lower selling price, result in higher transaction value
6 perceptions. The increase in perceived transaction value enhances purchases and
7 reduces search behavior for lower prices. If sellers intentionally increase the
8 advertised reference prices above normal retail prices, this is, inflate advertised
9 reference prices, the resulting inflated perceptions of transaction value would be
10 deceptive. Harm to both buyers and competitors could result from the effect of the
11 inflated transaction value on buyers' search and purchase behaviors.²³

12 30. Accordingly, all consumers who purchase Francesca's merchandise are harmed by
13 Defendant's pricing scheme because its impact pervades the entire market for Francesca's
14 merchandise. This is because, again, the artificially increased demand generated by Defendant's
15 pricing scheme results in increased actual sales prices beyond what the products would command
16 in the absence of the false reference pricing scheme. Again, "the higher reference price stated
17 alongside the selling price shift[s] the demand function outward, leading to higher average prices
18 and thus higher margins." Staelin *et al.*, *supra*, at 835. Thus, all Francesca's shoppers pay more
19 regardless of their individual beliefs or purchasing decision processes. In other words, their
20 subjective beliefs about the value of the products or the legitimacy of the purported discounts are
21 inconsequential to the injury they incur when purchasing Defendant's Francesca's merchandise.
22 All consumers who purchase falsely discounted Francesca's products have overpaid and are
23 deprived of the benefit of the bargain (i.e., the promised discount). Additionally, they will have
24 paid a premium for merchandise that is worth less than its actual sales price.

25 31. To put it differently, the fake discount information presented by Defendant's falsely
26 advertised reference and sale prices first causes consumers to (reasonably) perceive they are
27 receiving a bargain when the merchandise is purchased at its "sale" price. This consumer
28 perception results in these consumers gaining an additional "transaction value"²⁴ on their

²³ Dhruv Grewal *et al.*, *The Effects of Price-Comparison Advertising*, *supra* n.12, at 46.

²⁴ Thaler, *Mental Accounting and Consumer Choice*, *supra* n.6, at 205 ("To incorporate ... the psychology of buying into the model, two kinds of utility are postulated: acquisition utility and transaction utility. The former depends on the value of the good received compared to the outlay, the latter depends solely on the perceived merits of the 'deal.'"); Grewal & Compeau, *Comparative Price Advertising*, *supra* n.1, at 55 ("By creating an impression of savings, the presence of a higher reference price enhances subjects'

1 purchases, which they would not have otherwise gained but for Defendant's fake discounting
2 scheme. Consumers' valuation of Francesca's merchandise therefore increases in the aggregate.

3 32. Fundamental economics concepts and principles dictate that the harm caused by
4 Defendant's scheme is uniformly suffered by deceived and, to the extent there are any, non-
5 deceived shoppers alike. One such principle is that cost and demand conditions determine the
6 market prices paid by all consumers.²⁵ The aggregate demand curve for a product, including
7 Defendant's, represents consumers' valuation of that product as a whole; as consumers' valuation
8 increases, the demand curve shifts outward. When the aggregate demand curve of a product shifts
9 outward, its market price will increase. Therefore, a specific individual's willingness to pay a
10 certain price for a product will not negate how market prices, as determined by aggregate demand,
11 dictate what all consumers purchasing a given product will pay.

12 33. As a result, Defendant's pricing scheme impacts the market prices of its Francesca's
13 products, and any one individual consumer's subjective beliefs or idiosyncratic rationales will not
14 isolate them from the resultant artificial and illegitimate inflation in Francesca's prices. Economic
15 theory ensures that as the aggregate demand curve for the products moves outward, all consumers
16 are forced to pay a higher price than the products would command absent the fake discounting
17 scheme. Plaintiffs and proposed Class (defined below) members thus suffered a common impact
18 from Defendant's misconduct.

19 **D. Investigation**

20 34. Plaintiff's counsel has conducted a large-scale, multi-state, comprehensive
21 investigation into Defendant's fake discounting scheme at its Francesca's stores. Plaintiff's
22 counsel tracked items in Defendant's Francesca's stores in California from in or around February
23 2024 to August 2024. Attached as **Exhibit A** to this Complaint is a list of exemplary products
24 tracked in California.

25
26 perceived value and willingness to buy the product.""); Grewal & Compeau, *Pricing and public policy*,
27 *supra* n.14, at 7.

28 ²⁵ Mankiw, N. *Essentials of Economics*, 8th Edition. Boston, MA: Cengage Learning, 66 (2015) ("[P]rice
and quantity are determined by all buyers and sellers as they interact in the marketplace"); *see also* Hal R.
Varian, *Microeconomics Analysis*. 3rd Edition. New York, NY: W. W. Norton & Company, at 23-38, 144-
57, 233-353 & 285-312 (1992).

1 35. From those efforts, Plaintiff is informed that Defendant's Francesca's pricing
2 scheme (i.e., the manner in which the reference prices and purported discounts are conveyed to
3 shoppers) appear uniform at *every* location, regardless of what state it is in or when the observation
4 was made. The only thing that changed was the advertised discount and/or reference price on
5 certain merchandise. Indeed, the vast majority of products observed appear to have remained "on
6 sale" throughout the investigation,²⁶ "discounted" against a false reference price that has never
7 been observed as the actual selling price. In other words, all items had price tags that were then
8 perpetually "discounted" by in-store signage indicating a large percentage off ("__% Off") or
9 whole-price reduction discount. Accordingly, Plaintiff is informed and believes and thereon
10 alleges that Francesca's store merchandise is not regularly offered for sale at its full "original"
11 price—and certainly not "on a regular basis for a reasonably substantial period of time," as required
12 by 16 C.F.R. § 233.1. If the merchandise *is* offered at its full reference price it is usually *only*
13 because it is being offered at such price in connection with a BOGO offer for a higher percentage-
14 off of the "second" item the consumer purchases. In either event, the practice remains misleading.

15 36. Thus, the investigation confirms that the "original" or "price tag" reference price
16 of the items Plaintiff purchased are not the actual selling price of those items because they are
17 rarely, if ever, offered at those prices in isolation, but rather continuously offered for sale at fake
18 discount prices or fake BOGO offers. The investigation confirmed that this was a pervasive,
19 uniform, and systematic practice at the Defendant's Francesca's stores, as hundreds, and perhaps
20 thousands, of items remained continuously discounted throughout the investigation period,
21 including those products purchased by Plaintiff.²⁷

22
23 ²⁶ As noted above, in addition to percentage-off discounts (%-off from "original" reference price on price
24 tag), Defendant often employs a BOGO (buy-one-get-one) scheme in which, for example, if a customer
buys one item at full price, they will get the next one for 50% off (or some other %-off). Plaintiff intends
to test the viability of such a discounting scheme in this case.

25 ²⁷ Numerous false discount pricing cases brought in California federal district courts have held that,
26 notwithstanding [FRCP] Rule 9(b), that plaintiffs are *not* required to perform or provide *any* specific details
27 pertaining of pre-lawsuit investigations into false discounting practices in order to defeat a motion to
28 dismiss. *See, e.g., Rubenstein v. Neiman Marcus Grp. LLC*, 687 F. App'x 564, 568 (9th Cir. 2017)
("Without an opportunity to conduct any discovery, Rubenstein cannot reasonably be expected to have
detailed personal knowledge of Neiman Marcus's internal pricing policies or procedures for its Last Call
stores. Because Rubenstein need not specifically plead facts to which she cannot 'reasonably be expected
to have access,' her allegations regarding the fictitious nature of the Compared To prices may properly be

37. Products sold on Defendant's e-commerce website, <https://francescas.com>, and are also priced uniformly. That is, the products sold by Defendant bear a substantially discounted sale price that appears next to the "crossed out" or "strikethrough" original price and purported percentage-off in parentheses (e.g., "50% Off"). Plaintiff's counsel tracked numerous items offered for sale on Francescas.com from August 13, 2024 to March 7, 2025. A sample of the items tracked is attached as **Exhibit B**. The investigation included daily or near-daily monitoring of these items. In short, the investigation showed that the products were perpetually discounted and remained "on sale" for virtually the entire tracking period.

38. Thus, the investigation confirmed that Defendant's merchandise is priced with phantom reference prices the vast majority of the time, whether it is at its brick-and-mortar storefronts or online. The discounting scheme is uniform and identically applied on all, or virtually all, of the products sold throughout Defendant's California brick-and-mortar stores.

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

based on personal information and belief at this stage of the litigation."); *Stathakos v. Columbia Sportswear Co.*, No. 15-CV-04543-YGR, 2016 WL 1730001, at *3-4 (N.D. Cal. May 2, 2016) (complaint lacking in any allegations related to pre-suit investigation of false discounting practice satisfied Rule 9(b)); *Knapp*, 2016 WL 3268995, at *4 (allegations of "perpetual sale" were alone sufficient); *Horosny*, 2015 WL 12532178, at *4 (denying motion to dismiss where plaintiff pled existence of deceptive pricing scheme "on information and belief" only, without investigation); *see also Le v. Kohls Dept. Stores, Inc.*, 160 F.Supp.3d 1096, 1099 (E.D. Wis. Feb. 8, 2016) (denying a motion to dismiss where the plaintiff had not conducted a nationwide pre-suit investigation before alleging the defendant's comparison prices did not reflect a price at which its merchandise was routinely sold). Still, complaints containing pre-suit investigation allegations similar to Plaintiff's here have routinely been sustained over motion to dismiss challenges, in California federal courts as well as state courts which notably *do not* apply Federal Rule 9(b)'s heightened pleading standard for actions sounding in fraud. *See, e.g., Adams v. Cole Haan, LLC*, No. 8:20-CV-00913-JWH-DFMx, 2021 WL 4907248 (C.D. Cal. Mar. 1, 2021); *Dahlin v. Under Armour, Inc.*, No. CV 20-3706 PA (JEMx), 2020 WL 6647733 (C.D. Cal. July 31, 2020); *Inga v. Bellacor.com, Inc.*, No. 219CV10406MWFMRW, 2020 WL 5769080, at *1 (C.D. Cal. July 17, 2020); *Harris*, 2020 WL 3965022, at *1; *Calderon v. Kate Spade & Co., LLC*, No. 3:19-CV-00674-AJB-JLB, 2020 WL 1062930 (S.D. Cal. Mar. 5, 2020); *Fisher v. Eddie Bauer LLC*, No. 19-cv-857 JM (WVG) 2020 WL 4218228 (S.D. Cal. Feb. 3, 2020); *Dennis v. Ralph Lauren Corp.*, No. 16-cv-1056-WQH-BGS, 2017 WL 3732103 (S.D. Cal. Aug. 29, 2017); *Rael v. New York & Co., Inc.*, No. 16-CV-369-BAS (JMA), 2017 WL 3021019 (S.D. Cal. July 17, 2017); *Azimpour v. Sears, et al.*, No. 15-CV-2798 JLS (WVG), 2017 WL 1496255 (S.D. Cal. Apr. 26, 2017); *Fallenstein v. PVH Corp., et al.*, No. 21-CV-01690-AJB-AGS (S.D. Cal. Jan. 3, 2023) at ECF No. 29 (Order Denying Defendants' Motion to Dismiss Plaintiff's First Amended Complaint); *Schertzer v. Alparagas USA Inc* (Super. Ct. San Diego, 37-2019- 00015352, Dkt. No 45).

IV. PARTIES

Plaintiff Hannah Lacy

40. Plaintiff resides and is a citizen of Oceanside, California. On or about July 21, 2024, Plaintiff went shopping for some new clothing at the Francesca's store located at the Shoppes at Carlsbad in Carlsbad, California. In reliance on Defendant's false and deceptive advertising, marketing and discount pricing scheme, Plaintiff purchased a pair of jeans that bore an "original" (reference) price of approximately \$60 and a purported fixed price discount of \$25, for an actual sales price of \$35 (minus a 10% student/military/teacher discount).²⁸ Plaintiff paid an after-tax total of \$33.95.

41. During her time at the Francesca's store on July 21, 2024, Plaintiff browsed several items before deciding on what items to purchase. After reviewing the advertised reference and "sale" price for the above-described jeans, Plaintiff decided to purchase the items. During her time there on July 21, 2024, Plaintiff noticed numerous signs within the Francesca's store advertising various "%"-off discounts on items throughout the store.

42. Indeed, after observing the original price of the item and the accompanying sale price, Plaintiff believed she was receiving a significant discount on the item she had chosen. Her belief that the discounted prices on the items were limited and would not last was material and integral to her purchase decision. She would not have made the purchases were it not for the significant bargain she thought she was receiving. However, Plaintiff did not receive the benefit of her bargain and, in reality, paid more for the items than they were worth in the form of a premium as a result of the fake sale scheme.

43. Plaintiff has therefore suffered economic injury as a direct result of Defendant's unlawful, unfair, and fraudulent false reference pricing scheme.

²⁸ Plaintiff notes that she does not allege that there was anything improper about the 10% military discount and that it has been worked out of any applicable preliminary damages calculations, described further below.

Plaintiff's Economic Injury Is Readily Quantifiable

44. Plaintiff has been injured and incurred quantifiable actual damages as a result of Defendant's fraudulent pricing scheme, which can be and has been preliminarily calculated through the use of regression analysis.

45. Plaintiff overpaid for the products she purchased as described herein. And it was Defendant's false reference pricing scheme and attendant deception that caused Plaintiff to overpay. Despite Plaintiff's original belief that the products she purchased were discounted and, thus, that their value was significantly greater than the sale price for which she purchased them, Plaintiff, in actuality, paid an *inflated* price for all of the supposedly discounted products she purchased. In other words, both the reference prices and the actual selling prices of the items Plaintiff purchased were inflated, but for different reasons: the reference prices because Defendant intentionally fabricated them and the actual selling prices because if Defendant had not engaged in the false discounting scheme, then those items would not have commanded such high, i.e., *inflated*, prices. Thus, the items Plaintiff purchased were all worth less than the amounts she paid for them.

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

47. Here, for purposes of investigation and determining a preliminary measure of damages, Plaintiff, with the assistance of qualified expert economists and consultants, conducted an analysis of Defendant's product SKUs and pricing practices attached to each SKU. Plaintiff,

1 through the use of sophisticated regression analysis, was able to determine the objective measure
2 by which Plaintiff and Class members overpaid for the goods they purchased.²⁹

3 48. Reference guides on regression-based damages describe how “[p]ractitioners can
4 use several tools to establish and measure relations among the variables that affect revenues and
5 costs, and thus establish the casual link ... Regression analysis applies a statistical technique to
6 develop an equation depicting the relation among variable and then uses that equation for
7 prediction.”³⁰ In this case, Plaintiff’s consultants utilized regression analysis to estimate the
8 relationship between Defendant’s reference prices and Defendant’s selling prices, after accounting
9 for the other factors that influence Defendant’s pricing, and used that equation to predict prices
10 that would have occurred but for misconduct in this case. As explained below, the regression
11 analysis relies on Defendant’s data and measures how selling prices increase when the intensity of
12 its misconduct is greater (i.e. a higher reference price leads to higher selling price, holding all else
13 equal).

14 49. Plaintiff’s experts used the data collected during the investigation to analyze 97
15 products offered for sale within Defendant’s Francesca’s stores during the Class Period (defined
16 below). The average selling price within this data sample was \$42.85, whereas the average
17 reference price was \$53.19. Thus, on average, the reference price chosen by Defendant was \$10.34
18 higher (or 24.1% higher) than the selling price.

19 50. Plaintiff’s experts used this data as input (among additional control variables
20 affecting price, described below) to perform a regression model which allowed them to calculate
21 the price premium paid by Plaintiff, and all similarly situated proposed Class members, for each
22 product purchased. The regression model incorporates supply and demand factors through the use
23

24 ²⁹ Notably, if the “misrepresentation ... artificially inflate[s] the market price of a product, causing
25 [Plaintiffs] to pay more for it than [they] otherwise would have—regardless of whether [they] even saw the
26 misrepresentation,” the plaintiffs were “harmed [] by a misrepresentation without necessarily having relied
27 on it.” *In re AXA Equitable Life Ins. Co. COI Litig.*, No. 16-CV-740 (JMF), 2020 WL 4694172, at *10
(S.D.N.Y. Aug. 13, 2020). Under this “theory of causation ... that the advertising and labeling practice
28 allowed a price premium to be charged” is often known as a “market-price-based theory of causation.” *Id.*
at *11 (citation and internal quotation marks omitted). This theory, “unlike the promise-based theory, does
not depend on the consumer’s awareness of the representation.” *Id.*

³⁰ Roman L. Weil et al., *Litigation Services handbook: the role of the Financial Expert* Ch. 4, p. 25 (6th ed.
2017).

1 of *actual selling prices*, which are the net result of the competitive factors that influence
2 Defendant's pricing. For example, the price of an item at issue in this case is a function of its
3 component features (e.g., is the item a top, dress, or jacket? Is the item marketed towards women
4 or men?). The net effect of the demand factors (e.g., consumer willingness to pay for an item based
5 on its features) and supply factors (e.g., Defendant's production costs) are captured within the
6 product's attributes when actual selling prices are used in this type of regression analysis.

7 51. While additional variables will be accounted for after more detailed data is provided
8 by Defendant or elsewhere during discovery, *this initial regression analysis already accounts for*
9 *11 variables that impact Defendant's pricing* (including reference price). For example, the
10 regression analysis accounts for broad product type (e.g., bottoms vs. tops vs. outerwear) and
11 specific product type (e.g., tee shirt vs. blouse vs. pullover vs. button up).

12 52. After accounting for these product characteristics, the regression finds a coefficient
13 of 0.37. In other words, the regression finds that increasing the reference price by \$1 results in an
14 increase of 37¢ in the selling price of items at Francesca's stores.

15 53. The corresponding regression equation is then used to predict selling prices if the
16 reference price was reduced to the typical selling price of the item (i.e., lowering the reference
17 price to remove the impact of the pricing misconduct). For example, as previously discussed, the
18 preliminary data suggests that Defendant's reference prices were \$10.34 higher (24.1% higher)
19 than the actual sales prices, on average. When combined with the preliminary regression results
20 described above, this \$10.34 differential implies that selling prices were approximately \$3.83
21 higher, on average, due to the false discounting scheme alleged in this case.³¹ This average
22 overcharge of \$3.83 represents approximately 9.0% of the average purchase price within the data
23 collected by Plaintiff.

24 54. These results will be revised somewhat once Plaintiff receives additional pricing
25 data (i.e., daily histories of reference and sale prices for many more SKUs during the Class Period),
26 but even the data collected by Plaintiff's counsel demonstrates that Plaintiff and others similarly
27 situated paid a price premium as a direct result of the false discounting scheme practiced
28

³¹ That is, $\$10.34 \times 0.37 = \3.83 .

universally at Francesca's stores. Plaintiff will seek in-depth discovery of internal documents, digitally stored historic pricing data, and depositions of persons most knowledgeable about Defendant's practices to supplement this investigation, show common injury at class certification, and prove damages with reasonable certainty at trial.

55. The table below shows the application of the preliminary regression coefficient (0.37) to the items purchased by Plaintiff and the resulting measure of injury.³²

Item	Delta (Δ) Between Reference and Sale Price	Coefficient (0.37)	Damages ($\Delta \times 0.37$)
Jeans purchased by Plaintiff	\$25.00 ³³	0.37	\$9.25

56. The harm to Plaintiff and Class members (i.e., price premium) caused by Defendant's misconduct can also be objectively measured through the use of conjoint analysis supported by Defendant's historic pricing, sales, and other market data, which will also be pursued vigorously in discovery, to isolate the price premium associated with Defendant's false reference price and discounting scheme. Conjoint analysis is described as "a form of statistical analysis that firms use in market research to understand how customers value different components or features of their products or services ... Conjoint analysis is typically conducted via a specialized survey that asks consumers to rank the importance of the specific features in question. Analyzing the results allows the [practitioner] to then assign a value to each one."³⁴ To explain further, conjoint analysis is a well-accepted survey-based technique in which survey participants select their most preferred product from a series of product options with different attributes (including price).³⁵ The

³² This exercise can be performed for every product Defendant has sold at Francesca's stores at a purported discount by multiplying the regression coefficient by that item's reference price/sales price differential. Once enough historical pricing and sales data is provided to Plaintiff's experts to perfect the regression coefficient, measuring the harm to each Class member will be a simple mechanical exercise.

³³ Again, Plaintiff notes that this delta does *not* include the 10% military discount Plaintiff received on top of the fixed \$25 discount.

³⁴ <https://online.hbs.edu/blog/post/what-is-conjoint-analysis>.

³⁵ "The key characteristic of conjoint analysis is that respondents evaluate product profiles composed of multiple conjoined elements (attributes or features). Based on how respondents evaluate the combined elements (the product concepts), we deduce the preference scores that they might have assigned to individual components of the product that would have resulted in those overall evaluations" (Orme, B. "A Short History of Conjoint Analysis." Chapter 4 in *Getting Started with Conjoint Analysis: Strategies for Product Design and Pricing Research*. Second Edition, Madison, WI: Research Publishers LLC, 2010, p. 29).

researcher will then analyze consumers' trade-offs among products with different features using a statistical model that allows the researcher to estimate the influence of each product attribute and the willingness-to-pay ("WTP") for a particular product attribute. In other words, conjoint analysis can establish the extent to which consumer preferences (i.e., consumer demand, or WTP) change due to the alleged misconduct (i.e., false reference and discounting scheme) and, further, quantify its monetary impact on actual selling prices. After measuring the change in consumer preferences (and WTP) due to the alleged misconduct in this case, an overcharge is calculated by then incorporating *supply-side* behavior.

57. As with hedonic regression, Plaintiff can put forth an expert-based conjoint analysis with and/or without an economic market simulation to account for supply side factors³⁶ that will likewise demonstrate the price premium paid on products with inflated reference prices as compared to those without inflated reference prices. This approach will isolate the economic harm to Class members due solely to Defendant's misconduct and will demonstrate that otherwise identical products sold *without* reference prices ultimately cost less.

58. Accordingly, objective measures demonstrate that Plaintiff overpaid for the Francesca's store merchandise she purchased. The difference between the actual sales price paid

³⁶ An economic market simulation estimates market prices by fully incorporating the relevant supply and demand information to estimate the but-for market prices that would have been paid by consumers in the absence of the alleged misconduct. It is used to incorporate supply side factors into the but-for world in which consumers' WTP has adjusted due to the absence of the alleged misconduct. Market simulations often incorporate (and are calibrated to) real-world supply and demand market data on the Defendant's (and competitor's) products, prices, costs, market share, consumer decisions (e.g., mixed logit coefficients from conjoint analysis), and the price elasticity of consumer demand. Indeed, a wide body of academic literature in the economics discipline describes combining the consumer demand side of the market with the supply side of the market to determine market equilibrium prices. For example, Steven Berry, et al., *Automobile Prices in Market Equilibrium*, 63 *Econometrica* 841 (1995); Aviv Nevo, *A Practitioner's Guide to Estimation of Random-Coefficients Logit Models of Demand*, 9 *Journal of Economic and Management Strategy* 513-548 (2000); Steven Berry, et al., *Differentiated Products Demand Systems from a Combination of Micro and Macro Data: The New Car Market*, 112 *Journal of Political Economy* 68-105 (2004); Petrin, Amil, *Quantifying the Benefits of New Products: The Case of the Minivan*, 110 *Journal of Political Economy* 705-729 (2002); Greg Allenby, et al., *Valuation of Patented Product Features*, 57 *The Journal of Law & Economics* 629-663 (2014). Within the context of consumer class action litigation, various courts have accepted damages models based on economic market simulations that incorporate the findings of a conjoint analysis with additional supply-side factors. See, e.g., *Wesley Won et al. v. General Motors, LLC*, No. 2:19-cv-11044 (DML) (DRG) (E.D. Mich., July 28, 2022); *Thomas Allegra et al. v. Luxottica Retail North America, d/b/a Lenscrafters*, No. 17 CV-5216 (PKC) (RLM) (E.D.N.Y., Dec. 13, 2021); *Riley Johannessohn, et al. v. Polaris Industries, Inc.*, No. 16-cv-03348 (NEB/LIB) (D. Minn., Mar. 31, 2020) ("There is no question that a market simulation is a scientifically valid method to determine the market equilibrium price in a counterfactual world").

1 by Plaintiff due to the artificially increased demand for the products—caused by Defendant’s false
2 discounting scheme—and the market sale price that the products would have commanded without
3 Defendant’s misconduct provides an objective measure by which Plaintiff was overcharged and
4 injured by Defendant. The amount of inflation of the prices for Francesca’s store merchandise
5 Plaintiff purchased caused by Defendant’s deception thus measures how much Plaintiff overpaid.
6 As shown above, this amount can be quantified using regression analysis based on Defendant’s
7 historic pricing data and/or through conjoint analysis (with or without a market simulation).
8 Plaintiff’s allegations therefore sufficiently allege a “connection between the misrepresentation
9 and any harm from, or failure of, the product.” *Small v. Lorillard Tobacco Co., Inc.*, 94 N.Y.2d
10 43, 56 (1999). *See also Orlander v. Staples, Inc.*, 802 F.3d 289, 302 (requiring allegations that,
11 “on account of a materially misleading practice, [plaintiff] purchased a product and did not receive
12 the value of her purchase”) (emphasis added).

13 **Plaintiff Has Standing for Injunctive Relief and Lack An Adequate Remedy at Law**

14 59. Plaintiff is also susceptible to the same harm reoccurring, and therefore require an
15 injunction (i.e., Plaintiff lacks an adequate remedy at law), because she cannot be certain that
16 Defendant will have corrected this deceptive pricing scheme, and she desires to shop at
17 Defendant’s Francesca’s stores in the future because she likes the brand and the clothing styles
18 offered. Further, due to the enormous, fluctuating variety of styles and sizes of merchandise offered
19 at Francesca’s stores, Plaintiff will be unable to parse what prices are inflated and untrue, and what
20 prices are not. Plaintiff simply does not have the resources to ensure that Defendant is complying
21 with California and federal law with respect to its pricing, labeling, and/or advertising of
22 Francesca’s store merchandise.

23 60. Further, because of the wide selection of merchandise available at Defendant’s
24 Francesca’s stores, the sheer volume of products involved in Defendant’s deceit (i.e., on
25 information belief, virtually all of them), and the likelihood that Defendant may yet develop and
26 market additional Francesca’s merchandise items for sale, Plaintiff may again, by mistake,
27 purchase a falsely discounted product at one of the Francesca’s stores under the reasonable, but
28 false, impression that Defendant had corrected the scheme and that its reference price

1 advertisement represented a *bona fide* former price at which the item was previously offered for
2 sale by Defendant. However, without a substantial, time-consuming, and costly investigation,
3 Plaintiff will have no way of knowing whether Defendant has deceived her again.

4 61. Absent an equitable injunction enjoining Defendant from continuing in the
5 unlawful course of conduct alleged herein, Plaintiff, Class members, and the public will be
6 irreparably harmed and denied an effective and complete remedy because they face a real and
7 tangible threat of future harm emanating from Defendant's ongoing and deceptive conduct that
8 cannot be remedied with monetary damages. Accordingly, Plaintiff, Class members, and the
9 general public lack an adequate remedy at law and an injunction is the only form of relief which
10 will guarantee Plaintiff, as well as California consumers at large, the appropriate assurances.

11 62. Additionally, Plaintiff presently lacks an adequate remedy at law because she has
12 not yet developed the damages model necessary to determine whether actual damages will fully
13 compensate the monetary harm suffered, or whether equitable restitution will be required to make
14 Plaintiff whole. Legal damages are traditionally limited to actual out-of-pocket losses (reliance
15 damages) or lost benefit of the bargain (expectancy damages), whereas equitable restitution
16 focuses on restoring ill-gotten gains wrongfully obtained by the defendant from the plaintiff/class
17 members. Critically, California law prohibits recovery of benefit-of-the-bargain damages in
18 consumer deception cases but permits recovery of the same measure through *equitable relief*. See
19 Cal. Civ. Code § 3343. For example, Plaintiff and other California Class members may be entitled
20 to recover the difference between the price paid and the value received—a measure unavailable at
21 law but recoverable in equity. Until Plaintiff retains an expert and completes the necessary
22 economic analysis, it remains uncertain whether legal damages will even be viable, let alone
23 adequate. Accordingly, Plaintiff credibly alleges at this stage that no adequate legal remedy exists,
24 satisfying the *Sonner* standard for pleading equitable relief.³⁷

25
26 ³⁷ Decisions in numerous false discounting cases have accepted similar allegations where the defendant has
27 challenged the plaintiffs' ability to seek equitable relief following the decision in *Sonner v. Premier*
28 *Nutrition Corp.*, 971 F.3d 834, 844 (9th Cir. 2020). See, e.g., *Dahlin*, 2020 WL 6647733, at *4-5; *Adams*,
2021 WL 4907248, at *3-4 (C.D. Cal. Mar. 1, 2021); *Fallenstein*, No. 21-CV-01690-AJB-AGS (S.D. Cal.
Jan. 3, 2023) at ECF No. 29 (Order Denying Defendants' Motion to Dismiss Plaintiff's First Amended
Complaint). *Dahlin v. The Donna Karan Co. Store, LLC*, No. 2:21-cv-07711-AB-JPRx (C.D. Cal. Mar. 16,
2022) at ECF No. 30 (Order Denying Motion to Dismiss Plaintiff's First Amended Complaint) at 5-10.

63. Plaintiff also lacks an adequate remedy at law because her claims under the UCL “sweep[] more broadly than [those under] the CLRA.” *See Allen v. Hylands, Inc.*, 773 F. App’x 870, 874 (9th Cir. 2019). Although Plaintiff’s UCL claim under the “fraudulent” prong applies the same “reasonable consumer” standard as the CLRA, her claim under the “unfair” prong reaches substantially further. As alleged, Defendant’s conduct may be deemed “unfair” where it offends established public policies favoring transparency in pricing or constitutes immoral, unethical, oppressive, or unscrupulous conduct that substantially injures consumers—harms not fully captured by the CLRA’s remedial scheme. Because these broader injuries do not have an adequate legal remedy under the CLRA, and the UCL independently authorizes equitable relief to remediate such conduct, Plaintiff credibly alleges that legal damages are inadequate. Thus, Plaintiff properly plead parallel claims for legal damages and equitable restitution at this stage.

64. Finally, Plaintiff further lacks an adequate remedy at law because the UCL (an equitable cause of action) carries a statute of limitations of four years, while the CLRA (which can provide legal damages *and* equitable restitution) carries a shorter, three-year statute of limitations. Cal. Bus. & Prof. Code § 17208; Cal. Civ. Code § 1783. Thus, dismissal of Plaintiff’s (equitable) UCL claims would wipe out an entire year’s worth of monetary recovery for the California Class.

Defendant

65. Defendant Terramar Capital, LLC is a Delaware limited liability company with its principal executive offices in Los Angeles, California. Plaintiff is informed and believes that Defendant Terramar Capital, LLC owns and operates Francesca’s stores in California, in addition to other states across the United States, and advertises, markets, distributes, and/or sells Francesca’s-brand clothing and accessories in California and throughout the United States.

66. Plaintiff does not know the true names or capacities of the persons or entities sued herein as Does 1-50, inclusive, and therefore sues such defendants by such fictitious names. Plaintiff is informed and believes, and upon such information and belief alleges, that each of the Doe defendants is, in some manner, legally responsible for the damages suffered by Plaintiff and members of the proposed Classes as alleged herein. Plaintiff will amend this Complaint to set forth

1 the true names and capacities of these defendants when they have been ascertained, along with
2 appropriate charging allegations, as may be necessary.

3 67. Defendant knows that its reference price advertising is false, deceptive, misleading,
4 unconscionable, and unlawful under California and federal law.

5 68. Defendant fraudulently concealed from and intentionally failed to disclose to
6 Plaintiff and other members of the proposed Classes the truth about its advertised discount prices
7 and former reference prices. Defendant concealed from consumers the true nature and quality of
8 the products sold at its Francesca's stores.

9 69. Defendant intentionally concealed and failed to disclose material facts regarding
10 the truth about false former price advertising in order to provoke Plaintiff and the proposed Classes
11 to purchase Francesca's products.

12 70. At all relevant times, Defendant has been under a duty to Plaintiff and the Classes
13 to disclose the truth about its false discounts.

14 V. CLASS ALLEGATIONS

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

18 **Nationwide Class**

19 All persons who, within the United States and within the applicable statute of
20 limitations preceding the filing of this action (the "Class Period"), purchased from
21 a Francesca's store one or more products at discounts from an advertised reference
22 price and who have not received a refund or credit for their purchase(s).

23 **California Class**

24 All persons who, within the State of California and within the applicable statute of
25 limitations preceding the filing of this action (the "Class Period"), purchased from
26 a Francesca's store one or more products at discounts from an advertised reference
27 price and who have not received a refund or credit for their purchase(s).

28 Excluded from the Classes is Defendant, as well as its officers, employees, agents or affiliates,
parent companies and/or subsidiaries, and each of its respective officers, employees, agents or
affiliates, and any judge who presides over this action. Plaintiff reserves the right to expand, limit,
modify, or amend these Class definitions, including the addition of one or more classes, in

1 connection with her motion for Class certification, or at any other time, based upon, *inter alia*,
2 changing circumstances and/or new facts obtained during discovery.

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

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

11 a. whether, during the Class Periods, Defendant used false advertised
12 reference prices on its Francesca's product labels and falsely advertised price discounts on
13 merchandise sold in its outlet stores;

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

16 c. whether, during the Class Periods, the original price advertised by
17 Defendant was the prevailing market price for the products in question during the three
18 months preceding the dissemination and/or publication of the advertised former prices;

19 d. whether, during the Class Periods, any of the original prices advertised by
20 Defendant were false or misleading;

21 e. whether Defendant's purported sale prices advertised in its Francesca's
22 stores reflected any actual discounts or savings;

23 f. whether Defendant's purported percentage-off discounts advertised in its
24 Francesca's stores reflected any actual discounts or savings;

25 g. whether Defendant's alleged conduct constitutes violations of the laws
26 asserted;

27 h. whether Defendant's alleged conduct constitutes violations of federal
28 and/or California pricing regulations;

1 i. whether Defendant engaged in an unconscionable commercial practice,
2 and/or employed deception or misrepresentation under the laws asserted;

3 j. whether Plaintiff and Class members are entitled to damages and the proper
4 measure of that loss; and

5 k. whether an injunction is necessary to prevent Defendant from continuing to
6 use false, misleading or illegal price comparisons.

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

11 75. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the Class
12 members. Plaintiff has retained counsel experienced in complex consumer class action litigation,
13 and Plaintiff intends to prosecute this action vigorously. Plaintiff has no antagonistic or adverse
14 interests to those of the Classes.

15 76. **Superiority:** The nature of this action and the nature of laws available to Plaintiff
16 and the Classes make the use of the class action format a particularly efficient and appropriate
17 procedure to afford relief to them and the Classes for the wrongs alleged. The damages or other
18 financial detriment suffered by individual Class members is relatively modest compared to the
19 burden and expense that would be entailed by individual litigation of their claims against
20 Defendant. It would thus be virtually impossible for Plaintiff and Class members, on an individual
21 basis, to obtain effective redress for the wrongs done to them. Absent the class action, Class
22 members and the general public would not likely recover, or would not likely have the chance to
23 recover, damages or restitution, and Defendant will be permitted to retain the proceeds of its
24 fraudulent and deceptive misdeeds.

25 77. All Class members, including Plaintiff, were exposed to one or more of Defendant's
26 misrepresentations or omissions of material fact claiming that former reference prices advertised
27 prices were legitimate. Due to the scope and extent of Defendant's consistent false sale prices, and
28 advertising scheme, disseminated in a years-long campaign to California consumers, it can be

1 reasonably inferred that such misrepresentations or omissions of material fact were uniformly
2 made to all members of the Classes. In addition, it can be reasonably presumed that all Class
3 members, including Plaintiff, affirmatively acted in response to the representations contained in
4 Defendant's false advertising scheme when purchasing merchandise sold at Francesca's stores.

5 78. Plaintiff is informed that Defendant keep extensive computerized records of its
6 Francesca's customers through, *inter alia*, customer loyalty programs, credit card programs, and
7 general marketing programs. Defendant has one or more databases through which a significant
8 majority of Class members may be identified and ascertained, and it maintains contact information,
9 including email and home addresses, through which notice of this action could be disseminated in
10 accordance with due process requirements.

11 VI. CAUSES OF ACTION

12 FIRST CAUSE OF ACTION

13 Violation of California's Unfair Competition Law ("UCL") 14 CAL. BUS. & PROF. CODE §§ 17200, *et seq.* (On Behalf of Plaintiff and the California Class)

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

17 80. Plaintiff brings this claim individually and on behalf of the members of the
18 proposed California Class against Defendant for violations of the UCL, Cal. Bus. & Prof. Code
19 §§ 17200, *et seq.*

20 81. The UCL defines "unfair business competition" to include any "unlawful, unfair or
21 fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading" advertising.
22 Cal. Bus. Prof. Code § 17200.

23 82. The UCL imposes strict liability. Plaintiff and members of the proposed California
24 Class need not prove that Defendant intentionally or negligently engaged in unlawful, unfair, or
25 fraudulent business practices—but only that such practices occurred.

26 *"Unfair" Prong*

27 83. A business act or practice is "unfair" under the UCL if it offends an established
28 public policy or is immoral, unethical, oppressive, unscrupulous or substantially injurious to

1 consumers, and that unfairness is determined by weighing the reasons, justifications and motives
2 of the practice against the gravity of the harm to the alleged victims.

3 84. Defendant's actions constitute "unfair" business practices because, as alleged
4 above, Defendant engaged in misleading and deceptive price comparison advertising that
5 represented false reference prices and corresponding deeply discounted phantom "sale" prices.
6 Defendant's acts and practices offended an established public policy of transparency in pricing,
7 including regulations enacted by the FTC, and they constituted immoral, unethical, oppressive,
8 and unscrupulous activities that are substantially injurious to consumers.

9 85. The harm emanating from this practice to Plaintiff and members of the proposed
10 California Class outweighs any utility it provides because Defendant's practice of advertising false
11 discounts provides no utility. There were reasonably available alternatives to further Defendant's
12 legitimate business interests other than the misleading and deceptive conduct described herein.

13 ***"Fraudulent" Prong***

14 86. A business act or practice is "fraudulent" under the UCL if it is likely to deceive
15 members of the consuming public.

16 87. Defendant's acts and practices alleged above constitute fraudulent business acts or
17 practices as Defendant has deceived Plaintiff and members of the California Class and is highly
18 likely to deceive members of the consuming public. Plaintiff and members of the California Class
19 relied on Defendant's fraudulent and deceptive representations regarding its false ticket prices for
20 products sold by Defendant. These misrepresentations played a substantial role in Plaintiff's and
21 members of the proposed California Class's decisions to purchase products at a purportedly steep
22 discount, and Plaintiff and members of the California Class would not have purchased products
23 without Defendant's misrepresentations.

24 ***"Unlawful" Prong***

25 88. A business act or practice is "unlawful" under the UCL if it violates any other law
26 or regulation.

27 89. Defendant's acts and practices alleged above constitute unlawful business acts or
28 practices as Defendant has violated state and federal law in connection with its deceptive pricing

1 scheme. The FTCA prohibits "unfair or deceptive acts or practices in or affecting commerce" (15
2 U.S.C. § 45(a)(1)) and prohibits the dissemination of any false advertisements. 15 U.S.C. § 52(a).
3 Under the FTC, false former pricing schemes, like Defendant's, are described as deceptive
4 practices that would violate the FTCA:

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

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, however,
13 in such a case, that the price is one at which the product was openly and actively
14 offered for sale, for a reasonably substantial period of time, in the recent, regular
15 course of his business, honestly and in good faith - and, of course, not for the
16 purpose of establishing a fictitious higher price on which a deceptive comparison
might be based. And the advertiser should scrupulously avoid any implication that
a former price is a selling, not an asking price (for example, by use of such
language as, "Formerly sold at \$ _____"), unless substantial sales at that price
were actually made.

17 16 C.F.R. § 233.1(a) and (b) (emphasis added).

18 90. In addition, Defendant's acts and practices violate California law, which expressly
19 prohibits false former pricing schemes. The FAL, Cal. Bus. & Prof. Code § 17501, entitled "*Worth
20 or value; statements as to former price,*" states:

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

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

26
27 Cal. Bus. & Prof. Code § 17501 (emphasis added).
28

1 91. Defendant violates § 17501 because it advertises items, including the items that
2 Plaintiff purchased and are described herein, with a former price that greatly exceeds the prevailing
3 market price of those items. For the most part, Defendant advertises on its price tags a reference
4 price that is unadorned by any qualifying language (e.g., “Compare At”) which could arguably put
5 consumers on notice to review prices outside of the Francesca’s store.

6 92. In so doing, Defendant reasonably conveys to consumers that these reference prices
7 represent its *own* former price for that same merchandise. *See supra* n.20 (citing *Vizcarra*, 710 F.
8 Supp. 3d at 725). Accordingly, the “prevailing” market price of those items can be measured
9 exclusively by reference to Defendant’s own historical sales data. *See Harris*, 2020 WL 3965022,
10 at *4 (the need for allegations pertaining to a false discounting plaintiff’s counsel’s investigation
11 of outside market “*only arises when the language of the advertisement implies a comparison to*
12 *another retailer.*”) (emphasis added); *see* ¶ 23.

13 93. Thus, Defendant’s internal sales data need only be reviewed to ascertain the
14 “prevailing” market prices for the products at issue in this case. *See People v. Super. Ct. (J.C.*
15 *Penney Corp., Inc.)*, 34 Cal. App. 5th 376, 410-13 (2019) (the “prevailing market price” is the
16 most “common,” “predominant,” or “most widely occurring” price at which items are sold) (citing
17 authorities).

18 94. As detailed in the Third Cause of Action below, the CLRA, Cal. Civ. Code
19 § 1770(a)(9), prohibits a business from “[a]dvertising goods or services with intent not to sell them
20 as advertised,” and subsection (a)(13) prohibits a business from “[m]aking false or misleading
21 statements of fact concerning reasons for, existence of, or amounts of price reductions.”

22 95. As detailed herein, and for the same reason that Defendant’s acts and practices
23 violate the FTCA and the FAL, they also violate the CLRA, thus establishing another “unlawful”
24 act in violation of the UCL.

25 96. Defendant’s practices, as set forth above, misled Plaintiff, the California Class, and
26 the public in the past and will continue to mislead them in the future. Consequently, Defendant’s
27 practices constitute an unlawful, fraudulent, and unfair business practice within the meaning of the
28 UCL.

1 97. Defendant's violations of the UCL, through its unlawful, unfair, and fraudulent
2 business practices, are ongoing and present a continuing threat to Plaintiff, members of the
3 California Class, and the public who, if Defendant's false pricing scheme is permitted to continue,
4 will continue to be deceived into purchasing products based on illegal price comparisons. These
5 false price comparisons lead to artificial and increased demand which, in turn, leads to higher
6 prices and financial harm for consumers like Plaintiff and the members of the California Class as
7 described herein. Because of the surreptitious nature of Defendant's deception, these injuries
8 cannot be reasonably avoided and will continue to be suffered by the consuming public absent a
9 mandated change in Defendant's practice.

10 98. Pursuant to Bus. & Prof. Code § 17203, Plaintiff and members of the California
11 Class are entitled to preliminary and permanent injunctive relief enjoining Defendant from
12 continuing to engage in this unfair competition alleged above, as well as disgorgement and
13 restitution to Plaintiff and the California Class of all Defendant's revenues wrongfully obtained
14 from them as a result of Defendant's unfair competition, or such portion of those revenues as the
15 Court may find equitable.

16 **SECOND CAUSE OF ACTION**

17 **Violation of California's False Advertising Law ("FAL")**
18 **CAL. BUS. & PROF. CODE §§ 17500, *et seq.***
19 ***(On Behalf of Plaintiff and the California Class)***

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

22 100. Plaintiff brings this claim individually and on behalf of the members of the
23 California Class against Defendant for violations of California's FAL, Cal. Bus. & Prof. Code
24 §§ 17500, *et seq.*

25 101. Cal. Bus. & Prof. Code § 17500 provides:

26 It is unlawful for any . . . corporation . . . with intent directly or indirectly to dispose
27 of . . . personal property or to perform services, professional or otherwise, or
28 anything of any nature whatsoever or to induce the public to enter into any
obligation relating thereto, to make or disseminate or cause to be made or
disseminated . . . from this state before the public in any state, in any newspaper
or other publication, or any advertising device, or by public outcry or
proclamation, or in any other manner or means whatever, including over the
Internet, any statement, concerning that . . . personal property or those services . .

1 which is *untrue or misleading*, and which is known, or which by the exercise of
2 reasonable care should be known, to be untrue or misleading . . .

3 (emphasis added).

4 102. The FAL further provides:

5 no price shall be advertised as a former price of any advertised thing, unless the
6 alleged former price was the prevailing market price . . . within three months next
7 immediately preceding the publication of the advertisement or unless the date when
the alleged former price did prevail is clearly, exactly, and conspicuously stated in
the advertisement.

8 Cal Bus. & Prof. Code § 17501.

9 103. Defendant's routine of advertising discounted prices from false ticket prices, which
10 are not and never have been the prevailing market prices of those products and were materially
11 greater than the true prevailing prices (i.e., Defendant's average and/or most common actual sale
12 price), constitutes an unfair, untrue, and misleading practice in violation of the FAL. This
13 deceptive marketing practice gave consumers the false impression that the products were regularly
14 sold on the market for a substantially higher price than they actually were; therefore, leading to
15 the false impression that the products sold by Defendant are worth more than they actually are.

16 104. As a direct and proximate result of Defendant's misleading and false advertisements,
17 as well as Defendant's deceptive and unfair acts and practices made during the course of Defendant's
18 business, Plaintiff and members of the California Class suffered economic injury.

19 105. Plaintiff, on behalf of herself and the California Class, requests that this Court order
20 Defendant to restore this money to Plaintiff and the California Class, and to enjoin Defendant from
21 continuing these unfair practices in violation of the FAL in the future. Otherwise, Plaintiff,
22 members of the California Class, and the broader general public will be irreparably harmed and/or
23 denied an effective and complete remedy.

24 **THIRD CAUSE OF ACTION**

25 **Violation of California's Consumers Legal Remedies Act ("CLRA")**
26 **CAL. CIV. CODE § 1750, *et seq.***
(On Behalf of Plaintiff and the California Class)

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

1 107. Plaintiff brings this claim individually and on behalf of the members of the
2 California Class against Defendant for violations of the CLRA, Cal. Civ. Code § 1750, *et seq.*

3 108. Plaintiff and each member of the California Class are “consumers” as defined by
4 Cal. Civ. Code § 1761(d). Defendant’s sale of products were “transactions” within the meaning of
5 Cal. Civ. Code § 1761(e). The products purchased by Plaintiff and members of the California Class
6 are “goods” or “services” within the meaning of Cal. Civ. Code § 1761(a)-(b).

7 109. Defendant violated and continues to violate the CLRA by engaging in the following
8 practices proscribed by Cal. Civ. Code § 1770(a) in transactions with Plaintiff and the California
9 Class which were intended to result in, and did result in, the sale of products sold at Defendant’s
10 Francesca’s stores:

11 a) advertising goods or services with intent not to sell them as advertised;
12 § 1770(a)(9); and

13 b) making false or misleading statements of fact concerning reasons for,
14 existence of, or amounts of price reductions; § 1770(a)(13).

15 110. Plaintiff and the California Class are consumers who have suffered economic injury
16 and damages, including benefit of the bargain damages, as a result of Defendant’s use and
17 employment of the false and misleading reference pricing alleged herein. Pursuant to Cal. Civ.
18 Code § 1780(a), Plaintiff therefore seeks an order enjoining such methods, acts, or practices as
19 well as any other relief the Court deems proper. Plaintiff additionally seeks costs and reasonable
20 attorney’s fees pursuant to Cal. Civ. Code § 1780(e).

21 111. On May 15, 2025, Plaintiff’s counsel sent Defendant a CLRA notice letter, which
22 complies in all respect with § 1782(a). The letter was sent via certified mail, return receipt
23 requested, and advised Defendant that it was in violation of the CLRA and demanded Defendant
24 cease and desist from such violations and make full restitution by refunding the monies unlawfully
25 obtained from Plaintiff and California consumers received therefrom. The CLRA letter stated that
26 it was sent on behalf of all other similarly situated purchasers. Upon Defendant’s failure to fully
27 rectify the wrongs described in this notice letter after 30 days following receipt, Plaintiff seeks all
28 legal damages available under the CLRA.

FOURTH CAUSE OF ACTION

Unjust Enrichment
(On Behalf of Plaintiff and the Nationwide Class)

112. Plaintiff realleges and reincorporates by reference all paragraphs alleged above.

113. Plaintiff bring this claim individually and on behalf of the Nationwide Class against Defendant.

114. Plaintiff and the Nationwide Class conferred a benefit on Defendant in the form of the gross revenues derived from their purchases of merchandise from Francesca's retail stores.

115. Defendant had knowledge of the benefit conferred upon it by Plaintiff and the Nationwide Class members.

116. Defendant has been unjustly enriched in retaining the revenues obtained through its deceptive and misleading pricing practices. Specifically, Defendant falsely represented that its merchandise was being offered at a discount from a higher, former "original" price, when in fact such reference prices were fabricated or inflated, and the items were never offered at the claimed original prices for a meaningful period of time.

117. Retention of those revenues is unjust and inequitable because Plaintiff and the Nationwide Class paid more than they otherwise would have had they known the true nature of Francesca's pricing practices. Plaintiff and Nationwide Class members would not have purchased the items at all, or would have paid significantly less, absent Defendant's deceptive marketing.

118. Defendant accepted and retained the benefit in the form of premium payments extracted from consumers under false pretenses.

119. Defendant has thereby profited from the deceptive pricing scheme under circumstances which make it inequitable for Defendant to retain those gains.

120. Plaintiff and the Nationwide Class members are, therefore, entitled to restitution in the form of the revenues derived from Defendant's deceptive sale pricing practices.

121. As a direct and proximate result of Defendant's conduct, Plaintiff and the Nationwide Class members have suffered monetary losses in an amount to be proven at trial.

1 122. Equitable relief is appropriate because Plaintiff may lack an adequate remedy at
2 law if, for example, individual damages are determined to be less than the total purchase price or
3 statutory thresholds. Restitution provides a more prompt and reliable means of redressing the harm
4 by restoring to Plaintiff the full amount paid under misleading circumstances.

5 123. **Choice of Law.** California's interest in applying its law to this dispute is strong.
6 Defendant's principal place of business is in California, and all pricing and marketing decisions at
7 issue were made, approved, or directed from within California. The conduct giving rise to
8 Plaintiff's claims emanated from California, including the formulation of Defendant's pricing
9 strategy, creation of marketing materials, and design of in-store signage. California has a
10 substantial interest in regulating businesses that operate within its borders and export deceptive
11 practices to consumers nationwide.

12 124. Application of California law to the common law claims of the Nationwide Class,
13 including the cause of action for unjust enrichment, is appropriate because: (1) Defendant is
14 headquartered in California and its alleged misconduct originated there; (2) California has a
15 materially greater interest than any other state in enforcing its laws against a business operating
16 within its borders; and (3) California's legal principles on unjust enrichment do not conflict
17 materially with those of other jurisdictions in a way that would frustrate the interests of justice.

18 125. Accordingly, California law governs Plaintiff's common law claim for fraud by
19 omission on behalf of herself and the Nationwide Class.

20 **FIFTH CAUSE OF ACTION**

21 **Fraud by Omission**
22 ***(On Behalf of Plaintiff and the Nationwide Class)***

23 126. Plaintiff realleges and reincorporates by reference all paragraphs alleged above.

24 127. Plaintiff brings this claim individually and on behalf of the Nationwide Class
25 against Defendant.

26 128. Defendant marketed and sold its merchandise to consumers throughout the United
27 States, including to Plaintiff in California.
28

129. Defendant omitted and concealed material facts about the nature of its pricing practices. Specifically, Defendant failed to disclose that the “original” or “regular” prices displayed on its merchandise were not bona fide former prices and that the advertised discounts were illusory.

130. These omissions misrepresented that customers were receiving a meaningful discount when, in fact, the merchandise had not been offered at the referenced original prices for a reasonably substantial period of time, if ever.

131. Francesca’s knew or should have known that its reference prices were fabricated or artificially inflated and that consumers would be misled into believing they were receiving a genuine bargain.

132. Defendant knew that the existence of a genuine discount is a material fact that influences consumer purchasing decisions. Retailers have a duty to refrain from deceptive pricing practices that manipulate consumers’ perceptions of value.

133. Defendant therefore had a duty to disclose the truth about its pricing practices but failed to do so.

134. Consumers, including Plaintiff and the Nationwide Class members, justifiably relied on the misleading appearance of discounts in making their purchase decisions.

135. As a result of these omissions and misrepresentations, Plaintiff and the Nationwide Class members paid more for Francesca’s merchandise than they otherwise would have, or made purchases they would not have made at all.

136. **Choice of Law.** California’s interest in applying its law to this dispute is strong. Defendant’s principal place of business is in California, and all pricing and marketing decisions at issue were made, approved, or directed from within California. The conduct giving rise to Plaintiff’s claims emanated from California, including the formulation of Defendant’s pricing strategy, creation of marketing materials, and design of in-store signage. California has a substantial interest in regulating businesses that operate within its borders and export deceptive practices to consumers nationwide.

1 137. Application of California law to the common law claims of the Nationwide Class,
2 including the cause of action for fraud by omission, is appropriate because: (1) Defendant is
3 headquartered in California and its alleged misconduct originated there; (2) California has a
4 materially greater interest than any other state in enforcing its laws against a business operating
5 within its borders; and (3) California's legal principles on fraud by omission do not conflict
6 materially with those of other jurisdictions in a way that would frustrate the interests of justice.

7 138. Accordingly, California law governs Plaintiff's common law claim for fraud by
8 omission on behalf of herself and the Nationwide Class.

9 **SIXTH CAUSE OF ACTION**

10 **Fraud (Affirmative Misrepresentation)**
11 ***(On Behalf of Plaintiff and the Nationwide Class)***

12 139. Plaintiff realleges and reincorporates by reference all paragraphs alleged above.

13 140. Plaintiff brings this claim individually and on behalf of the Nationwide Class
14 against Defendant.

15 141. Defendant engaged in a pattern of deceptive conduct by knowingly and
16 intentionally misrepresenting the nature of the pricing of its merchandise.

17 142. Specifically, Defendant affirmatively represented—both on product tags and in
18 nearby store signage—that its merchandise was being offered at a discounted “sale” price, reduced
19 from a former, higher “original” price. These representations were false. In truth, the so-called
20 “original” prices were not the prevailing market prices, had not been offered for a reasonable
21 period of time, or had never been the actual selling price for the merchandise.

22 143. Defendant made these misrepresentations with knowledge of their falsity and with
23 the intent to induce Plaintiff and the Nationwide Class members to rely on the appearance of a
24 discount and make purchases they otherwise would not have made.

25 144. Defendant's false reference pricing created a misleading impression of value and
26 urgency, deceiving consumers into believing they were obtaining a bargain.

27 145. Plaintiff and the Nationwide Class justifiably relied on Defendant's
28 misrepresentations in deciding to purchase the merchandise at the stated “sale” prices. A

1 reasonable consumer would expect a discount to reflect a genuine markdown from a bona fide
2 original price.

3 146. As a result of Defendant's fraudulent conduct, Plaintiff and the Nationwide Class
4 suffered monetary loss, including paying more than the true value of the merchandise or making
5 purchases they otherwise would have declined.

6 147. Defendant's conduct was willful, malicious, and fraudulent, and Plaintiff and the
7 Nationwide Class are entitled to compensatory and punitive damages in an amount to be proven
8 at trial.

9 148. **Choice of Law.** California's interest in applying its law to this dispute is strong.
10 Defendant's principal place of business is in California, and all pricing and marketing decisions at
11 issue were made, approved, or directed from within California. The conduct giving rise to
12 Plaintiff's claims emanated from California, including the formulation of Defendant's pricing
13 strategy, creation of marketing materials, and design of in-store signage. California has a
14 substantial interest in regulating businesses that operate within its borders and export deceptive
15 practices to consumers nationwide.

16 149. Application of California law to the common law claims of the Nationwide Class,
17 including the cause of action for fraud (affirmative misrepresentation), is appropriate because:
18 (1) Defendant is headquartered in California and its alleged misconduct originated there;
19 (2) California has a materially greater interest than any other state in enforcing its laws against a
20 business operating within its borders; and (3) California's legal principles on fraud (affirmative
21 misrepresentation) do not conflict materially with those of other jurisdictions in a way that would
22 frustrate the interests of justice.

23 150. Accordingly, California law governs Plaintiff's common law claim for fraud
24 (affirmative misrepresentation) on behalf of herself and the Nationwide Class.

25 **VII. PRAYER FOR RELIEF**

26 Wherefore, Plaintiff, on behalf of herself and on behalf of the other members of the Classes,
27 requests that this Court award relief against Defendant as follows:
28

1 A. an order certifying the Classes and designating Plaintiff as the Class
2 Representative and her counsel as Class Counsel;

3 B. awarding Plaintiff and members of the Classes all actual, consequential,
4 punitive, and statutory damages, as appropriate, including legal damages for Plaintiff's
5 CLRA claim if and when Defendant fails to take appropriate actions in response to
6 Plaintiff's CLRA notice letter pursuant to Cal. Civ. Code § 1782(a);

7 C. awarding restitution and disgorgement of all profits and unjust enrichment
8 that Defendant obtained from Plaintiff and the Class members as a result of its unlawful,
9 unfair, and fraudulent business practices described herein;

10 D. awarding declaratory and injunctive relief as permitted by law or equity,
11 including an order enjoining Defendant from continuing the unlawful practices as set forth
12 herein and retaining jurisdiction to monitor Defendant's compliance with permanent
13 injunctive relief;

14 E. ordering Defendant to engage in a corrective advertising campaign;

15 F. awarding attorneys' fees and costs; and

16 G. for such other and further relief as the Court may deem necessary or
17 appropriate.

18 **VIII. DEMAND FOR JURY TRIAL**

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

20 Dated: May 15, 2025

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