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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JANETTE LISNER, JENNIFER QUIROZ NUNEZ, and JAMES ANDREWS, for Themselves, as Private Attorneys General, and On Behalf Of All Others Similarly Situated,

Plaintiffs,

v.

SPARC GROUP LLC; AERO OPERATIONS LLC; and DOES 1–5, inclusive,

Defendants.

Case No. 2:21-cv-05713-AB-GJS

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. **Violation of Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq*.**
2. **Violation of False Advertising Law, Cal. Bus. & Prof. Code § 17500 *et seq.***
3. **Violation of Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.***

JURY TRIAL DEMANDED

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Plaintiffs Janette Lisner, Jennifer Quiroz Nunez and James Andrews, for themselves, as private attorneys general to protect the general public, and on behalf of all others similarly situated, allege as follows, on personal knowledge and on the investigation of their counsel, against Defendants SPARC Group LLC and Aero Operations LLC (collectively "Defendants" or "Aeropostale") and Defendants Does 1–5, inclusive:

I. INTRODUCTION AND SUMMARY

1. Aeropostale is a designer, marketer, and retail seller of casual clothing and accessories, targeting primarily the teen and young adult market. Almost all the items offered for sale by Aeropostale in its Aeropostale stores and on its website are branded as "Aeropostale" products, and are offered and sold exclusively by Aeropostale. In 2019, Aeropostale had over $1 billion in sales revenues in 2019 in its brick-and-mortar Aeropostale stores and on its retail website.

2. For years, Aeropostale has perpetrated a massive false discount advertising scheme across nearly all of its Aeropostale-branded products and sales channels (i.e., in Aeropostale's brick-and-mortar retail stores and on the Aeropostale website). Specifically, Aeropostale advertises perpetual or near perpetual storewide "sales" and percentage-off discounts—typically 50% to 70% off—from Aeropostale's self-created list prices for its products in order to trick its customers and the general public into thinking that its products are "on sale."

3. Aeropostale represents its list prices, which are printed on the product tags attached to the items it sells and which are advertised on its website with a slash-through, to be the "regular" and normal selling prices of the items. The list prices function as reference prices to which the advertised discounts are applied.

4. Aeropostale also advertises "free" offers such as "Buy 1 Get 1 Free" or "Buy 1 Get 2 Free," where Aeropostale represents that it will include one or

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two more of a given item (or of a specified similar item) for "free" if the customer pays the list price for the item.

5. Aeropostale's purported discounts from higher purported former prices (the list prices printed on its product tags and on its website) are false because Aeropostale never or rarely offers or sells its products at the advertised list price. Rather, Aeropostale invents inflated and fictitious list prices in order to enable it to advertise perpetual discounts and store-wide "sale" events to induce customers to purchase its products. Aeropostale's purported "free" offers are likewise false because Aeropostale directly recovers the cost of the "free" items by doubling or tripling the first item's selling price to the inflated—and otherwise never charged—list price.

6. Aeropostale's marketing plan is to trick its customers into believing that the list price printed on its product tags and on its product webpages is the regular and normal selling price for its products, and that its products are worth this inflated list price, such that the lower advertised "sale" price represents a special bargain.

7. Aeropostale's nationwide fraudulent advertising scheme harmed consumers like Plaintiffs Janette Lisner, Jennifer Quiroz Nunez and James Andrews, who each purchased falsely discounted products in a California Aeropostale retail store or from the Aeropostale website. Customers were harmed because they would not have purchased the items at the prices they paid had they known the items were not truly "on sale" and had not been regularly offered at the higher list price. Customers did not enjoy the actual discounts Aeropostale represented and promised to them, and the items they purchased were not in fact worth the inflated amount that Aeropostale represented to them. Customers were also harmed because Aeropostale's false advertising scheme fraudulently increased demand for Aeropostale's products, thereby shifting the demand curve and enabling Defendants to charge more than they otherwise could have

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charged—i.e, a price premium—for their products.

8. Plaintiffs each bring this action individually and as a private attorney general seeking public injunctive relief to protect the general public by putting an end to Aeropostale's false discount advertising scheme. Plaintiffs also seek restitution and/or damages on behalf of themselves and on behalf of a class of California Aeropostale customers who have been victims of Aeropostale's intentional and unlawful pattern and practice as described herein of using false discounts, false reference prices, and false "free" offers.

II. PARTIES

9. Plaintiff Janette Lisner is a citizen of the United States of America and California and an individual and a natural adult person who resides in Los Angeles County, California.

10. Plaintiff Jennifer Quiroz Nunez is a citizen of the United States of America and California and an individual and a natural adult person who resides in Tulare County, California.

11. Plaintiff James Andrews is a citizen of the United States of America and California and an individual and a natural adult person who resides in Riverside County, California.

12. Defendant SPARC Group LLC ("SPARC") is a limited liability company chartered under the laws of the State of Delaware. SPARC currently has and at all relevant times had its executive, marketing and technology operations in Lyndhurst, New Jersey or New York, New York. Based on Plaintiffs' investigation, SPARC Group LLC manages the retail and website operations of the Aeropostale brand and has conducted the unlawful actions described herein. SPARC describes itself as the "Operating Company for leading global brands

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including Aeropostale, Brooks Brothers, Forever 21, Lucky Brand and Nautica."[1] SPARC Group LLC is a joint venture between Simon Property Group, L.P. and Authentic Brands Group LLC.

13. Some of the unlawful activities pled herein were conducted by SPARC Group LLC when SPARC Group LLC was legally named "Aero OpCo LLC."[2] Based on Plaintiffs' investigation, on February 25, 2020, Aero OpCo LLC filed with the California Secretary of State a Name Change Amendment in which it stated that Aero OpCo LLC had changed its name to SPARC Group LLC. For purposes of this lawsuit, SPARC Group LLC is a successor to Aero OpCo LLC, and SPARC Group LLC is responsible for all unlawful actions pled herein that SPARC Group LLC conducted during the time that it was named Aero OpCo LLC.

14. Defendant Aero Operations LLC is a limited liability company chartered under the laws of the State of Delaware. Aero Operations LLC currently has and at all relevant times in the past has had its executive operations in Lyndhurst, New Jersey or New York, New York. Based on Plaintiffs' investigation, Aero Operations LLC is involved in the operations of the Aeropostale brand and has materially assisted the other defendants in conducting the unlawful actions described herein.

15. Defendants SPARC Group LLC and Aero Operations LLC (collectively, "Defendants" or "Aeropostale"), own and/or operate approximately

[1] See SPARC Group company LinkedIn webpage at: https://www.linkedin.com/company/sparc-group-llc/ (last accessed April 19, 2021).

[2] SPARC Group LLC still appears to operate to some extent under the name Aero OpCo LLC. For example, as of July 20, 2021, the Aeropostale Terms & Conditions posted on Aeropostale's website at https://www.aeropostale.com/terms-of-service.html stated: "Aeropostale.com is operated by Aero OpCo LLC ('Aero') on behalf of itself and its affiliates (the 'Web Site')."

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500 brick-and-mortar Aeropostale retail stores throughout the United States, including 57 in California. Defendants also own and/or operate a retail website www.aeropostale.com, through which Defendants advertise and sell their goods, with said website being regularly seen and used by consumers in California and throughout the United States to purchase goods from Aeropostale.

16. Defendants also operate distribution centers in Ontario, California and South River, New Jersey.

17. Defendants Doe 1 through Doe 5, inclusive, aided and/or abetted Defendants SPARC Group LLC and/or Aero Operations LLC in such a manner that Doe 1 through Doe 5, inclusive, are each directly, contributorily, vicariously, derivatively and/or otherwise liable for the acts or omissions of Aeropostale pled herein. Plaintiffs are currently unaware of the true identities of Doe 1 through Doe 5, inclusive; upon learning the true identities of Doe 1 through Doe 5, inclusive, Plaintiffs anticipate either freely amending the operative complaint or requesting leave from the Court to amend the operative complaint.

18. The allegations of this Complaint only concern Aeropostale's actions since September 16, 2016, during which time Defendants have owned and/or operated the Aeropostale business.

III. JURISDICTION AND VENUE

19. **Subject Matter Jurisdiction.** This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2) because the amount in controversy, exclusive of interest and costs, exceeds $5,000,000, and this is a class action in which there are members of the proposed Class who are citizens of a state different from Defendants.

20. **Personal Jurisdiction.** This Court has personal jurisdiction over Defendants because, without limitation: (1) Defendants have purposely availed themselves of the privileges of conducting business activities in California; (2) Defendants currently maintain systematic and continuous business contacts with

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California including marketing and selling their clothing products to Californians at their Aeropostale retail stores and on the Aeropostale website; and (3) Defendants have committed tortious acts within the state of California (as alleged, without limitation, throughout this Complaint).

21. Defendants own and/or operate approximately 57 brick-and-mortar Aeropostale retail stores in California and operate a distribution center in Ontario, California. Defendants also operate the Aeropostale website, through which Aeropostale advertises and sells its goods to individuals throughout California.

22. **Venue**. Venue is proper pursuant to 28 U.S.C. §1391 because Plaintiffs Janette Lisner and James Andrews reside in this District; many of the acts and transactions giving rise to this action occurred in this District; Defendants are authorized to conduct business in this District and do substantial business in this District; Defendants have intentionally availed themselves of the laws and markets within this District through distribution and sale of their products in this District; and Defendants are subject to personal jurisdiction in this District.

IV. FACTUAL ALLEGATIONS OF AEROPOSTALE'S FALSE DISCOUNT ADVERTISING SCHEME

23. Aeropostale currently operates approximately 500 brick-and-mortar Aeropostale retail stores throughout the United States, including 57 in California.

24. Aeropostale also operates a retail website at www.aeropostale.com, through which Aeropostale advertises and sells its goods, which is regularly seen and used to purchase goods from Aeropostale by consumers throughout the United States, including in California.

25. Almost all the items offered by Aeropostale are branded as "Aeropostale" products and are exclusively offered for sale and sold by Aeropostale in its retail stores and on its website. In other words, the products offered by Aeropostale in its stores and on its website are not offered or sold by,

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and are not available from, any other retailer.

26. Aeropostale had over $1 billion in sales revenues in 2019 in its retail stores and on its website.

27. In significant part, however, Aeropostale's revenues have been the product of a massive false discount advertising scheme. Aeropostale perpetually advertises nearly all of its products with significant discounts of 50-70% from a false higher reference price, in order to trick its customers into believing the advertised "sale" price represents a special bargain from Aeropostale's usual and regular prices. In fact, unbeknownst to its customers, Aeropostale's discounts are never-ending, and its products are never or virtually never offered at the supposed regular price. Aeropostale perpetrates this illegal scheme in order to induce consumers to purchase its products and to increase the amount it can charge for its products.

28. Decades of academic research has established that the use of false discounts, such as those utilized by Aeropostale, materially impacts consumers' behavior. Advertised discounts from a higher reference price affect a consumer's perception of the value of the transaction, the consumer's willingness to make the purchase, and the amount of money the consumer is willing to pay for the product.[3]

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[3] See, *e.g.*, Rajesh Chandrashekaran & Dhruv Grewal, *Assimilation of Advertised Reference Prices: The Moderating Role of Involvement*, 79 J. Retailing 53 (2003); Pilsik Choi & Keith S. Coulter, *It's Not All Relative: The Effects of Mental and Physical Positioning of Comparative Prices on Absolute Versus Relative Discount Assessment*, 88 J. Retailing 512 (2012); Larry D. Compeau & Dhruv Grewal, *Comparative Price Advertising: An Integrative Review,* 17 J. Pub. Pol'y & Mktg. 257 (1998); Larry D. Compeau, Dhruv Grewal & Rajesh Chandrashekaran, *Comparative Price Advertising: Believe It or Not*, 36 J. Consumer Aff. 284 (2002); David Friedman, *Reconsidering Fictitious Pricing*, 100 Minn. L. Rev. 921 (2016); Dhruv Grewal & Larry D. Compeau, *Consumer Responses to Price and its Contextual Information Cues: A Synthesis of Past Research, a Conceptual Framework, and Avenues for Further Research*, in 3 Rev. of Mktg. Res. 109 (Naresh K. Malhotra ed., 2007); Daniel J. Howard & Roger A. Kerin, *Broadening the Scope of Reference Price Advertising Research:*

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29. When advertised discounts and the reference prices to which those discounts are applied are bona fide and truthful—e.g., when those reference prices truly represent the retailer's regular former prices for the product—they may help consumers in making informed purchasing decisions. In contrast, consumers are harmed when retailers, such as Aeropostale, advertise fake "sales" from false and inflated purported former prices. The advertised false discounts from inflated former prices deceive consumers, deprive consumers of a fair opportunity to accurately evaluate the offer, and result in purchasing decisions based on false pretenses.

30. Fake "sales" from false former prices—as employed by Aeropostale—cause consumers to pay more than they otherwise would have paid for products. False discounts also fraudulently increase consumer demand for products, shifting the demand curve and enabling the retailer to charge higher prices—to everyone—than the retailer otherwise could have charged.

31. Beyond the adverse impact upon consumers' welfare, the practice of employing false discounts from false former prices also negatively affects the integrity of competition in retail markets. A retailer's use of false discounts constitutes an unfair method of competition, injuring honest competitors that sell the same or similar products, or otherwise compete in the same market, who advertise legitimate sales from valid and accurate former prices. Businesses who play by the rules—and the investors in those businesses—are penalized if the unlawful advertising practices of their competitors go unchecked.

32. California law, as well as federal regulations, prohibit false discount

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A Field Study of Consumer Shopping Involvement, 70 J. Mktg. 185 (2006); Aradhna Krishna, Richard Briesch, Donald R. Lehmann & Hong Yuan, *A Meta-Analysis of the Impact of Price Presentation on Perceived Savings*, 78 J. Retailing 101 (2002); Balaji C. Krishnan, Sujay Dutta & Subhash Jha, *Effectiveness of Exaggerated Advertised Reference Prices: The Role of Decision Time Pressure*, 89 J. Retailing 105 (2013); and Tridib Mazumdar, S. P. Raj & Indrahit Sinha, *Reference Price Research: Review and Propositions*, 69 J. Mktg. 84 (2005).

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advertising practices such as those perpetrated by Aeropostale. California's Unfair Competition Law and False Advertising Law generally forbid unfair business practices and false advertising (i.e., Cal. Bus. and Prof. Code §§ 17200 *et seq.* and 17500 *et seq.*). Regarding sales to consumers for household purposes, the California Consumers Legal Remedies Act prohibits "[m]aking false or misleading statements of fact concerning reasons for, existence of, or amounts of, price reductions." Cal. Civ. Code § 1770(a)(13).

33. The United States Court of Appeals for the Ninth Circuit has recognized the abuses that flow from false discount advertising: "Most consumers have, at some point, purchased merchandise that was marketed as being 'on sale' because the proffered discount seemed too good to pass up. Retailers, well aware of consumers' susceptibility to a bargain, therefore have an incentive to lie to their customers by falsely claiming that their products have previously sold at a far higher 'original' price in order to induce customers to purchase merchandise at a purportedly marked-down 'sale' price. Because such practices are misleading—and effective—the California legislature has prohibited them." *Hinojos v. Kohl's Corp.*, 718 F.3d 1098, 1101 (9th Cir. 2013).

34. The California Court of Appeal has likewise recognized the importance of California's false discount advertising statutes in protecting consumers: "Our Legislature has adopted multiple statutes that specifically prohibit the use of deceptive former price information and misleading statements regarding the amount of a price reduction. … These statutes make clear that … our Legislature has concluded 'reasonable people can and do attach importance to [a product's former price] in their purchasing decisions.' (alterations in original) (quoting Kwikset Corp. v. Superior Court, 246 P.3d 877, 892 (Cal. 2011))." *Hansen v. Newegg.com Americas, Inc.*, 25 Cal.App.5th 714, 730 (2018).

35. The Federal Trade Commission ("FTC") has also described what constitutes false discount advertising from false former prices:

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> (a) One of the most commonly used forms of bargain advertising is to offer a reduction from the advertiser's own former price for an article. If the former price is the actual, bona fide price at which the article was offered to the public on a regular basis for a reasonably substantial period of time, it provides a legitimate basis for the advertising of a price comparison. Where the former price is genuine, 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 cases, the "reduced price" is, in reality, probably just the seller's regular price.

16 C.F.R § 233.1.

36. Aeropostale's false discounting scheme is similar in all material respects to the deceptive practices described and prohibited by these false discount advertising laws and regulations.

A. <u>Aeropostale's False Discounts From False Former Prices</u>

37. Aeropostale intentionally and deceptively indicates to consumers that the advertised "sale" prices in its retail stores represent significant discounts from Aeropostale's own regular and normal prices for its products. Aeropostale's regular practice is to post large signs on its store windows and throughout its retail stores advertising that virtually all of its products are "XX% OFF" (typically 50-70% off). These signs are typically pre-printed, but Aeropostale also posts hand-written signs on black chalkboard in its stores to further give the appearance of a special limited-time sale. But in fact, the percentage-off savings and discounts are perpetual, and are applied to the inflated and fictitious list price printed on the product tags.

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38. Below are photographs taken at an Aeropostale store on July 7, 2019, which are representative of Aeropostale's in-store advertising at any given time:

Percentage-Off Discount Advertising
Aeropostale Retail Store on July 7, 2019









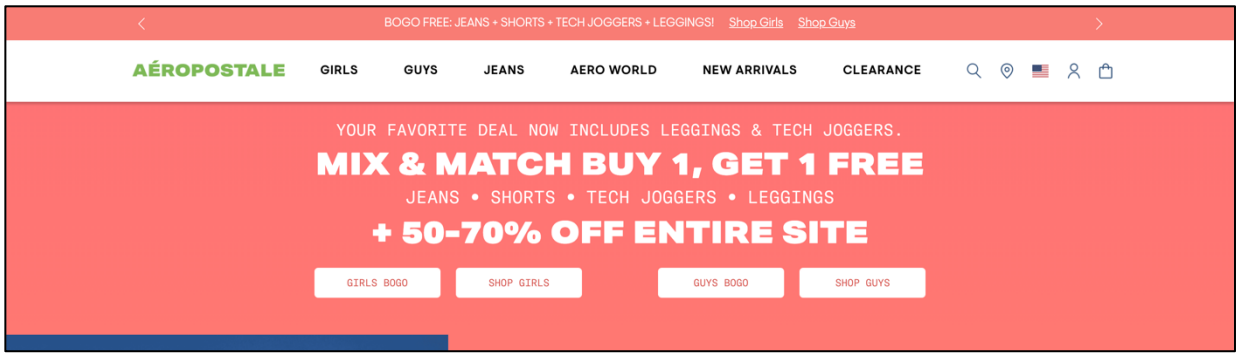
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39. In this example, Aeropostale advertises an "ENTIRE STORE 50-70% OFF" sales event. The promised discounts are advertised on large signs both outside and inside the store. Signage on the racks adjacent to the clothing items prominently advertises "50% OFF," "60% OFF" and "70% OFF" in bold lettering. Aeropostale has also placed hand-written chalkboard signs in the store which advertise discounts such as "50% OFF" and "70% OFF."

40. But in fact, Aeropostale perpetually advertises these 50-70% storewide savings whether it is in the middle of summer, whether it is Black Friday, or whether it is in the middle of April.

41. For example, on April 23, 2021, Aeropostale advertised on its website a similar "50-70% OFF ENTIRE SITE" sale. See the screenshot below:

Homepage of Aeropostale Website April 23, 2021



42. Advertised discounts such as these are viewed both under the law and by the reasonable consumer to refer to discounts from Aeropostale's own regular offering prices for those products. *See* 16 C.F.R § 233.1; *see also* 4 Cal. Code Reg. § 1301.

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43. There can be no doubt that Aeropostale intends that consumers interpret and understand the list prices printed on its product tags and on its website to stand for Aeropostale's regular selling prices for those products. In fact, for years on its product webpages on the Aeropostale website, Aeropostale has prominently advertised that the advertised savings are from Aeropostale's "REGULAR PRICE." See the screenshot below:

Aeropostale Product Webpage August 20, 2020



44. This screenshot is of the product webpage for the Long Sleeve Seriously Soft Crew Tee ("Crew Tee") taken from the Aeropostale website on August 20, 2020. Aeropostale features a prominent red box with the phrase "SAVE **59%** OFF THE REGULAR PRICE." The 59% savings was applied to the represented "regular" slash-through list price of $29.50. Further, for maximum impact, Aeropostale designed this red box (containing the false advertising "SAVE **59%** OFF THE REGULAR PRICE") as an animation on the product webpage which suddenly flies in from the right side of the screen and bounces up against the strike-through list price.

45. The advertised savings was false. Since November 1, 2019, Aeropostale had ***never*** charged more than the $12.00 selling price for the Crew Tee. Notably, based on counsel's investigation, from November 26, 2019 through August 19, 2020 Aeropostale charged $7.00 for the Crew Tee ($5.00 less than the

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supposed $12.00 "sale" price). Thus, customers who purchased the falsely discounted Crew Tee on August 20, 2020 had been tricked by Aeropostale into paying $5.00 ***more*** than the true "regular price" of the Crew Tee.

46. Aeropostale's false discount advertisements and sales events are intended by Aeropostale to trick its customers into believing that its products have a value of, and are usually sold at, the list prices printed on the product tags and on the product webpages, and that the purported "sale" prices and advertised discounts represent a special and limited-time bargain.

47. In fact, the sale and discount representations on the signage and the list prices printed on the product tags are false and misleading, because customers are not receiving the special bargain that Aeropostale has led them to believe. The specific amounts of the percentage-off or dollar discount may slightly change over time, but the existence of a significant discount on each product is perpetual.

B. Aeropostale's False "Free" Offers.

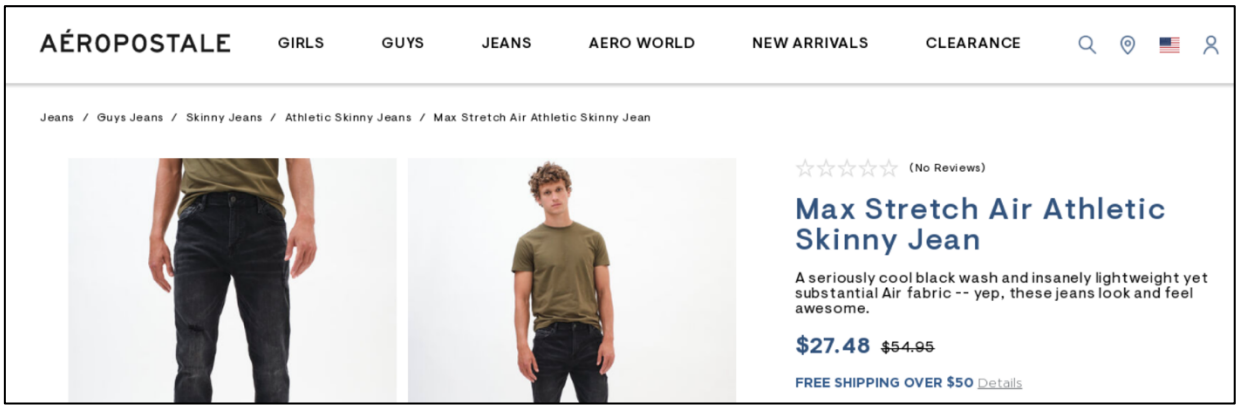
48. Another related false discounting practice by Aeropostale is to advertise "Buy 1 Get 1 Free" or "Buy 1 Get 2 Free" offers for its products.

49. However, in all cases, Aeropostale's promise of "Buy 1 Get 1 Free" or "Buy 1 Get 2 Free" is false and deceptive. Whenever Aeropostale makes such a purported "Free" offer, Aeropostale inflates the first item's selling price to the (never otherwise charged) price listed on the tag. Given Aeropostale's perpetual "discount" pricing of 50-70% off the list price, this means Aeropostale is directly recovering the cost of the "free" product(s) by doubling or tripling the price of the first product, such that the customer is in fact not getting any deal at all.

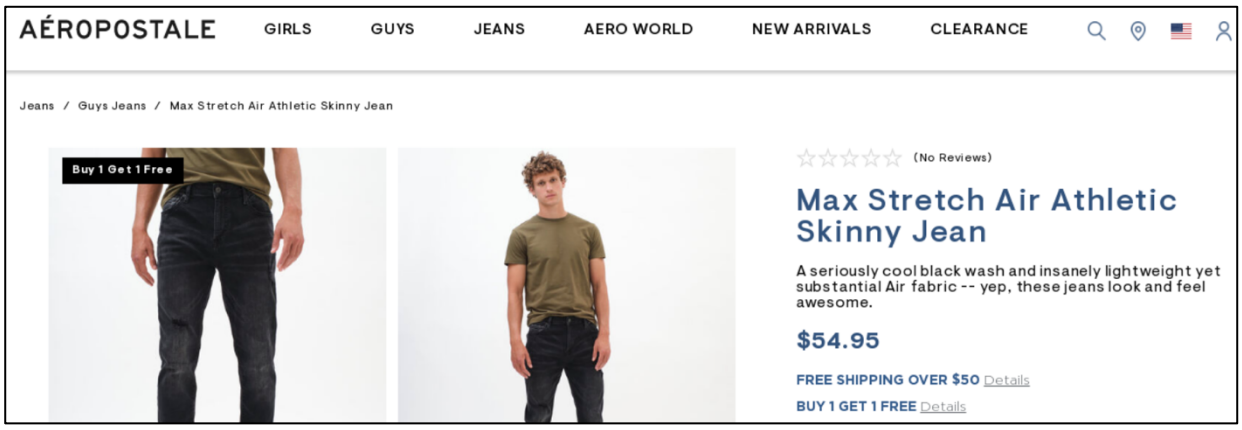
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50. For example, below are two screenshots from the Aeropostale website demonstrating Aeropostale's false free offer scheme.

Aeropostale Website January 13, 2021
Advertised With a 50% Discount From an Inflated Reference Price



Aeropostale Website January 14, 2021
Advertised With False "BUY 1 GET 1 FREE" Offer (Selling Price is Exactly Doubled)



51. This item, the Max Stretch Air Athletic Skinny Jean, was always either offered by Aeropostale for sale at $27.48 or less, or at the $54.95 price with a "Buy 1 Get 1 Free" offer. Note that $27.48 is exactly 50% of $54.95. In other words, on January 14, 2021, (see the screenshot above) Aeropostale formulaically doubled the selling price in order to offer its (false) "Buy 1 Get 1 Free" offer.

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52. Aeropostale similarly advertises "Buy 1 Get 1 Free" and "Buy 1 Get 2 Free" offers in its retail stores. For example, below are photographs taken at an Aeropostale retail store on July 7, 2019, showing "Buy 1 Get 1 Free" and "Buy 1 Get 2 Free" advertising.

"Buy 1 Get 1 Free" and "Buy 1 Get 2 Free" Advertising
Aeropostale Retail Store on July 7, 2019









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53. The Federal Trade Commission warns sellers advertising "Free" offers that "Where the seller, in making such an offer, increases his regular price of the article required to be bought, or decreases the quantity and quality of that article, or otherwise attaches strings (other than the basic condition that the article be purchased in order for the purchaser to be entitled to the 'free' or '1¢' additional merchandise) to the offer, the consumer may be deceived." 16 C.F.R § 233.4. "In other words, when the purchaser is told that an article is 'Free' to him if another article is purchased, the word 'Free' indicates that he is paying nothing for that article and no more than the regular price for the other. *Thus, a purchaser has a right to believe that the merchant will not directly and immediately recover, in whole or in part, the cost of the free merchandise or service by marking up the price of the article which must be purchased . . .*" 16 C.F.R. § 251.1 (emphasis added).

54. Aeropostale engages in exactly this deceptive and unlawful practice when it recovers the cost of the supposedly "free" product(s) by doubling or tripling the price of the first product. Aeropostale's "free" offer representations are false, and the customer is not in fact getting the bargain that Aeropostale is advertising.

55. Meanwhile, these "BUY 1 GET 1 FREE" or "BUY 1 GET 2 FREE" offer days, on which Aeropostale increases the price of the first product to the list price, do not constitute bona fide offers to sell the product at the list price because the product is *only* offered at the list price when accompanied by a supposedly "FREE" offer. Thus, Aeropostale cannot credibly claim to "establish" its list prices via this deceptive free offer scheme, which is itself an independent unlawful act and practice.

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V. PLAINTIFFS' ALLEGATIONS ARE BASED ON A COMPREHENSIVE INVESTIGATION OF NEARLY 7 YEARS.

56. Plaintiffs' allegations concerning Aeropostale's false discount advertising scheme are based on a comprehensive investigation by Plaintiffs' counsel of Aeropostale's pricing practices for a period of nearly 7 years. Plaintiffs' counsel has been monitoring and scraping the Aeropostale website on an automated daily basis with a proprietary software program since November 5, 2014. Plaintiffs' counsel has compiled and extracted daily pricing and marketing data from the website for nearly all of the products Aeropostale has offered during this time. In total, **Plaintiffs' counsel has assembled and analyzed an exhaustive historical database of daily prices and time-stamped screenshots of over 3.8 million daily offerings of over 39,000 products over this nearly 7-year period**. (Note, while counsel has been investigating the Aeropostale business since November 5, 2014, the allegations of this Complaint only concern Aeropostale's actions since September 16, 2016, during which time Defendants have owned and/or operated the Aeropostale business.)

57. Plaintiffs' counsel has also investigated brick-and-mortar Aeropostale retail stores and has found that Aeropostale's false discount practices and product pricing are substantially the same both online and in-store. Virtually all products that Aeropostale offers in its brick-and-mortar retail stores are also available and are advertised on the Aeropostale website. Based on the investigation of Plaintiffs' counsel, Aeropostale offers and advertises these products with identical list prices and at substantially the same sale prices both on the Aeropostale website and in its retail stores in California and throughout the nation. Thus, Plaintiffs' counsel's comprehensive evidence, statistics, and analysis which establishes the falsity of Aeropostale's discount advertising online, is equally applicable to establishing the falsity of Aeropostale's discount advertising in its retail stores.

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58. For example, the images below demonstrate how Aeropostale's list prices, sales prices, and advertised purported discounts are substantially the same both online and in-store:

Aeropostale Retail Store
November 26, 2019

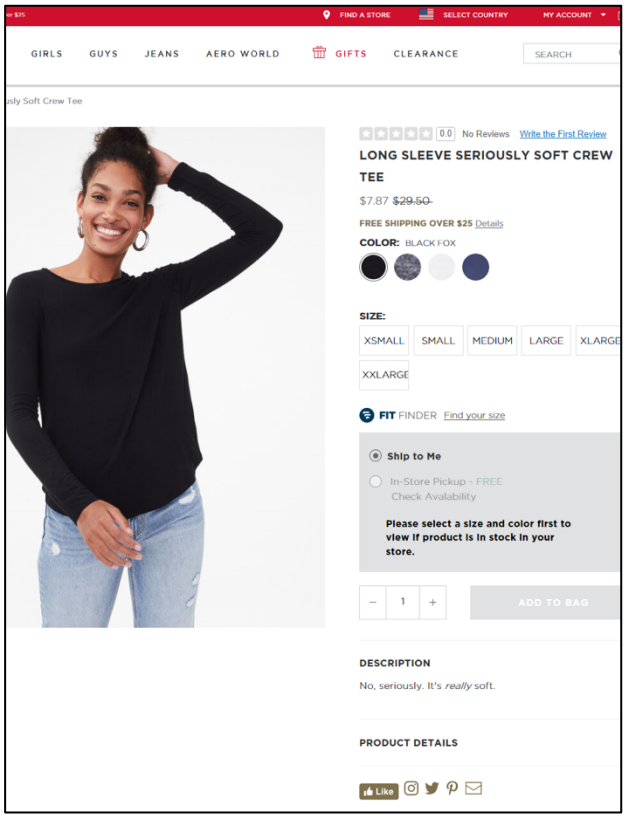
Long Sleeve Seriously Soft Crew Tee
Sales Price: $7.87; List Price $29.50





Aeropostale Website
November 26, 2019

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



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

60. The images below further demonstrate how Aeropostale's list prices,

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sales prices, and advertised purported discounts are substantially the same both online and in-store:

Aeropostale Retail Store
July 7, 2019

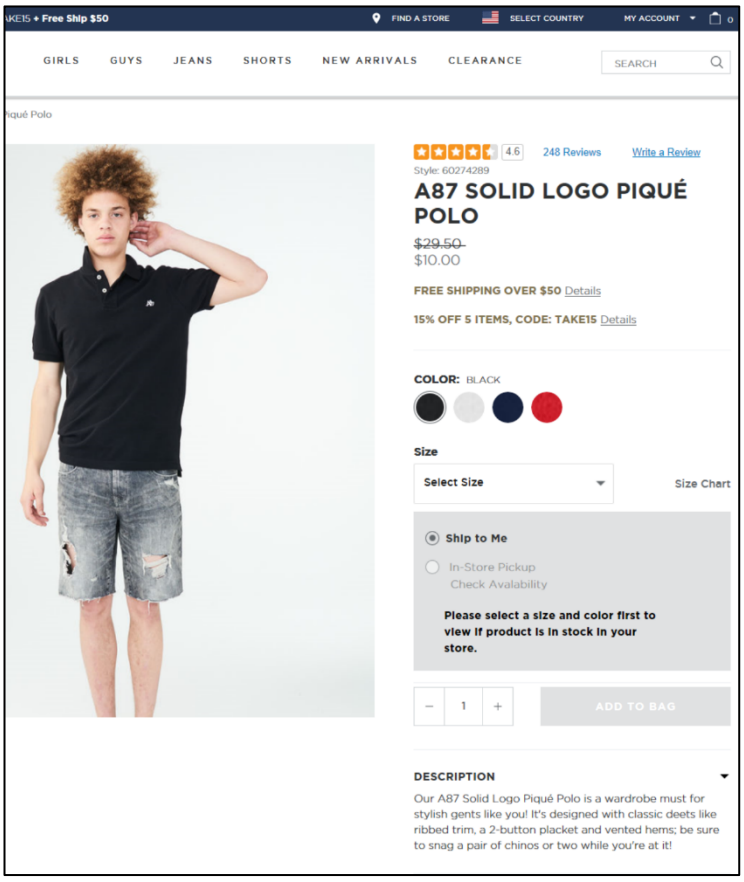
A87 Solid Logo Pique Polo
Sales Price: $10.00; List Price $29.50





Aeropostale Website
July 7, 2019

A87 Solid Logo Pique Polo
Sales Price: $10.00; List Price $29.50



61. The images above are of the Aeropostale A87 Solid Logo Pique Polo ("Solid Polo"). The photographs on the left were taken at an Aeropostale retail store on July 7, 2019. The screenshot on the right was taken the same day on Aeropostale's website of the identical Solid Polo. The photographs on the left show the $10.00 sale price and the $29.50 list price printed on the product tag. On the website, Aeropostale advertised the same $29.50 list price (here represented with a strike-through indicating it is the higher regular price), alongside the same $10.00 sale price.

62. Plaintiffs' counsel's exhaustive big-data analysis of millions of data

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points for more than 39,000 products over this nearly 7-year period shows that Aeropostale advertises perpetual discounts for nearly all of its products. The percentage-off and other discounts are ***always*** false, and Aeropostale's advertised former prices (i.e., the list prices printed on its product tags) to which the discounts are applied are false and inflated. In fact, for the majority of the products that Aeropostale advertises with a discount or with a "Free" offer, Aeropostale has ***never***—not even for a single day—offered the product at the list price without a discount or "free" offer.

63. On information and belief, on those rare occasions that Aeropostale offers some of its products at list price, it does so in bad faith, solely for the purpose of "establishing" its list price to attempt to exculpate itself from legal liability for its illegal pricing scheme. It is Aeropostale's intent to sell few if any products at list price, and in fact Aeropostale sells no, or practically no, products at list price.

64. Also based on investigation by Plaintiffs' counsel, brick-and-mortar Aeropostale mainline stores and Aeropostale "Factory" stores are substantially identical and are for all intents and purposes the same. The mainline and factory stores typically advertise the same store-wide "sale" events, and consistently offer identical products with identical list prices at substantially the same sales prices. In addition, the Aeropostale mainline stores and the Aeropostale Factory stores have substantially the same physical layout and offer substantially the same customer experience.

65. Counsel's comprehensive investigation has revealed and documented that the Aeropostale business has been perpetrating this massive false discount advertising scheme online and in Aeropostale retail stores (including throughout California) since at least November 5, 2014, through to the present day. (However, the allegations of this Complaint only concern Aeropostale's actions since September 16, 2016, during which time Defendants have owned and/or

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operated the Aeropostale business.)

66. The false or misleading nature of Aeropostale's purported discounts and list prices were at all relevant times masked or concealed or hidden such that an ordinary consumer exercising reasonable care under all the circumstances would not have known of or discovered their false or misleading nature.

67. By Aeropostale's design, the false advertising scheme by its very nature is hidden and impossible for the typical consumer to discover. Consumers who shopped at Aeropostale retail stores or on the Aeropostale website would have no way to know the true daily price histories and past selling prices for the products they viewed and purchased. Consumers would have no way to know that the list prices printed on the product tags and on the product webpages were fictitious and inflated and that the advertised savings were false. Consumers would have no way to know that Aeropostale's false discounting practices extended across all of Aeropostale's products and stores and sales channels.

68. In fact, counsel for Plaintiffs only found evidence for Aeropostale's advertising scheme as part of an expensive and expansive multi-year investigation of Aeropostale's pricing practices in general.

VI. CUSTOMERS WERE HARMED AS A RESULT OF AEROPOSTALE'S FALSE DISCOUNT ADVERTISING SCHEME

69. As a direct and proximate result of Aeropostale's false discount advertising scheme and the acts and omissions described herein, all California consumers who have purchased a product in a California Aeropostale retail store or from the Aeropostale website that was advertised with a discount, reference price, or "free" offer have been harmed, have suffered an injury-in-fact, and have lost money or property.

70. **First**, customers were harmed because they would not have purchased the items at the prices they paid had they known the items had not been regularly offered at the higher list price. Customers paid more than they otherwise

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would have paid for the products they purchased.

71. **Second**, customers were harmed because they did not enjoy the actual discounts Aeropostale represented and promised to them.

72. **Third**, customers were harmed because the items they purchased were not in fact worth the inflated amount that Aeropostale represented to them. In fact, the items did not normally sell for, and were not actually worth, the fictitious and invented list price that Aeropostale printed on its product tags and on its website.

73. **Fourth**, customers were harmed because they were overcharged. Customers paid a price premium due to illegitimately inflated demand resulting from Aeropostale's deceptive pricing scheme. Aeropostale's false discount advertising scheme fraudulently increased demand for Aeropostale's products, thereby shifting the demand curve and enabling Defendants to charge their customers more than they otherwise could have charged. Aeropostale's false advertising scheme enabled Aeropostale to charge everyone more for all of its products by artificially stimulating demand based on false pretenses. But for the false advertising scheme, Aeropostale would have had to charge less money for its products in order to enjoy the same level of demand for its products.

VII. PLAINTIFFS' INDIVIDUAL FACTUAL ALLEGATIONS

A. Plaintiff Janette Lisner

74. Plaintiff Janette Lisner is, and at all relevant times has been, a California resident and citizen.

75. Ms. Lisner has been a regular shopper at Aeropostale for many years.

76. **In-Store Purchase of Women's Cami**. Ms. Lisner has made numerous purchases of purportedly discounted products in Aeropostale's retail stores in California.

77. For example, on June 22, 2020, Ms. Lisner visited an Aeropostale

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store located in the Northridge Fashion Center in Northridge, California 91324.

78. While at the store, Ms. Lisner saw prominent signs that advertised significant sales and percentage-off discounts on merchandise throughout the store.

79. Ms. Lisner viewed a women's basic camisole ("Cami") that had a product tag showing a price of $6.50 and which Aeropostale advertised as being on sale for $4.00.

80. Relying on Aeropostale's representations, Ms. Lisner reasonably believed that the Cami was normally offered for sale and sold by Aeropostale for the $6.50 tagged price. Ms. Lisner reasonably believed that the Cami was thereby worth and had a value of $6.50, the price set forth on the product tag by Aeropostale. Ms. Lisner reasonably believed that the advertised "sale" price of $4.00—a purported monetary discount of $2.50—represented a special bargain.

81. Relying on Aeropostale's representations, Ms. Lisner purchased five Camis (three in one color, Item #96627506, one in another color, Item #92584977, and one in a third color, Item #96627506).

82. On the paper receipt that Ms. Lisner received at the cash register and which Ms. Lisner viewed, Aeropostale stated that the sale price of each Cami was "$4.00," and that Ms. Lisner was enjoying a "Discount" of "($2.50)" from the regular price. These representations on the receipt further indicated to Ms. Lisner that each Cami—which was exclusively offered and sold by Aeropostale—had a value of and was normally and regularly sold by Aeropostale for $6.50, and that the $4.00 sale price she paid was a bargain price after Aeropostale applied a "Discount" that resulted in a monetary savings of "($2.50)."

83. However, the $6.50 price which Aeropostale printed on the Cami's product tag and on the receipt, and the advertised discount of $2.50, were false and deceptive. In reality, and unbeknownst to Ms. Lisner, Aeropostale had ***never*** offered the Cami at the purported regular price of $6.50 in its stores.

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84. **Online Purchase of Shelf Cami**. Ms. Lisner has also made purchases of purportedly discounted products from Aeropostale's website.

85. On October 5, 2020, Ms. Lisner visited the Aeropostale website to shop for clothing items. Ms. Lisner viewed and ultimately purchased several items from the website that day. For example, Ms. Lisner viewed webpages advertising a shelf camisole ("Shelf Cami").

86. On the product webpage for the Shelf Cami, Ms. Lisner viewed several representations, including a "sale" price and a higher "regular" price for the Shelf Cami. Ms. Lisner viewed a strike-through "regular" price of "~~$10.50.~~" Directly below this reference price, Ms. Lisner viewed the "sale" price of $4.40.

87. Relying on Aeropostale's representations, Ms. Lisner reasonably believed that the Shelf Cami was normally offered for sale and sold by Aeropostale for the $10.50 reference price. Ms. Lisner reasonably believed that the Shelf Cami was thereby worth and had a value of $10.50. Ms. Lisner reasonably believed that the advertised "sale" price of $4.40—a purported monetary discount of $6.10—represented a special bargain.

88. Relying on Aeropostale's representations, Ms. Lisner purchased two Shelf Camis (Item #022918350).

89. However, the advertised "regular" price and discount for the Shelf Camis—which were exclusively offered and sold by Aeropostale—were false and deceptive because, unbeknownst to Ms. Lisner, Aeropostale had ***never*** offered the Shelf Camis at their advertised regular price of $10.50.

90. The products purchased by Ms. Lisner from Aeropostale were not in fact worth the advertised regular prices that Aeropostale had led Ms. Lisner to believe. Contrary to Aeropostale's representations, Ms. Lisner did not enjoy the advertised and promised savings for the products that she purchased.

91. Aeropostale's advertised false discounts from false former prices were material misrepresentations and inducements to Ms. Lisner's purchases.

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92. As a direct and proximate result of Aeropostale's acts and omissions, Ms. Lisner was harmed, suffered an injury-in-fact, and lost money or property.

93. Ms. Lisner reasonably relied on Aeropostale's material misrepresentations. If Ms. Lisner had known the truth, she would not have purchased the Camis or Shelf Camis or any of the other products she purchased from Aeropostale at the prices she paid. Ms. Lisner did not enjoy the actual discounts Aeropostale represented and promised to her. The products were not in fact worth the inflated amounts that Aeropostale represented to her.

94. Further, Ms. Lisner was overcharged. Aeropostale's false advertising scheme fraudulently increased demand for Aeropostale's products, thereby shifting the demand curve and enabling Aeropostale to charge Ms. Lisner more for its products—including the Camis and Shelf Camis—than Aeropostale otherwise could have charged.

95. Ms. Lisner has a legal right to rely now, and in the future, on the truthfulness and accuracy of Aeropostale's representations regarding its advertised discounts and reference prices.

96. Ms. Lisner has been a regular shopper at Aeropostale, and would shop there again if she could have confidence regarding the truth of Aeropostale's prices and the value of its products.

97. Ms. Lisner will be harmed if, in the future, she is left to guess as to whether Aeropostale is providing a legitimate sale or not, and whether products are actually worth the amount that Aeropostale is representing.

98. If Ms. Lisner were to purchase again from Aeropostale without Aeropostale having changed its unlawful and deceptive conduct alleged herein, Ms. Lisner would be harmed on an ongoing basis and would be harmed once or more in the future.

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B. Plaintiff Jennifer Quiroz Nunez

99. Plaintiff Jennifer Quiroz Nunez is, and at all relevant times has been, a California resident and citizen.

100. Ms. Nunez has been a regular shopper at Aeropostale for many years. She has made numerous purchases of purportedly discounted products in Aeropostale's brick-and-mortar stores in California.

101. For example, on March 29, 2021, Ms. Nunez visited an Aeropostale store located in the Visalia Mall in Visalia, California 93277.

102. While at the store, Ms. Nunez saw prominent signs that advertised significant sales and percentage-off discounts on merchandise throughout the store.

103. Ms. Nunez viewed signage adjacent to several pairs of denim shorts that advertised that the shorts were "BUY 1 GET 1 FREE." Ms. Nunez viewed the product tags attached to two pairs of denim shorts, which each showed a price of $59.95.

104. Relying on Aeropostale's representations, Ms. Nunez reasonably believed that the denim shorts were normally offered for sale and sold by Aeropostale for the $59.95 tagged price. Ms. Nunez reasonably believed that the denim shorts were thereby worth and had a value of $59.95, the price set forth on the product tag by Aeropostale. Ms. Nunez reasonably believed that the advertised "BUY 1 GET 1 FREE" offer—a purported monetary discount of $59.95 for purchasing two pairs of denim shorts—represented a special bargain.

105. Relying on Aeropostale's representations, Ms. Nunez purchased one pair of denim shorts for $59.95 (Item #93390793) and received a second pair of denim shorts, purportedly for "free" (Item #93412967).

106. On the paper receipt that Ms. Nunez received at the cash register and which Ms. Nunez viewed, Aeropostale made additional product pricing and value representations regarding the pairs of denim shorts. Aeropostale printed on the

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receipt that the regular price for each pair of denim shorts was "$59.95," and that the second pair of denim shorts was "100.0% Off" the regular price of $59.95, comprising a monetary discount of "($59.95)." These representations on the receipt further indicated to Ms. Nunez that each pair of denim shorts had a value of and was normally and regularly sold by Aeropostale for $59.95, and that the "free" pair of denim shorts she received after paying the full regular price for the first pair of denim shorts was a bargain price after Aeropostale applied a special "BUY 1 GET 1 FREE" discount that resulted in a monetary savings of "($59.95)."

107. However, the $59.95 price which Aeropostale printed on the product tag of the shorts and on the receipt, the advertised discount of "BUY 1 GET 1 FREE," and the $59.95 in claimed monetary savings, were false and deceptive. In reality, and unbeknownst to Ms. Nunez, Aeropostale had ***never*** offered either pair of denim shorts in its stores at the purported regular price of $59.95. The denim shorts—which were exclusively offered and sold by Aeropostale—were not in fact worth the $59.95 price that Aeropostale had led her to believe. Each pair of denim shorts had nearly always been advertised with a "BUY 1 GET 1 FREE" offer or with a "50% OFF" discount from the $59.95 tagged price. Contrary to Aeropostale's representations, Ms. Nunez did not enjoy the advertised and promised savings of $59.95 for the "free" pair of denim shorts.

108. Aeropostale's advertised false "free" offer and false and inflated list prices were material misrepresentations and inducements to Ms. Nunez's purchase.

109. As a direct and proximate result of Aeropostale's acts and omissions, Ms. Nunez was harmed, suffered an injury-in-fact, and lost money or property.

110. Ms. Nunez reasonably relied on Aeropostale's material misrepresentations. If Ms. Nunez had known the truth, she would not have purchased the pairs of denim shorts from Aeropostale at the price she paid.

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Ms. Nunez did not enjoy the actual discount Aeropostale represented and promised to her. The pairs of denim shorts were not in fact worth the inflated amount that Aeropostale represented to her. In fact, the pairs of denim shorts did not normally sell for, and were not actually worth, the fictitious and invented list price that Aeropostale printed on its product tag and on the receipt.

111. Further, Ms. Nunez was overcharged. Aeropostale's false advertising scheme fraudulently increased demand for Aeropostale's products including the denim shorts, thereby shifting the demand curve and enabling Aeropostale to charge Ms. Nunez more for the denim shorts than Aeropostale otherwise could have charged.

112. Ms. Nunez has a legal right to rely now, and in the future, on the truthfulness and accuracy of Aeropostale's representations regarding its advertised reference prices and discounts.

113. Ms. Nunez has been a regular shopper at Aeropostale, and would shop there again if she could have confidence regarding the truth of Aeropostale's prices and the value of its products.

114. Ms. Nunez will be harmed if, in the future, she is left to guess as to whether Aeropostale is providing a legitimate sale or not, and whether products are actually worth the amount that Aeropostale is representing.

115. If Ms. Nunez were to purchase again from Aeropostale without Aeropostale having changed its unlawful and deceptive conduct alleged herein, Ms. Nunez would be harmed on an ongoing basis and would be harmed once or more in the future.

C. Plaintiff James Andrews

116. Plaintiff James Andrews is, and at all relevant times has been, a California resident and citizen.

117. Mr. Andrews has been a regular shopper at Aeropostale for many years. He has made numerous purchases of purportedly discounted products in

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Aeropostale's brick-and-mortar stores in California.

118. For example, on November 7, 2019, Mr. Andrews visited an Aeropostale store located in the Moreno Valley Mall in Moreno Valley, California 92553.

119. Prior to entering the store, Mr. Andrews saw a large sign hanging in the window by the storefront entrance advertising "Up to 70% OFF" all items in the store. While at the store, Mr. Andrews saw prominent signs that advertised significant sales and percentage-off discounts on merchandise throughout the store.

120. Mr. Andrews viewed signage adjacent to a black knit hat ("Hat") which advertised that the Hat was on sale for "60% OFF." Mr. Andrews also viewed the product tag attached to the Hat, which showed a price of $19.50.

121. Relying on Aeropostale's representations, Mr. Andrews reasonably believed that the Hat was normally offered for sale and sold by Aeropostale for the $19.50 tagged price. Mr. Andrews reasonably believed that the Hat was thereby worth and had a value of $19.50, the price set forth on the product tag by Aeropostale. Mr. Andrews reasonably believed that the advertised discount of "60% OFF"—which resulted in a purported "sale" price of $7.80 and a purported monetary discount of $11.70—represented a special bargain.

122. Relying on Aeropostale's representations, Mr. Andrews purchased the Hat (Item #92652883).

123. On the paper receipt that Mr. Andrews received at the cash register and which Mr. Andrews viewed, Aeropostale made additional product pricing and value representations regarding the Hat. Aeropostale printed on the receipt that the sale price of the Hat was "$7.80," and that Mr. Andrews was enjoying a "PROMO" of "60% OFF" the regular price of "$19.50" and a monetary discount of "($11.70)." These representations on the receipt further indicated to Mr. Andrews that the Hat had a value of and was normally and regularly sold by

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Aeropostale for $19.50, and that the lower $7.80 price he paid was a bargain price after Aeropostale applied a special "60% OFF" "PROMO" discount that resulted in a monetary savings of "($11.70)."

124. However, the $19.50 price which Aeropostale printed on the Hat's product tag and on the receipt, and the advertised discounts of "60% OFF" and $11.70 in monetary savings from that tagged price, were false and deceptive. In reality, and unbeknownst to Mr. Andrews, Aeropostale had ***never*** offered the Hat at the purported regular price of $19.50 in its stores.

125. Aeropostale's advertised false discounts from false former prices were material misrepresentations and inducements to Mr. Andrews' purchase.

126. As a direct and proximate result of Aeropostale's acts and omissions, Mr. Andrews was harmed, suffered an injury-in-fact, and lost money or property.

127. Mr. Andrews reasonably relied on Aeropostale's material misrepresentations. If Mr. Andrews had known the truth, he would not have purchased the Hat from Aeropostale at the price he paid. Mr. Andrews did not enjoy the discount Aeropostale represented and promised to him. The Hat was not in fact worth the inflated amount that Aeropostale represented to him. In fact, the Hat did not normally sell for, and was not actually worth, the fictitious and invented list price that Aeropostale printed on its product tag and on the receipt.

128. Further, Mr. Andrews was overcharged. Aeropostale's false advertising scheme fraudulently increased demand for Aeropostale's products including the Hat, thereby shifting the demand curve and enabling Aeropostale to charge Mr. Andrews more for the Hat than Aeropostale otherwise could have charged.

129. Mr. Andrews has a legal right to rely now, and in the future, on the truthfulness and accuracy of Aeropostale's representations regarding its advertised reference prices and discounts.

130. Mr. Andrews has been a regular shopper at Aeropostale, and would

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shop there again if he could have confidence regarding the truth of Aeropostale's prices and the value of its products.

131. Mr. Andrews will be harmed if, in the future, he is left to guess as to whether Aeropostale is providing a legitimate sale or not, and whether products are actually worth the amount that Aeropostale is representing.

132. If Mr. Andrews were to purchase again from Aeropostale without Aeropostale having changed its unlawful and deceptive conduct alleged herein, Mr. Andrews would be harmed on an ongoing basis and would be harmed once or more in the future.

VIII. CLASS ACTION ALLEGATIONS

133. **Class Definition:** Plaintiffs Janette Lisner, Jennifer Quiroz Nunez and James Andrews bring this class-action lawsuit on behalf of themselves and the members of the following class (the "Class"):

> **All citizens of the State of California who, within the applicable limitations period, purchased from an Aeropostale retail store located in California or from the Aeropostale website one or more products which was advertised or promoted by displaying or disseminating a discount (including a reference price, a percentage-off offer, or a "free" offer).**

134. **In-Store Subclass Definition:** Plaintiff Janette Lisner, Jennifer Quiroz Nunez and James Andrews bring this class-action lawsuit on behalf of themselves and the members of the following subclass (the "In-Store Subclass"):

> **All citizens of the State of California who, within the applicable limitations period, purchased from an Aeropostale retail store located in California one or more products which was advertised or promoted by displaying or disseminating a discount (including a reference price, a percentage-off offer, or a "free" offer).**

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135. **Online Subclass Definition:** Plaintiff Janette Lisner brings this class-action lawsuit on behalf of herself and the members of the following subclass (the "Online Subclass"):

> **All citizens of the State of California who, within the applicable limitations period, purchased from the Aeropostale website one or more products which was advertised or promoted by displaying or disseminating a discount (including a reference price, a percentage-off offer, or a "free" offer).**

136. **All claims and the Class and Subclass definitions are limited to claims which have not been discharged in bankruptcy**.

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

138. ***Numerosity.*** Plaintiffs do not know the exact number of Class members but are informed and believe that the Class easily comprises tens of thousands of individuals. As such, Class members are so numerous that joinder of all members is impracticable.

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

a. Aeropostale's policies and actions regarding its advertising;

b. The accuracy of Aeropostale's advertised discounts and reference prices;

c. The accuracy of Aeropostale's advertised "free" offers such as "Buy 1 Get 1 Free" and "Buy 1 Get 2 Free";

d. Whether the alleged conduct of Aeropostale violates

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California Civil Code § 1750 *et seq.*, California Business & Professions Code § 17500 *et seq.*, and California Business & Professions Code § 17200 *et seq.*;

e. Whether the alleged conduct of Aeropostale violates 16 C.F.R § 233.1 *et seq.* and 16 C.F.R. § 251.1; and

f. Whether Plaintiffs and the Class have suffered injury and have lost money or property as a result of such false or misleading discounts, "free" offers, and reference prices.

140. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the party opposing the Class.

141. The party opposing the Class has acted or refused to act on grounds generally applicable to the Class.

142. ***Typicality.*** Plaintiffs' claims are typical of Class members' claims. Plaintiffs and Class members all sustained injury as a result of Defendants' practices and schemes.

143. ***Adequacy.*** Plaintiffs will fairly and adequately protect Class members' interests. Plaintiffs have no interests antagonistic to Class members' interests. Plaintiffs have retained counsel who have considerable experience and success in prosecuting complex class action and consumer protection cases.

144. Further, a class action is superior to all other available methods for fairly and efficiently adjudicating this controversy. Each Class member's interests are small compared to the burden and expense required to litigate each of their claims individually, so it would be impractical and would not make economic sense for Class members to seek individual redress for Aeropostale's conduct. Individual litigation would add administrative burden on the courts, increasing the delay and expense to all parties and to the court system. Individual litigation would also create the potential for inconsistent or contradictory judgments

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regarding the same uniform conduct. A single adjudication would create economies of scale and comprehensive supervision by a single judge. Moreover, Plaintiffs do not anticipate any difficulties in managing a class action trial.

145. Aeropostale continues to advertise false discounts and false free offers in its California stores and on its website (and in its stores nationwide) to this day. There is no reason to believe that Aeropostale will voluntarily and permanently cease its unlawful practices. Moreover, in the unlikely event that Aeropostale were to cease its unlawful practices, Aeropostale can and is likely to recommence these unlawful practices.

146. In acting toward Plaintiffs, the Class, and the general public in the manner alleged herein, Aeropostale acted with and was guilty of malice, fraud, and oppression and acted in a manner with a strong and negative impact upon its customers and the public.

147. Aeropostale is primarily engaged in the business of selling clothing and apparel goods. Each cause of action brought by Plaintiffs against Aeropostale in this Complaint arises from and is limited to statements or conduct by Aeropostale that consist of representations of fact about Aeropostale's business operations or goods that is or was made for the purpose of obtaining approval for, promoting, or securing sales of or commercial transactions in, Aeropostale's goods or the statement is or was made in the course of delivering Aeropostale's goods. Each cause of action brought by Plaintiffs against Aeropostale in this Complaint arises from and is limited to statements or conduct by Aeropostale for which the intended audience is an actual or potential buyer or customer, or a person likely to repeat the statements to, or otherwise influence, an actual or potential buyer or customer.

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CAUSES OF ACTION

COUNT I
Violation of the Consumers Legal Remedies Act
California Civil Code § 1750 *et seq.*

148. Plaintiffs reallege and incorporate by reference all paragraphs alleged hereinbefore.

149. Plaintiffs bring this claim in their individual capacities, in their capacities as private attorneys general seeking the imposition of public injunctive relief to protect the general public, and as representatives of the putative Class.

150. Each of Defendants SPARC Group LLC and Aero Operations LLC, and each Doe defendant is a "person," as defined by California Civil Code § 1761(c).

151. Plaintiffs Janette Lisner, Jennifer Quiroz Nunez and James Andrews are each a "consumer," as defined by California Civil Code § 1761(d).

152. The Aeropostale products purchased by each Plaintiff from Aeropostale are "goods" as defined by California Civil Code § 1761(a).

153. Plaintiffs' purchases from Aeropostale each constitutes a "transaction," as defined by California Civil Code § 1761(e).

154. Venue is proper under Cal. Civil Code § 1780(d) because Plaintiff Janette Lisner's transactions which are the subject of this Complaint occurred in this county. Plaintiff's declaration establishing that this Court is a proper venue for this action is attached hereto as **Exhibit A.**

155. The unlawful methods, acts or practices alleged herein to have been undertaken by Aeropostale were all committed intentionally and knowingly. The unlawful methods, acts or practices alleged herein to have been undertaken by Aeropostale did not result from a bona fide error notwithstanding the use of reasonable procedures adopted to avoid such error.

156. Aeropostale intentionally deceived Plaintiffs and the Class, and continues to deceive the public, by advertising false discounts, false former

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prices, and false "free" offers.

157. Aeropostale's methods, acts and practices, including Aeropostale's misrepresentations, active concealment, and failures to disclose, violated and continue to violate the CLRA in ways including, but not limited to, the following:

a. Aeropostale misrepresented that its products had characteristics, benefits, or uses that they did not have (Cal. Civ. Code § 1770(a)(5));

b. Aeropostale advertised its products with an intent not to sell them as advertised (Cal. Civ. Code § 1770(a)(9));

c. Aeropostale made false or misleading statements of fact concerning reasons for, existence of, or amounts of, price reductions. (Cal. Civ. Code § 1770(a)(13)); and

d. Aeropostale represented that its products were supplied in accordance with previous representations when they were not (Cal. Civ. Code § 1770(a)(16)).

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

159. Aeropostale's misrepresentations deceive and have a tendency to deceive the general public.

160. Aeropostale's misrepresentations are material, in that a reasonable person would attach importance to the information and would be induced to act on the information in making purchase decisions.

161. Plaintiffs and Class members reasonably relied on Aeropostale's material misrepresentations.

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162. As a direct and proximate result of these violations, Plaintiffs and the Class were harmed, suffered injury-in-fact, lost money, and suffered damages.

163. First, Plaintiffs and the Class were harmed because they would not have purchased the items at the prices they paid had they known the items had not been regularly offered at the higher list price.

164. Second, Plaintiffs and the Class were harmed because they did not enjoy the actual discounts Aeropostale represented and promised to them.

165. Third, Plaintiffs and the Class were harmed because the items they purchased were not in fact worth the inflated amount that Aeropostale represented to them. In fact, the items did not normally sell for, and were not actually worth, the fictitious and invented list price that Aeropostale printed on its product tags and listed on its website.

166. Fourth, Plaintiffs and the Class were harmed because they were overcharged. They paid a price premium due to illegitimately inflated demand resulting from Aeropostale's deceptive pricing scheme. Aeropostale's false discount advertising scheme fraudulently increased demand for Aeropostale's products, thereby shifting the demand curve and enabling Defendants to charge their customers more than they otherwise could have charged. Aeropostale's false advertising scheme enabled Aeropostale to charge everyone more for all of its products, by artificially stimulating demand based on false pretenses. But for the false advertising scheme, Aeropostale would have had to charge less money for its products in order to enjoy the same level of demand for its products.

167. Aeropostale's conduct has caused substantial injury to Plaintiffs, Class members, and the general public.

168. Plaintiffs lack an adequate remedy at law to prevent Aeropostale's continued misrepresentations. Aeropostale's conduct is ongoing and is likely to continue and recur absent a permanent injunction.

169. Plaintiffs, on behalf of themselves and as private attorneys general,

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seek public injunctive relief under the CLRA to protect the general public from Aeropostale's false advertising and misrepresentations.

170. In accordance with California Civil Code § 1782(a), on April 29, 2021, Plaintiffs' counsel, on behalf of Plaintiff James Andrews, served Defendants with notice of their CLRA violations by certified mail, return receipt requested. On June 2, 2021, Plaintiffs' counsel, on behalf of Plaintiffs Janette Lisner and Jennifer Quiroz Nunez, likewise served Defendants with notice of their CLRA violations by certified mail, return receipt requested. Defendants did not respond whatsoever to Plaintiffs' notification letters. Defendants failed to give, or to agree to give within a reasonable time, an appropriate correction, repair, replacement, or other remedy for their CLRA violations within 30 days of their receipt of the CLRA demand notices. Accordingly, pursuant to Sections 1780 and 1782(b) of the CLRA, Plaintiffs and the Class are entitled to recover compensatory and exemplary damages, attorneys' fees and costs, and any other relief the Court deems proper for Aeropostale's CLRA violations.

COUNT II
Violation of California's False Advertising Law
California Business and Professions Code § 17500 *et seq.*

171. Plaintiffs reallege and incorporate by reference all paragraphs alleged hereinbefore.

172. Plaintiffs bring this claim in their individual capacities, in their capacities as private attorneys general seeking the imposition of public injunctive relief to protect the general public, and as representatives of the putative Class.

173. Aeropostale has engaged in false or misleading advertising in violation of California Business & Professions Code § 17500, *et seq.*, also known as California's False Advertising Law ("FAL").

174. Aeropostale has advertised discounts, former prices, and "free" offers that are false, misleading, and have a capacity, likelihood or tendency to deceive reasonable consumers. *See, e.g.*, *Kasky*, 27 Cal.4th at 951 (UCL and FAL

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prohibit "not only advertising which is false, but also advertising which, although true, is either actually misleading or which has a capacity, likelihood or tendency to deceive or confuse the public" (citation omitted)); *Hansen v. Newegg.com Americas, Inc.*, 25 Cal.App. 5th 714, 722 (2018) (same); *Overstock.com, Inc.*, 2014 WL 657516, at *23 (same).

175. Aeropostale committed such violations of the False Advertising Law with actual knowledge that its advertising was untrue or misleading, or Aeropostale, in the exercise of reasonable care, should have known that its advertising was untrue or misleading.

176. Aeropostale's misrepresentations deceive and have a tendency to deceive the general public.

177. Aeropostale's misrepresentations are material, in that a reasonable person would attach importance to the information and would be induced to act on the information in making purchase decisions.

178. Plaintiffs and Class members reasonably relied on Aeropostale's material misrepresentations.

179. As a direct and proximate result of these violations of the False Advertising Law, Plaintiffs and the Class were harmed, suffered injury-in-fact, and lost money. Plaintiffs and Class members would not have otherwise purchased the items at the prices they paid, and Plaintiffs and Class members were overcharged.

180. By its misconduct alleged herein, Aeropostale received more money from Plaintiffs and Class members than it should have received.

181. Aeropostale should be ordered to disgorge or make restitution of all monies improperly accepted, received or retained.

182. Aeropostale's conduct has caused substantial injury to Plaintiffs, Class members, and the general public.

183. Plaintiffs lack an adequate remedy at law to prevent Aeropostale's

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continued false discount advertising practices. Aeropostale's misconduct is ongoing and is likely to continue and recur absent a permanent injunction. Accordingly, Plaintiffs seek an order enjoining Aeropostale from committing such practices.

184. Plaintiffs, on behalf of themselves and as private attorneys general, seek public injunctive relief under the FAL to protect the general public from Aeropostale's false discount advertising.

185. Plaintiffs further seek an order granting restitution to Plaintiffs and Class members in an amount to be proven at trial. Plaintiffs further seek an award of attorneys' fees and costs under Cal. Code Civ. Proc. § 1021.5.

COUNT III
Violation of California's Unfair Competition Law
California Business and Professions Code § 17200 *et seq.*

186. Plaintiffs reallege and incorporate by reference all paragraphs alleged hereinbefore.

187. Plaintiffs bring this claim in their individual capacities, in their capacities as private attorneys general seeking the imposition of public injunctive relief to protect the general public, and as representatives of the putative Class.

188. California Business & Professions Code § 17200, *et seq.*, also known as California's Unfair Competition Law ("UCL"), prohibits any unfair, unlawful, or fraudulent business practice.

189. Aeropostale has violated the UCL by engaging in the following ***unlawful*** business acts and practices:

a. Making material misrepresentations in violation of Cal. Civ. Code §§ 1770(a)(5, 9, 13 & 16) (the CLRA);

b. Making material misrepresentations in violation of Cal. Bus. & Prof. Code § 17500 *et seq.* (the FAL);

c. Engaging in deceit in violation of Cal Civ. Code §§ 1709–1710; and

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d. Employing deceptive discount price advertisements as identified by 16 C.F.R § 233.1 *et seq.* and 16 C.F.R. § 251.1.

190. Aeropostale has violated the UCL by engaging in the following ***unfair*** and ***fraudulent*** business acts and practices:

a. Advertising false discounts, including percentage-off and dollar-off discounts;

b. Advertising false former prices, including advertising inflated list prices on its product tags and false "regular" prices on the Aeropostale website; and

c. Advertising false "free" offers such as "Buy 1 Get 1 Free" or "Buy 1 Get 2 Free," where Aeropostale directly recovers the cost of the "free" items by doubling or tripling the first item's selling price to the inflated—and otherwise never charged—list price.

191. Aeropostale's misrepresentations were likely to mislead reasonable consumers.

192. Aeropostale's misrepresentations deceive and have a tendency to deceive the general public.

193. Aeropostale's misrepresentations are material, in that a reasonable person would attach importance to the information and would be induced to act on the information in making purchase decisions.

194. Aeropostale intentionally deceived Plaintiffs and Class members, and continues to deceive the public.

195. Plaintiffs and Class members reasonably relied on Aeropostale's material misrepresentations.

196. By its conduct alleged herein, Aeropostale received more money from Plaintiffs and Class members than it should have received, and that money is subject to restitution.

197. As a direct and proximate result of Aeropostale's unfair, unlawful,

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and fraudulent conduct, Plaintiffs and Class members lost money. Plaintiffs and Class members would not have otherwise purchased the items at the prices they paid, and Plaintiffs and Class members were overcharged.

198. Aeropostale's conduct alleged herein is immoral, unethical, oppressive, unscrupulous, unconscionable, and substantially injurious to Plaintiffs, Class members, and the general public. Perpetrating a years-long scheme of misleading and overcharging customers is immoral, unethical, and unscrupulous. Moreover, Aeropostale's conduct is oppressive and substantially injurious to consumers. There is no utility to Aeropostale's conduct, and even if there were any utility, it would be significantly outweighed by the gravity of the harm to consumers caused by Aeropostale's conduct alleged herein.

199. Plaintiffs lack an adequate remedy at law. Aeropostale's conduct is ongoing and is likely to continue and recur absent a permanent injunction.

200. Plaintiffs, on behalf of themselves and as private attorneys general, seek public injunctive relief under the UCL to protect the general public from Aeropostale's false discount advertising.

201. Plaintiffs further seek an order granting restitution to Plaintiffs and Class members in an amount to be proven at trial. Plaintiffs further seek an award of attorneys' fees and costs under Cal. Code Civ. Proc. § 1021.5.

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PRAYER FOR RELIEF

Public Injunctive Relief:

A. In order to prevent injury to the general public, Plaintiffs Janette Lisner, Jennifer Quiroz Nunez and James Andrews each individually and as private attorneys general, request that the Court enter a public injunction against each Defendant under the CLRA, FAL, and UCL as follows:

1. Permanently enjoin each Defendant from advertising false discounts for Aeropostale-exclusive products including percentage-off and dollar-off discounts, where the purportedly discounted products have not been regularly offered by Aeropostale in the recent past at the higher reference price to which the discounts are applied;

2. Permanently enjoin each Defendant from advertising false reference prices for Aeropostale-exclusive products, including inflated prices on Aeropostale product tags and false "regular" prices on the Aeropostale website, where the products have not been regularly offered by Aeropostale in the recent past and will not be regularly offered in the near future (e.g., for newly introduced products) at the higher reference price;

3. Permanently enjoin each Defendant from advertising false "free" offers such as "Buy 1 Get 1 Free" or "Buy 1 Get 2 Free," where Aeropostale directly recovers the cost of the "free" products by increasing the first product's selling price above the normal and regular Aeropostale offering price for the product; and

4. Retain jurisdiction to monitor Defendants' compliance with the permanent public injunctive relief.

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Individual and Class Relief:

B. On behalf of themselves and the proposed Class and subclasses, Plaintiffs Janette Lisner, Jennifer Quiroz Nunez and James Andrews request that the Court order relief and enter judgment against Defendants as follows:

1. Order disgorgement or restitution, including, without limitation, disgorgement of all revenues, profits and/or unjust enrichment that each Defendant obtained, directly or indirectly, from Plaintiffs and Class members as a result of the unlawful conduct alleged herein;

2. Order each Defendant to pay damages to Plaintiffs and Class members in an amount to be proven at trial;

3. Order each Defendant to pay punitive and exemplary damages to the extent allowed by law;

4. Order each Defendant to pay court attorneys' fees, costs, and pre-judgment and post-judgment interest to the extent allowed by law;

5. Permanently enjoin each Defendant from the unlawful conduct alleged herein;

6. Retain jurisdiction to police each Defendant's compliance with the permanent injunctive relief; and

7. Grant such other relief as this Court deems just and proper.

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JURY DEMAND

Plaintiffs Janette Lisner, Jennifer Quiroz Nunez and James Andrews, on behalf of themselves and on behalf of the Class, demand a trial by jury on all issues so triable.

DATED this 4th day of August, 2021.

Presented by:

HATTIS & LUKACS

By: /s/ Daniel M. Hattis

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**Pro hac vice application to be submitted.*