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15 *Counsel for Plaintiffs*
 16 *and the Proposed Class*

17 **IN THE UNITED STATES DISTRICT COURT**
 18 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

19 QASEM HASHIMI and HENRY DE
 20 LA PAZ, on behalf of themselves and all
 21 others similarly situated,

22 Plaintiffs,

23 v.

24 PVH CORP. a Delaware corporation,
 25 PVH RETAIL STORES, LLC, a
 26 Delaware limited liability company, and
 27 DOES 1-50, inclusive,

28 Defendants.

Case No.: **'26CV3811 AJB GC**

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiffs Qasem Hashimi and Henry De La Paz (collectively, “Plaintiffs”) bring this action, on behalf of themselves and all others similarly situated, against Defendant PVH Corp. and PVH Retail Stores, LLC (collectively, “Tommy Hilfiger” or “Defendants”) and state:

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I. NATURE OF ACTION

1
2 1. This case arises from Defendants’ illegal false price-discounting scheme
3 implemented at their brick-and-mortar outlet stores. False price-discounting occurs
4 when a seller fabricates an inflated reference price, at which it seldom, if ever, sells a
5 product, while offering the product “on sale” at what appears to be a significantly
6 discounted price. In reality, there is no discount or savings because the reference price
7 significantly overstates the product’s value, as the product is almost always sold at
8 prices below the reference price and, often, below the “sale” price. “It has long been
9 considered a deceptive practice to state falsely that a product ordinarily sells for an
10 inflated price but that it is being offered at a special reduced price[.]” *F.T.C. v. Colgate-*
11 *Palmolive Co.*, 380 U.S. 374, 387 & n.17 (1965) (collecting cases).

12 2. Prices reflect both quality and value.¹ Retailers like Defendants therefore
13 use inflated reference prices to manipulate the public’s perception of their merchandise,
14 misleading consumers into overestimating a product’s quality and value and leading
15 them to believe they are getting a bargain and higher-quality product when buying at a
16 “sale” price. As a result, false price-discounting artificially inflates demand for a
17 product, which, in turn, artificially inflates prices.² Specifically, “the higher reference
18 price stated alongside the selling price shift[s] the demand function outward, leading
19 to higher average prices and thus higher margins.” Richard Staelin, *et al.*, *Competition*
20 *and the Regulation of Fictitious Pricing*, 87 J. Mktg., 826, 835 (2023). Consequently,
21

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

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

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1 false price-discounting schemes enable retailers to sell more products and charge
2 higher prices than they otherwise would without the false price comparisons.

3 3. Based on their counsel’s pre-suit investigation, Plaintiffs allege that
4 Defendants seek to capitalize on these known and proven effects of false price
5 comparisons by advertising perpetual (or near perpetual) discounts from false reference
6 prices to entice consumers into buying products that they would not otherwise purchase
7 and/or to pay more than they otherwise would, absent the false discounts. At all relevant
8 times, Defendants have continually engaged in false price-discounting for men and
9 women’s clothing and accessories sold throughout their brick-and-mortar stores,
10 including within California. In bringing this putative Class Action Complaint, Plaintiffs
11 seek to remedy this deception and its attendant harm to consumers. Plaintiffs seek all
12 applicable damages, including actual, statutory, and punitive damages as well as
13 equitable restitution and injunctive relief from Defendants arising from their false
14 price-discounting practices.

15 4. Through their false price-discounting scheme alleged herein, Defendants
16 violated, and continue to violate, California consumer protection statutes and federal
17 law. Specifically, Defendants violated and continue to violate California’s Unfair
18 Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.* (“UCL”); California’s False
19 Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.* (“FAL”); California’s
20 Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.* (“CLRA”); and the
21 Federal Trade Commission (“FTC”) Act (“FTCA”), which prohibits “unfair or
22 deceptive acts or practices in or affecting commerce” (15 U.S.C. § 45(a)(1)) and false
23 advertisements (15 U.S.C. § 52(a)).

24 **II. PARTIES**

25 **Plaintiff Henry De La Paz**

26 5. Plaintiff De La Paz resides in North Hills, California, and is a citizen of
27 the State of California. On or about July 26, 2024, Plaintiff De La Paz went shopping
28 for some new clothing at the Tommy Hilfiger outlet store located at 100 Citadel Drive,

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1 Suite 519, Commerce, California 90040. In reliance on Defendants’ false and deceptive
2 advertising, marketing, and discount pricing scheme, Plaintiff De La Paz purchased a
3 t-shirt that bore an “original” (reference) price of approximately \$24.50 and a purported
4 25%-off discount (-\$11.27)—in addition to a 10% off total purchase discount—for an
5 actual sales price of approximately \$13.23. Plaintiff De La Paz also purchased a polo
6 shirt that bore an “original” (reference) price of approximately \$69.50 and a purported
7 sale price of \$39.99—minus the 10% off total purchase price discount—for an actual
8 sales price of approximately \$35.99. Plaintiff De La Paz paid an after-tax total of
9 \$54.27.

10 6. During his time at the Tommy Hilfiger outlet store on July 26, 2024,
11 Plaintiff De La Paz browsed the store and observed numerous signs advertising
12 storewide markdowns and percentage-based discounts. After reviewing the advertised
13 “original” and sale prices on the items he selected, he reasonably believed he was
14 receiving a substantial bargain. This belief was material to his decision to purchase.

15 7. Plaintiff De La Paz would not have purchased either item, or would not
16 have paid as much as he did, had he known the advertised discounts were false. He
17 believed the items had been previously offered at the higher reference price and were
18 now being sold at a genuine markdown. In fact, he did not receive the benefit of any
19 real discount and ultimately paid more than the fair value of the products under the
20 mistaken impression that he was securing a deal.

21 8. What’s more, Defendants’ signage and labeling deceived Plaintiff De La
22 Paz into believing that he was purchasing mainline Tommy Hilfiger merchandise at a
23 discount. In reality, the items he purchased appear to have been manufactured
24 specifically for sale in Defendants’ factory outlet stores (“MFO”) and as a result—
25 Plaintiffs are informed and believe—they have not ever been offered elsewhere. Thus,
26 the “original” \$24.50 and \$69.50 prices were not markdowns from any higher full-price
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1 mainline item, but rather a fictitious reference price deceptively used to create a false
2 sense of savings and urgency among consumers.³

3 9. Accordingly, Plaintiff De La Paz has suffered economic injury as a direct
4 result of Defendants’ unfair and deceptive false discounting practices, including the
5 inflated price paid for merchandise falsely presented as discounted goods.

6 **Plaintiff Qasem Hashimi**

7 10. Plaintiff Hashimi resides in San Diego, California, and is a citizen of the
8 State of California. On or about April 9, 2025, Plaintiff Hashimi went shopping for
9 some new clothing at the Tommy Hilfiger outlet store located at 5620 Paseo Del Norte,
10 Carlsbad, California 92008. In reliance on Defendants’ false and deceptive advertising,
11 marketing, and discount pricing scheme, Plaintiff Hashimi purchased sweatpants that
12 bore an “original” (reference) price of approximately \$80.00 and a purported 50%-off
13 discount (-\$40.00) for an actual sales price of approximately \$40.00. Plaintiff Hashimi
14 also purchased a polo shirt that bore an “original” (reference) price of approximately
15 \$64.50 and a purported and actual sale price of \$28.00. Plaintiff Hashimi paid an after-
16 tax total of \$73.22.

17 11. During his time at the Tommy Hilfiger outlet store on April 9, 2025,
18 Plaintiff Hashimi browsed the store and observed numerous signs advertising
19 storewide markdowns and percentage-based discounts. After reviewing the advertised
20 “original” and sale prices on the items he selected, he reasonably believed he was
21 receiving a substantial bargain. This belief was material to his decision to purchase.

22 12. Plaintiff Hashimi would not have purchased either item, or would not have
23 paid as much as he did, had he known the advertised discounts were false. He believed
24 the items had been previously offered at the higher reference price and were now being
25 sold at a genuine markdown. In fact, he did not receive the benefit of any real discount

26
27 ³ Plaintiff De La Paz reserves the right to submit additional support—including product
28 research, style code analyses, and SKU comparison data—in connection with future
amended complaints or briefing once the Court has allowed discovery to open on these
purchases.

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1 and ultimately paid more than the fair value of the products under the mistaken
2 impression that he was securing a deal.

3 13. What’s more, Defendants’ signage and labeling deceived Plaintiff
4 Hashimi into believing that he was purchasing mainline Tommy Hilfiger merchandise
5 at a discount. In reality, like Plaintiff De La Paz’s items, the items he purchased appear
6 to have been manufactured specifically for sale in Defendants’ factory outlet stores
7 (*i.e.*, MFO) and as a result—Plaintiffs are informed and believe—they have not ever
8 been offered elsewhere. Thus, the “original” \$80 and \$64.50 prices were not
9 markdowns from any higher full-price mainline item, but rather a fictitious reference
10 price deceptively used to create a false sense of savings and urgency among
11 consumers.⁴

12 14. Accordingly, Plaintiff De La Paz has suffered economic injury as a direct
13 result of Defendants’ unfair and deceptive false discounting practices, including the
14 inflated price paid for merchandise falsely presented as discounted goods.

15 **Defendants**

16 15. Defendant PVH, Corp., is a Delaware corporation with its principal
17 executive offices in New York, New York. Defendant PVH Retail Stores, LLC, is a
18 Delaware limited liability company with its principal executive offices in New York,
19 New York. Defendants PVH, Corp., and PVH Retail Stores, LLC, are citizens of the
20 State of Delaware and the State of New York. Plaintiffs are informed and believe that
21 Defendants own and operate Tommy Hilfiger outlet stores in California, in addition to
22 other states across the United States, and advertise, market, distribute, and/or sell
23 Tommy Hilfiger-brand clothing and accessories in California, and throughout the
24 United States.

25
26
27 ⁴ Plaintiff Hashimi reserves the right to submit additional support—including product
28 research, style code analyses, and SKU comparison data—in connection with future
amended complaints or briefing once the Court has allowed discovery to open on these
purchases.

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

9 17. Defendants are fully aware that their reference price advertising is false,
10 deceptive, misleading, and unlawful under California and federal law—and yet
11 continue to engage in this pricing scheme with calculated disregard for consumer
12 protection standards.

13 18. Defendants knowingly and fraudulently concealed from Plaintiffs and
14 members of the proposed Class the truth about their fictitious reference prices and the
15 misleading nature of their advertised discounts. They also failed to disclose the
16 materially inferior, MFO nature of the products sold at Tommy Hilfiger outlet
17 locations, depriving consumers of the ability to make informed purchasing decisions.

18 19. Defendants deliberately withheld and misrepresented critical information
19 about their false former pricing practices for the specific purpose of inducing Plaintiffs
20 and Class members to purchase Tommy Hilfiger outlet merchandise under the false
21 impression they were receiving a legitimate discount on mainline-quality goods.

22 20. At all relevant times, Defendants had a legal and equitable duty to disclose
23 the truth about their deceptive pricing scheme and the genuine nature of their outlet
24 merchandise. Defendants breached that duty by intentionally omitting material facts
25 and misleading consumers at the point of sale.

26 **III. JURISDICTION AND VENUE**

27 21. This Court has original jurisdiction over the subject matter of this action
28 pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2). The matter in

1 controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000,
2 and Plaintiffs, as well as at least some members of the proposed Class (defined below),
3 have different states of citizenship from the Defendants.

4 22. This Court has personal jurisdiction over Defendants because Defendants
5 conduct substantial business in California, including by operating brick-and-mortar
6 outlet stores and selling products to consumers within this District.

7 23. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of
8 the events or omissions giving rise to Plaintiffs’ claims occurred in this District.

9 **IV. General Allegations**

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

11 24. For nearly 50 years, the FTC invested significant resources in deterring
12 the use of false reference pricing, so much so that in the 1950s, as much as 30% of the
13 FTC’s cease-and-desist orders in a typical year were related to false price discounting.
14 *See Staelin, et al., supra*, at 826. Despite these efforts, in 1970, the FTC decided to
15 cease aggressive enforcement of its published guidelines and regulations aimed at
16 preventing the use of false reference prices. *Id.* The reason for the FTC’s shift in
17 enforcement policies was due to the need to regulate what it believed were more
18 egregious actions, and the FTC’s belief that the practice of using false reference prices
19 would dissipate as competition increased. Decades later, with the benefit of hindsight,
20 economists have now concluded that the FTC’s prediction was incorrect, and that its
21 lax enforcement policies have backfired, as “fictitious pricing within the United States
22 has . . . proliferated, is prevalent, and is pervasive. . . . as many firms consistently
23 ignor[e] fictitious pricing statutes with impunity.” *Id.* (cleaned up).

24 25. This does not come without consumer harm and consequences, as retailers
25 like Defendants benefit substantially from false discounting schemes because
26 consumers use advertised reference prices to make purchasing decisions, particularly
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1 when the information available to consumers varies among different types of products.⁵
 2 Most often, as with men and women’s clothing and accessories, consumers lack
 3 complete information about the products, and as a result, they often rely on information
 4 provided by sellers, including pricing information, to make purchase decisions.⁶

5 26. Deceptively advertised reference prices are thus incorporated into
 6 consumers’ decision process. First, a product’s price is an indicator of product quality;⁷
 7 as such, consumers view inflated and false reference prices as a proxy for product
 8 quality. Second, reference prices appeal to consumers’ desire for bargains or deals.⁸
 9 Academic researchers note how consumers “sometimes expend more time and energy
 10 to get a discount than seems reasonable given the financial gain involved,” and “often
 11 derive more satisfaction from finding a sale price than might be expected on the basis
 12 of the amount of money they actually save.”⁹ Under this concept, coined as “transaction
 13 utility” by Nobel Prize-winning economist Richard Thaler, consumers place value on
 14 the psychological experience of obtaining a product at a perceived bargain.¹⁰

15
 16 ⁵ Even within a product, consumers may have imperfect information on the individual
 17 attributes. Economists describe “search goods” as those whose attributes “can be
 18 ascertained in the search process prior to purchase” (*e.g.*, style of a shirt), “experience
 19 goods” as those whose attributes “can be discovered only after purchase as the product
 20 is used” (*e.g.*, longevity of a shirt), and “credence goods” as those whose attributes
 21 “cannot be evaluated in normal use” (*e.g.*, whether the shirt’s cotton was produced
 22 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).

23 ⁶ “Not only do consumers lack full information about the prices of goods, but their
 24 information is probably even poorer about the quality variation of products simply
 25 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).

26 ⁷ Grewal & Compeau, *Comparative Price Advertising*, *supra* note 1, at 54; *see also*
 27 Richard Thaler. *Mental Accounting and Consumer Choice*, 4 no. 3 *Mktg. Sci.* 199, 212
 28 (1985) [hereinafter Thaler, *Mental Accounting and Consumer Choice*] (“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”).

⁸ Grewal & Compeau, *Comparative Price Advertising*, *supra* note 1, at 52.

⁹ Peter Darke & Darren Dahl. *Fairness and Discounts: The Subjective Value of a
 Bargain*, 13 no. 3 *J. of Consumer Psych.* 328 (2003).

¹⁰ *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

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1 27. Academic literature further reports that “there is ample evidence that
2 consumers use reference prices in making brand choices”¹¹ and publications have
3 summarized the empirical data as follows:

4 Inflated reference prices can have multiple effects on consumers. They
5 can increase consumers’ value perceptions (transaction value and
6 acquisition value), reduce their search intentions for lower prices,
7 increase their purchase intentions, and reduce their purchase intentions
8 for competing products ... Inflated and/or false advertised reference
9 prices enhance consumers’ internal reference price estimates and,
10 ultimately, increase their perceptions of value and likelihood to
11 purchase[.]¹²

12 28. In the academic article *Competition and the Regulation of Fictitious*
13 *Pricing*, published in 2023, authors Richard Staelin, a Duke marketing professor since
14 1982, Joel Urbany, a Notre Dame marketing professor since 1999, and Donald Ngwe,
15 a senior principal economist for Microsoft and former marketing professor for Harvard,
16 built on their prior analytic work to explain the effects of false reference pricing
17 schemes and why their use has not dissipated as previously expected by the FTC. *See*
18 *Staelin, et al., supra*, at 826-27.

19 29. As Staelin and his co-authors explain, the proliferation of false price-
20 discounting can be attributed to several factors, including the absence of FTC’s
21 enforcement of its false price-discounting regulations, the modern development of
22 consumer search behavior and options available to consumers (e.g., smartphones,
23 online shopping), which has amplified the ease and effectiveness of false price-
24 discounting, and the incorrect assumption that competition would naturally push

25 deal [] and that magnitude of this utility is a function of the size of the deal.”) (citation
26 omitted).

27 ¹¹ Gurumurthy Kalvanaram & Russell S. Winer. *Empirical Generalizations from*
28 *Reference Price Research*. 14 no. 3 Mktg. Sci. G161 (1995); *see also* Jerry B.
Gotlieb & Cyndy Thomas Fitzgerald. *An Investigation into the Effects of Advertised*
Reference Prices on the Price Consumers are Willing to Pay for the Product. 6 no. 1
J. of Applied Bus. Rsch. 59, 65-66 (1990) [hereinafter Gotlieb & Fitzgerald, *An*
Investigation] (“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.”).

¹² 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).

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1 deceptive pricing out of the market by motivating sellers to provide truthful
2 information. *See id.* at 829-834. In reality, heightened competition drove firms to
3 differentiate through “noise” (*i.e.*, misleading information); thus, the authors conclude
4 that competition *spread* the practice of false price-discounting, rather than extinguish
5 it. *See id.* at 831 (“Identical firms selling identical products make positive profits
6 because of their obfuscation strategy, and the likelihood of obfuscation grows as
7 competition intensifies.”).¹³

8 30. Consequently, retailers like Defendants, who understand that consumers
9 are susceptible to bargain hunting, have a substantial financial interest in making
10 consumers think they are getting a bargain, even when they are not. Contrary to the
11 illusory bargains in Defendants’ advertisements, consumers are not paying less than
12 the true normal price, (or AUR), and therefore are not receiving any discount. Rather,
13 they are actually overpaying for Defendants’ product as “the higher reference price
14 stated alongside the selling price shift[s] the demand function outward, leading to
15 higher average prices and thus higher margins.” Staelin, *et al.*, *supra*, at 835. In short,
16 “recent empirical evidence suggests that fictitious pricing can produce significant
17 positive returns for [retailers, but also] lead[s] to consumer welfare loss.” *Id.* at 827.

18 **B. Defendants Engage in a Fraudulent Price Discounting Scheme**

19 31. Defendants, a specialty retailer of men and women’s clothing and
20 accessories, have for years engaged in a deceptive pricing scheme at their Tommy

21
22 ¹³ The author’s proposed solution to curbing false price-discounting is the disclosure
23 of the “true normal price.” The “true normal price” refers to the price at which a product
24 is ordinarily sold (such as a historical or modal selling price), serving as a clear and
25 standardized benchmark which consumers can use to reliably assess what a product
26 typically sells for and, in turn, whether a discount is *bona fide*. *See id.* at 842 (“[W]e
27 believe the most effective metric to capture normal price is a firm’s modal offering
28 price in the most recent, relevant business period.”) (citing 16 C.F.R § 233.1). Nearly
all retailers internally track this metric and typically refer to it as the “Average Unit
Retail” (AUR). *See Average Unit Retail (AUR): Meaning, Importance, & Formula*,
8th & Walton (Sep. 28, 2023), <https://www.8thandwalton.com/blog/average-unit-retail/>. (“AUR (Average Unit Retail) is the average selling price of an item within a
specific period.”). Retailers also track and project other metrics that provide additional
context regarding what products typically sell for, and what they expect to sell for in
the future, such as sales and margin projections.

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1 Hilfiger outlet stores located in California. This scheme involves advertising
2 merchandise at purported “sale” prices that are falsely represented as discounts from
3 inflated “original” prices printed on the products’ price tags. In most instances, these
4 items are accompanied by placards in the immediate vicinity advertising a certain
5 percentage-off discount from the stated “original” price. In other cases, signage
6 presents a whole-price reduction (e.g., “Now \$XX.XX”) from that same reference
7 price.

8 32. These signs—uniformly printed on colored card stock with bold, white
9 font—appear throughout Tommy Hilfiger outlet stores. Defendants do not disclose when
10 any item was last offered, if ever, at its “original” price.

11 33. Photographs of Defendants’ stores reveal the systematic nature of this
12 practice:



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26 34. As shown in those photographs, Defendants’ “original” or “ticket” prices
27 include no qualifying language suggesting a price comparison to other markets.
28 Instead, Defendants’ pervasive use of percentage-off and “Now” pricing signage

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1 creates the unmistakable impression that the advertised discounts reflect reductions
2 from a bona fide, in-store, former selling price.¹⁴ The pricing signage does not suggest
3 any comparison to Tommy Hilfiger’s mainline retail stores or to third-party retailers.

4 35. Plaintiffs are informed and believe that the majority of Tommy Hilfiger
5 outlet merchandise is manufactured exclusively for and sold solely at their outlet
6 stores.¹⁵ Subject to verification in discovery, Plaintiffs are informed and believe that
7 Defendants’ MFO¹⁶ merchandise is made using different materials, construction
8 methods, and/or design specifications than Tommy Hilfiger’s mainline counterparts.

9 36. Although discovery is very much needed on this front, from their own
10 investigation and research, Plaintiffs are informed and believe that the following non-
11 exhaustive list includes indicia of whether a Factory Outlet item is MFO or not:
12 (1) fabric, construction, or design elements denoting lower quality (e.g., thinner

13
14
15 ¹⁴ See *Vizcarra v. Michaels Stores, Inc.*, 710 F. Supp. 3d 718, 725 (N.D. Cal. 2024) (“A
16 reasonable consumer does not need language such as, ‘Formerly \$9.99, Now 40% Off
17 \$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, 2016 WL 3268995, at *4 (N.D. Cal. June 15, 2016)).

18 ¹⁵ See generally *Sperling v. Stein Mart, Inc.*, 291 F. Supp. 3d 1076, 1084 (C.D. Cal.
19 2018) (“In exclusive product cases, a store, often an outlet store, sells a lower-price,
20 different version of a product sold in a traditional retail store. The outlet uses the price
21 of the product made for the retail store as a comparative reference price on price tags.
22 However, the actual product being sold in the outlet is made exclusively for the outlet
23 and is never sold for the comparative reference price at a traditional retail store. In those
cases, courts generally find that a plaintiff can proceed with his or her claims.”); see,
e.g., *Rubenstein v. Neiman Marcus Grp. LLC*, 687 F.App’x 564, 567 (9th Cir. 2017);
Stathakos v. Columbia Sportswear Co., No. 15-cv-04543, 2017 WL 1957063, at *8
(N.D. Cal. May 11, 2017); *Branca v. Nordstrom, Inc.*, No. 14-cv2062, 2015 WL
10436858, at *7-8 (S.D. Cal. Oct. 9, 2015).

24 ¹⁶ The term “MFO” is used throughout this complaint. To be clear, MFO—“Made-for-
25 Outlet”—refers to products that are manufactured specifically for sale at outlet stores,
26 rather than being originally sold at, or intended for, a brand’s mainline retail stores.
27 This is a common practice in the retail clothing industry and one that Plaintiffs have
28 every reason to believe Defendants engage in. MFO items are often produced using
different materials, construction methods, or design specifications than their mainline
counterparts and may never have been offered for sale at regular retail prices or through
the brand’s primary sales channels—practices that Plaintiffs have every reason to
believe Defendants likewise employ in the manufacturing and sale of their Tommy
Hilfiger outlet merchandise.

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1 materials, less lining and tailoring, shortcuts in detail, etc.); and (2) tags or labels with
2 simplified formatting, or style numbers not traceable to mainline products.

3 37. Plaintiffs emphasize that whether an item sold at a Tommy Hilfiger outlet
4 is MFO is in no way dispositive of Class membership, as consumers who purchased
5 non-MFO items are properly included in the same class as those who purchased MFO
6 items; liability may still attach under California consumer protection laws, as well as
7 fraud-based common law, due to Defendants’ misleading “original” pricing; deceptive
8 comparisons to fictitious or unverified MSRPs or list prices that do not reflect recent
9 or actual sales in mainline channels; uniform outlet signage or marketing that implies
10 discounts from mainline retail—even where the referenced price was once used, if at
11 all, Plaintiffs are informed and believe it reflects outdated or historically remote
12 pricing; and omissions regarding the true nature—such as the age, condition, or
13 discontinued status—of non-MFO items, as well as the misleading impression that such
14 products are currently available or recently sold at mainline retail prices.

15 38. Additionally, because the reference prices on the outlet merchandise are
16 styled as prior in-store prices, not market comparisons, Defendants’ scheme is not a
17 “Compare At” or “Comparable Value” pricing model. In such models, sellers explicitly
18 invite comparison to external retailers. No such qualifier exists here (at least for the
19 majority of the relevant time period). Consequently, Plaintiffs are not required to
20 “assert evidence from which a rational trier of fact could infer that the comparative
21 reference price was inaccurate,” as that standard ***“only arises when the language of***
22 ***the advertisement implies a comparison to another retailer.***¹⁷ Where, as here, the
23 reference price is represented as a former in-store price, the law requires that it reflect
24 the price at which the item was actually and regularly offered for sale.¹⁸

25
26 ¹⁷ See *Harris v. PFI W. Stores, Inc.*, No. 19-cv-192521, 2020 WL 3965022, at *4 (C.D.
27 Cal. Apr. 9, 2020) (citing *Sperling*, 291 F.Supp.3d at 1085-86 and *Horosny v.*
Burlington Coat Factory of California, LLC, No. 15-cv-05005, 2015 WL 12532178, at
28 *6 (C.D. Cal. Oct. 26, 2015) (emphasis added).

¹⁸ See Cal. Bus. & Prof. Code § 17501 (former price must be the prevailing market
price within the three months immediately preceding the advertisement, unless

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1 39. Plaintiffs are further informed and believe and thereon allege, that
2 Defendants’ Tommy Hilfiger outlet merchandise and pricing practices are materially
3 identical across all Tommy Hilfiger outlet stores in California and throughout the
4 United States. Subject to verification in discovery, Plaintiffs are informed and believe
5 that the same MFO products are offered for sale at all such locations, and the same
6 false reference pricing scheme—featuring inflated “original” price tags and uniform
7 in-store discount signage—is deployed consistently across Defendants’ nationwide
8 outlet store network.

9 40. Because Tommy Hilfiger outlet products are rarely, if ever, offered for
10 sale at their “original” ticket prices, the advertised discounts are fictitious. These prices
11 serve no function other than to create a false sense of urgency and value, deceiving
12 consumers into believing that they are purchasing high-quality goods at a substantial
13 markdown. In reality, consumers are either purchasing lower-quality, MFO goods—
14 often older, discontinued, or overstock items—for which the reference prices are
15 outdated, unverified, or no longer reflect any actual or recent sales in Tommy Hilfiger’s
16 mainline retail channels. In both cases, the advertised “original” prices are misleading,
17 and the corresponding discounts are illusory.

18 41. Even if Defendants were to demonstrate that some products were at one
19 time offered at the full reference price (a disputed question of fact itself), such isolated
20 instances would be insufficient to render the reference prices “actual” or “bona fide”
21 under governing law.¹⁹ Under California’s FAL, a represented former price must have
22 been the prevailing market price within the past three months, or else the advertisement
23

24
25 _____
26 otherwise clearly stated); 16 C.F.R. § 233.1(a) (reference price must be a “bona fide”
former price, meaning the price at which the product was “openly and actively offered
for sale, for a reasonably substantial period of time.”).

27 ¹⁹ For the advertised former price to be “actual, bona fide” and “legitimate” it must be
28 the “price at which the article was offered to the public *on a regular basis for a
reasonably substantial period of time.*” 16 C.F.R. § 233.1(a) (emphasis added).

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1 must “clearly, exactly and conspicuously” disclose the date when that price was in
2 effect—something Defendants consistently fail to do.²⁰

3 42. In sum, Defendants’ fake discounting practices are designed to manipulate
4 consumer behavior, increase sales, and artificially inflate perceived product value. The
5 scheme deprives consumers of accurate pricing information and results in the unlawful
6 imposition of a price premium for merchandise that would not command such prices
7 absent the false reference pricing. Plaintiffs, like thousands of other consumers, were
8 duped into overpaying for products under the mistaken belief that they were receiving
9 a legitimate discount.

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

11 43. A product’s reference price matters because it serves as the anchor from
12 which consumers assess its value.²¹ Empirical research confirms that consumers are
13 more willing to pay higher prices when a product is presented with a higher reference
14 price.²² Defendants’ false reference pricing causes consumers to overvalue Tommy
15 Hilfiger outlet merchandise, leading them to pay more than they otherwise would. The
16 products’ sales prices are thus artificially inflated, not due to intrinsic value, but
17 because Defendants have manipulated consumer perception through false
18 comparisons. As discussed above, academic literature makes clear:

19 [A]dvertised reference prices in these deal-oriented advertisements can

20 ²⁰ See Cal. Bus. & Prof. Code § 17501. Nor would such rare offerings constitute the
21 “prevailing market price” within the “three months next immediately preceding the
22 publication of the advertisement,” as is required by the FAL, “unless the date when the
23 alleged former price did prevail is clearly, exactly and conspicuously stated in the
24 advertisement.” Indeed, where certain items are sold by only one retailer — as is the
25 case with Defendants’ MFO items, the “prevailing market price” is the most
26 “common,” “predominant,” or “most widely occurring” price at which items are sold
27 by that retailer. See *People v. Super. Ct. (J.C. Penney Corp., Inc.)*, 34 Cal. App. 5th
28 376, 410-13 (2019) (citing authorities).

²¹ Thaler, *Mental Accounting and Consumer Choice*, *supra* note 7, at 212.

²² Jerry B. Gotlieb & Cyndy Thomas Fitzgerald, *An Investigation into the Effects of
Advertised Reference Prices on the Price Consumers are Willing to Pay for the
Product*, 60 no 1 J. APPLIED BUS. RSCH. 66 (1990). 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.

enhance buyers’ internal reference prices These enhanced internal reference prices, when compared with the lower selling price, result in higher transaction value perceptions.... [I]f sellers intentionally increase the advertised reference prices above normal retail prices... the resulting inflated perceptions of transaction value would be deceptive. Harm to both buyers and competitors could result from the effect of the inflated transaction value on buyers’ search and purchase behaviors.²³

44. All consumers who purchase Tommy Hilfiger outlet merchandise are harmed by this pricing scheme because its impact is systemic: it inflates demand and elevates actual sales prices across the board. As Staelin, *et al.*, explain, “the higher reference price stated alongside the selling price shift[s] the demand function outward, leading to higher average prices and thus higher margins.” In other words, whether or not a particular consumer “believed” the discount was real is irrelevant—every purchaser paid more than they would have in a properly functioning market, and all were denied the benefit of the bargain.

45. Put differently, Defendants’ fake discounting scheme causes consumers to (reasonably) perceive they are getting a bargain. This perception creates an artificial increase in what economists call “transactional utility”²⁴ or “transaction value”²⁵—the extra satisfaction consumers derive from believing they got a deal. But that satisfaction is based on a lie. As a result, Tommy Hilfiger outlet merchandise appears more valuable than it is, skewing market demand and distorting prices.

46. Basic economic principles confirm that this harm is uniform across the Class. Cost and demand conditions—not individual subjective beliefs—dictate the price consumers pay.²⁶ The aggregate demand curve represents consumers’ collective

²³ 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, 46 (1998) [hereinafter “Grewal et al., *The Effects of Price-Comparison Advertising*”].

²⁴ Thaler, *Mental Accounting and Consumer Choice*, *supra* note 7, at 205.

²⁵ Dhruv Grewal et al., *The Effects of Price-Comparison Advertising*, *supra* note 23, at 46; Grewal & Compeau, *Pricing and public policy*, *supra* note 12, at 7.

²⁶ 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.

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1 valuation of a product. When Defendants’ deceptive pricing inflates this valuation, the
2 demand curve shifts outward, and prices rise for everyone, regardless of whether a
3 particular buyer was “deceived” in a traditional sense.

4 47. Accordingly, Defendants’ scheme artificially inflates the market price of
5 Tommy Hilfiger outlet merchandise. Individual beliefs, motivations, or purchasing
6 rationales do not insulate consumers from harm. As long as the aggregate demand for
7 a falsely discounted product increases, all purchasers pay a higher price than they
8 otherwise would. Plaintiffs and the proposed Class thus suffered a common injury
9 caused by Defendants’ uniform misconduct.

10 48. In addition to the above-described pricing deception, Defendants’ scheme
11 further harms consumers by causing them to overpay for inferior, outlet-specific
12 merchandise under the mistaken belief that they are purchasing high-quality mainline
13 products at a steep discount. Defendants offer no disclosure—either at the point of sale
14 or on the product itself—that (on information and belief) the majority of Tommy
15 Hilfiger outlet merchandise is manufactured exclusively for outlet sale using different
16 materials, construction methods, and quality standards than its mainline counterparts.
17 This omission misleads consumers into believing they are purchasing the same
18 premium items sold at Tommy Hilfiger retail stores, when in fact they are buying
19 lower-grade substitutes never intended for full-price sale.

20 49. The result is a dual injury: consumers are deceived not only about the price
21 of the merchandise, but also about its nature and value. Believing they are securing a
22 rare deal on high-end, mainline merchandise, consumers reasonably attribute more
23 value to the product than it actually possesses. They are therefore deprived of the
24 benefit of the bargain twice over—once because the purported discount is illusory, and
25 again because the underlying product is not what it appears to be. This deception further
26 skews consumers’ valuation of Tommy Hilfiger outlet merchandise, reinforces

27 _____
28 New York, NY: W. W. Norton & Company, at 23-38, 144-57, 233-353 & 285-312 (1992).

1 artificially high prices, and intensifies the common harm suffered by all members of
2 the Class.

3 **D. Plaintiffs’ Counsel’s Investigation, Supported by Plaintiffs’ Consulting**
4 **Textile Expert, Reveals a Uniform False Pricing Scheme and Inferior Outlet**
5 **Merchandise**

6 50. Plaintiffs’ counsel has conducted a large-scale, ongoing investigation into
7 Defendants’ deceptive reference pricing practices at Tommy Hilfiger outlet stores. This
8 investigation includes systematic in-store tracking of merchandise at California
9 locations during the following periods: February 7, 2022, through September 23, 2022;
10 April 18, 2024, through August 9, 2024; a separate visit on November 13, 2024; and
11 from March 25, 2025, through July 24, 2025. Investigative visits were also conducted
12 in Oregon and New York during parts of 2023 and 2024, but no New York or Oregon
13 claims are currently asserted in this action.

14 51. Based on these efforts, Plaintiffs are informed and believe that
15 Defendants’ reference pricing scheme—*i.e.*, the manner in which “original” prices and
16 corresponding discounts are presented—is materially uniform across all Tommy
17 Hilfiger outlet locations, regardless of geography or time of observation. While the
18 specific discount or reference price may vary, the scheme itself does not: all items are
19 advertised with an inflated “original” price, followed by perpetual signage promoting
20 a percentage-off or whole-price reduction. Not once during the investigation was a
21 product observed being offered at its full “original” price. Plaintiffs are therefore
22 informed and believe that Tommy Hilfiger outlet merchandise is not, as a general
23 practice, offered for sale at its tagged price—let alone “on a regular basis for a
24 reasonably substantial period of time,” as required by FTC regulations.

25 52. The investigation confirms that the reference prices on Tommy Hilfiger
26 outlet items—including those purchased by Plaintiffs—do not reflect legitimate, bona
27 fide former prices. Rather, they serve solely as artificial anchors used to fabricate a
28 perceived discount. Hundreds, if not thousands of products were observed as
continuously “on sale” during the multi-month investigation period. This pattern

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1 constitutes a pervasive, systematic, and deceptive practice at all Tommy Hilfiger outlet
2 locations visited.²⁷ Indeed, Defendants’ deceptive discounting scheme appeared to be
3 executed uniformly across all Tommy Hilfiger outlet locations in California where
4 outlet shoppers are routinely misled into believing they are purchasing premium
5 mainline merchandise at steep discounts, when in fact they are paying inflated prices
6 for mostly *lower-quality goods* never intended for sale in full-price retail settings.²⁸

7 53. To further underscore that point, Plaintiffs’ counsel retained a qualified
8 textile engineering expert with more than five decades of experience in garment
9 construction, manufacturing quality, and specification enforcement to evaluate whether
10 apparel sold at Tommy Hilfiger outlet stores was materially inferior to equivalent items
11 sold through Tommy Hilfiger’s mainline retail channels, including major department
12 stores such as Macy’s (“Plaintiffs’ Consulting Textile Expert”). He was asked to assess
13 whether the outlet items were simply discounted surplus from mainline inventory, or
14 whether they were, in fact, purposefully manufactured for outlet sale using lower-

15
16 ²⁷ Notably, numerous California federal courts have held that plaintiffs in false discount
17 pricing cases need not plead detailed pre-suit investigations to survive a motion to
18 dismiss—even under Rule 9(b). *See, e.g., Rubenstein v. Neiman Marcus Grp. LLC*, 687
19 F. App’x 564, 568 (9th Cir. 2017) (plaintiff “cannot reasonably be expected” to have
20 detailed knowledge of internal pricing policies pre-discovery; *Stathakos*, 2016 WL
21 1730001, at *3-4 (Rule 9(b) satisfied despite no pre-suit investigation allegations);
22 *Knapp*, 2016 WL 3268995, at *4 (“perpetual sale” allegations sufficient); *Horosny*,
23 2015 WL 12532178, at *4 (upholding “information and belief” pleading); *Le v. Kohl’s*,
24 160 F. Supp. 3d at 1099 (no nationwide investigation required).

25 ²⁸ While many past courts have not required them—*see supra* note 27—other
26 California courts have also routinely upheld complaints that *do* include pre-suit
27 investigations—even less robust than Plaintiffs’ here. *See, e.g., Adams v. Cole*
28 *Haan, LLC*, No. 20-cv-00913, 2021 WL 4907248 (C.D. Cal. Mar. 1, 2021); *Dahlin v.*
Under Armour, Inc., No. 20-cv-3706, 2020 WL 6647733 (C.D. Cal. July 31, 2020);
Inga, 2020 WL 5769080, at *1; *Harris*, 2020 WL 3965022, at *1; *Calderon v. Kate*
Spade & Co., LLC, No. 19-cv-00674, 2020 WL 1062930 (S.D. Cal. Mar. 5, 2020);
Fisher v. Eddie Bauer LLC, No. 19-cv-857, 2020 WL 4218228 (S.D. Cal. Feb. 3,
2020); *Dennis v. Ralph Lauren Corp.*, No. 16-cv-1056, 2017 WL 3732103 (S.D. Cal.
Aug. 29, 2017); *Rael v. New York & Co., Inc.*, No. 16-cv-369, 2017 WL 3021019 (S.D.
Cal. July 17, 2017); *Azimpour v. Sears, et al.*, No. 15-cv-2798, 2017 WL 1496255 (S.D.
Cal. Apr. 26, 2017); *Fallenstein v. PVH Corp., et al.*, No. 21-cv-01690 (S.D. Cal.
Jan. 3, 2023) at Dkt. No. 29 (Order Denying Defendants’ Motion to Dismiss Plaintiff’s
First Amended Complaint); *Schertzer v. Alpargatas USA Inc* (Super. Ct. San Diego,
37-2019- 00015352, Dkt. No. 45).

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1 quality materials or construction techniques, as part of a deceptive discount pricing
2 scheme.

3 54. Plaintiffs’ Consulting Textile Expert analyzed six garments: three
4 purchased from a Macy’s department store and three similar styles purchased from a
5 Tommy Hilfiger outlet store. The pairs included: (1) tan chino slacks, (2) red polo
6 shirts, and (3) red crew neck short-sleeve t-shirts. In two of the three categories—slacks
7 and polos—the outlet garments were found to be inferior in both construction and
8 material quality.²⁹ For instance, the Macy’s tan chinos featured inner waistband piping
9 over the overlock stitching—a labor- and materials-intensive finishing technique that
10 adds durability and comfort. The outlet version lacked this piping and instead exposed
11 the seam edges, indicating a clear cost-saving measure. Yet the price tags for both
12 garments were identical at \$79.50, reinforcing the illusion that the outlet product was
13 equivalent in value.

14 55. Similarly, the Macy’s red polo shirt was constructed from a premium 96%
15 cotton and 4% Elastane blend and featured a traditional three-button placket, offering
16 greater versatility and comfort. The outlet version substituted a cheaper 60% cotton /
17 40% polyester blend, was manufactured in a different country (India vs. Turkey), and
18 included only a two-button placket—an intentionally cheaper design. According to
19 Plaintiffs’ expert, the outlet version was “inferior in design, aesthetics, and fit and
20 function” and appeared “manufactured specifically for sale through Tommy Hilfiger
21 outlet stores” rather than as discounted mainline inventory.

22
23 ²⁹ The third category—crew neck t-shirts—did not reveal meaningful differences in
24 quality between the mainline and outlet versions. As Plaintiffs’ Consulting Textile
25 Expert noted, this is not surprising given the inherent simplicity of the garment. Unlike
26 more complex apparel items such as slacks or polos, which involve multiple design and
27 construction variables (*e.g.*, fabric blends, plackets, interior finishing, structural
28 stitching), a basic short-sleeve crew neck tee is composed of minimal components and
requires relatively straightforward assembly. As a result, there are fewer opportunities
for meaningful cost-cutting without altering the garment’s function or appearance in
obvious ways. Thus, the lack of observed disparity in this category does not undermine
the broader finding that Tommy Hilfiger outlet garments are frequently of lower quality
than their mainline counterparts.

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1 56. In sum, Plaintiffs’ Consulting Textile Expert concluded that two of the
2 three outlet items were of demonstrably lower quality than their mainline counterparts,
3 with measurable cost-cutting in materials, design, and manufacturing techniques. The
4 evidence indicated that these garments were not leftover mainline goods sold at a
5 discount, but rather garments manufactured at a lower cost specifically for retail sale
6 at Tommy Hilfiger outlet stores.

7 57. Despite Plaintiffs’ counsel’s extensive investigative efforts, the full scope
8 of Defendants’ deceptive pricing and sourcing practices remains concealed within
9 records exclusively in Defendants’ possession. Plaintiffs will seek targeted discovery
10 to obtain the internal data and documentation necessary to confirm the breadth and
11 depth of Defendants’ scheme.

12 **E. Plaintiffs’ and Class Members’ Economic Injuries Are Readily Quantifiable**

13 58. Plaintiffs have been injured and incurred quantifiable actual damages as a
14 result of Defendants’ fraudulent pricing scheme, which can be and has been
15 preliminarily calculated through the use of regression analysis.

16 59. Plaintiffs overpaid for the products they purchased as described herein.
17 And it was Defendants’ false reference pricing scheme and attendant deception that
18 caused Plaintiffs to overpay. Despite Plaintiffs’ original belief that the products they
19 purchased were discounted and thus, that their value was significantly greater than the
20 sale price for which they purchased them, Plaintiffs, in actuality, paid an *inflated* price
21 for all of the supposedly discounted products they purchased. In other words, both the
22 reference prices and the actual selling prices of the items Plaintiffs purchased were
23 inflated, but for different reasons: the reference prices because Defendants intentionally
24 fabricated them and the actual selling prices because if Defendants had not engaged in
25 the false discounting scheme, then those items would not have commanded such high,
26 *i.e., inflated*, prices. Thus, the items Plaintiffs purchased were all worth less than the
27 amounts they paid for them.
28

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1 60. Plaintiffs were damaged in their purchases because Defendants’ false
2 reference price discounting scheme inflated the final selling price of the items they
3 purchased, such that Defendants’ false reference price discounting scheme caused
4 Plaintiffs to pay a price premium. Defendants’ false reference price discounting scheme
5 artificially inflated consumer demand, such that each consumer who purchased the
6 corresponding product paid higher prices when compared to what they would have paid
7 had Defendants not engaged in a false reference pricing scheme. Plaintiffs would not
8 have purchased the merchandise, or would have paid less for it, but for Defendants’
9 representations regarding the false reference prices and purported discounts of the
10 merchandise. Plaintiffs were misled into believing that they were receiving substantial
11 savings on the purchase of Defendants’ products, which was implied by the falsely
12 advertised reference prices.

13 61. Here, for purposes of investigation and determining a preliminary
14 measure of damages, Plaintiffs, with the assistance of qualified expert economists and
15 consultants, conducted an analysis of Defendants’ product SKUs and pricing practices
16 attached to each SKU. Plaintiffs, through the use of sophisticated regression analysis,
17 were able to determine the objective measure by which Plaintiffs and Class members
18 overpaid for the goods they purchased.³⁰

19 62. Reference guides on regression-based damages describe how
20 “[p]ractitioners can use several tools to establish and measure relations among the
21 variables that affect revenues and costs, and thus establish the causal link . . .
22 Regression analysis applies a statistical technique to develop an equation depicting the

23 _____
24 ³⁰ Notably, if the “misrepresentation ... artificially inflate[s] the market price of a
25 product, causing [Plaintiffs] to pay more for it than [they] otherwise would have—
26 regardless of whether [they] even saw the misrepresentation,” the Plaintiffs were
27 “harmed [] by a misrepresentation without necessarily having relied on it.” *In re AXA*
28 *Equitable Life Ins. Co. COI Litig.*, No. 16-cv-740, 2020 WL 4694172, at *10 (S.D.N.Y.
Aug. 13, 2020). Under this “theory of causation ... that the advertising and labeling
practice 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.*

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1 relation among variable and then uses that equation for prediction.”³¹ In this case,
2 Plaintiffs’ consultants utilized regression analysis to estimate the relationship between
3 Defendants’ reference prices and Defendants’ selling prices, after accounting for the
4 other factors that influence Defendants’ pricing, and used that equation to predict prices
5 that would have occurred but for the misconduct in this case. As explained below, the
6 regression analysis relies on Defendants’ data and measures how selling prices increase
7 when the intensity of their misconduct is greater (*i.e.*, a higher reference price leads to
8 higher selling price, holding all else equal).

9 63. Plaintiffs’ experts used the data collected during the investigation to
10 analyze 113 products offered for sale within Defendants’ Tommy Hilfiger outlet stores
11 during the Class Period (defined below). The average reference price within this data
12 sample was \$74.40, whereas the average selling price was \$47.90. Thus, on average,
13 the reference price chosen by Defendants was \$26.50 (or 55.3% higher) than the selling
14 price.

15 64. Plaintiffs’ experts used this data to perform a regression model which
16 allowed them to calculate the price premium paid by Plaintiffs and all similarly situated
17 proposed Class members for each product purchased. The regression model
18 incorporates supply and demand factors through the use of *actual selling prices*, which
19 are the net result of the competitive factors that influence Defendants’ pricing. For
20 example, the price of an item at issue in this case is a function of its component features
21 (*e.g.*, is the item a dress, top, or jacket? Is the item marketed towards women or men?).
22 The net effect of the demand factors (*e.g.*, consumer willingness to pay for an item
23 based on its features) and supply factors (*e.g.*, Defendants’ product costs) are captured
24 within the product’s attributes when actual selling prices are used in this type of
25 regression analysis.

26
27
28 ³¹ Roman L. Weil et al., *Litigation Services Handbook: The Role of the Financial Expert*, Ch. 4, p. 25 (6th ed. 2017).

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1 65. While additional variables will be accounted for after more detailed data
2 is provided during discovery, ***this initial regression analysis already accounts for nine***
3 ***variables that impact Defendants’ pricing*** (including reference price). For example,
4 the regression analysis accounts for broad product type (e.g., bottoms vs. tops vs.
5 dresses vs. outerwear) and target gender demographic (e.g., women, men, girls, or
6 boys).

7 66. After accounting for these product characteristics, the regression finds that
8 increasing the reference price by \$1 results in an increase of approximately \$0.58 in
9 the selling price of items at Tommy Hilfiger outlet stores.

10 67. The corresponding regression equation is then used to predict selling
11 prices if the reference price was reduced to the typical selling price of the item (i.e.,
12 lowering the reference price to remove the impact of Defendants’ misconduct on
13 pricing). For example, as previously discussed, the preliminary data suggests that
14 Defendants’ reference prices were \$26.50 (or 55.3% higher) than the selling price, on
15 average. When combined with the preliminary regression results described above, this
16 \$26.50 differential implies that selling prices were approximately \$15.37 higher, on
17 average, due to the false discounting scheme alleged in this case.³² This average
18 overcharge of \$15.37 represents approximately 32.1% of the average purchase price
19 within the data collected by Plaintiffs.³³

20 68. These results will be revised upon receipt of documents and data during
21 discovery, but the data suggests that Plaintiffs and all others similarly situated paid a
22 price premium as a result of the alleged misconduct. Plaintiffs will seek in-depth
23 discovery of internal documents, digitally stored historic pricing data, and depositions
24 of persons most knowledgeable about Defendants’ practices to supplement this
25 investigation, show common injury at class certification, and prove damages with
26 reasonable certainty at trial.

27 ³² That is, $\$26.50 \times 0.58 = \15.37 .

28 ³³ That is, $\$15.37 / \$47.90 = 32.1\%$

69. The table below shows the application of the preliminary regression coefficient (0.58) to the items purchased by Plaintiffs and the resulting measure of injury.³⁴

Item	Delta (Δ) Between Reference and Sale Price	Coefficient (0.58)	Damages ($\Delta \times 0.58$)
Plaintiff De La Paz's Signature Core T-Shirt	\$11.27	0.58	\$6.54
Plaintiff De La Paz's Tommy Tipped Polo Shirt	\$29.51	0.58	\$17.12
Plaintiff Hashimi's Sweatpants	\$40	0.58	\$23.20
Plaintiff Hashimi's Polo Shirt	\$36.50	0.58	\$21.17

70. The harm to Plaintiffs and Class members (*i.e.*, price premium) caused by Defendants' misconduct can also be objectively measured through the use of conjoint analysis supported by Defendants' historic pricing, sales, and other market data, which will also be pursued vigorously in discovery, to isolate the price premium associated with Defendants' false reference price and discounting scheme.

71. 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 researcher will then analyze

³⁴ This exercise can be performed for every product Defendants have sold at Tommy Hilfiger 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.

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," ch. 4 in *Getting Started with Conjoint Analysis: Strategies for Product Design and Pricing Research*, Madison, WI: Research Publishers LLC, p. 29 (2d ed. 2010).

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

10 72. As with hedonic regression, Plaintiffs can put forth an expert-based
11 conjoint analysis with and/or without an economic market simulation to account for
12 supply side factors³⁶ that will likewise demonstrate the price premium paid on products
13 with inflated reference prices as compared to those without inflated reference prices.
14 This approach will isolate the economic harm to Class members due solely to

15 _____
16 ³⁶ An economic market simulation estimates market prices by fully incorporating the
17 relevant supply and demand information to estimate the but-for market prices that
18 would have been paid by consumers in the absence of the alleged misconduct. It is used
19 to incorporate supply side factors into the but-for world in which consumers’ WTP has
20 adjusted due to the absence of the alleged misconduct. Market simulations often
21 incorporate (and are calibrated to) real-world supply and demand market data on the
22 Defendants’ (and competitor’s) products, prices, costs, market share, consumer
23 decisions (*e.g.*, mixed logit coefficients from conjoint analysis), and the price elasticity
24 of consumer demand. Indeed, a wide body of academic literature in the economics
25 discipline describes combining the consumer demand side of the market with the
26 supply side of the market to determine market equilibrium prices. For example, Steven
27 Berry, et al., *Automobile Prices in Estimation of Random-Coefficients Logit Models of*
28 *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 *J. Political Economy* 68-105 (2004); Amil
Petrin, *Quantifying the Benefits of New Products: The Case of the Minivan*, 110 *J.*
Political Economy 705-29 (2002); Greg Allenby, et al., *Valuation of Patented Product*
Features, 57 *J. Law & Economics* 629-63 (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.*, *Won v. General Motors, LLC*, No. 19-cv-11044 (E.D.
Mich. July 28, 2022); *Allegra v. Luxottica Retail North America*, No. 17-cv-5216
(E.D.N.Y. Dec. 13, 2021); *Johannessohn v. Polaris Industries, Inc.*, No. 16-cv-03348
(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.”).

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1 Defendants’ misconduct and will demonstrate that otherwise identical products sold
2 *without* reference prices ultimately cost less.

3 73. Accordingly, objective measures demonstrate that Plaintiffs overpaid for
4 the Tommy Hilfiger outlet store merchandise they purchased. The difference between
5 the actual sale price paid by Plaintiffs due to the artificially increased demand for the
6 products—caused by Defendants’ false discounting scheme—and the market sale price
7 that the products would have commanded without Defendants’ misconduct provides an
8 objective measure by which Plaintiffs were overcharged and injured by Defendants.
9 The amount of inflation of the prices for the Tommy Hilfiger outlet store merchandise
10 Plaintiffs purchased as a result of Defendants’ deception measures how much Plaintiffs
11 overpaid. As shown above, this amount can be quantified using regression analysis
12 based on Defendants’ historic pricing data and/or through conjoint analysis (with or
13 without a market simulation).

14 74. Plaintiffs submit that the methodologies discussed herein are commonly
15 accepted by courts in consumer class actions and are capable of being applied using
16 class-wide data, making damages analyses in this action manageable and suitable for
17 common proof.

18 **F. Plaintiffs Face a Threat of Future Recurring Harms and Lack an Adequate**
19 **Remedy at Law**

20 75. Plaintiffs do not have an adequate remedy at law, and are susceptible to
21 recurring harm because they like the merchandise sold at Defendants’ brick-and-mortar
22 stores. Plaintiffs desire to continue purchasing additional items from Defendants in the
23 future. However, Plaintiffs are unable to discern which reference prices are inflated and
24 untrue from truthful reference prices. Plaintiffs may again, by mistake, purchase
25 products with false reference prices and discounts in the future based on the reasonable,
26 but incorrect, impression that the advertised reference prices are honest, accurate, and
27 bona fide. Plaintiffs have no reasonable means to determine in the future whether
28 Defendants are continuing to use false reference prices and discounts, or whether they

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1 have ceased this deceptive practice, and are therefore susceptible to recurring harm in
2 the immediate future.

3 76. Absent an equitable injunction enjoining Defendants from implementing
4 an unlawful false price-discounting scheme, Plaintiffs, members of the putative Class,
5 and the general public will be irreparably harmed and denied an effective and complete
6 remedy because of the real and tangible threat of future harm emanating from
7 Defendants’ ongoing and deceptive conduct that cannot be remedied with monetary
8 damages. Accordingly, Plaintiffs, members of the putative Class, and the general public
9 lack an adequate remedy at law, and an injunction is the only form of relief that will
10 guarantee them the appropriate redress and assurances.

11 77. Moreover, Plaintiffs lack an adequate remedy at law with respect to their
12 claims seeking equitable restitution because they have not yet retained an expert to
13 determine whether an award of damages can or will adequately remedy their monetary
14 losses caused by Defendants. Particularly, as legal damages focus on remedying the
15 loss to the Plaintiffs, and equitable restitution is concerned with money wrongfully
16 obtained by Defendants. Furthermore, Plaintiffs will seek to establish damages under
17 various theories, such as the “purchase price,” “price premium,” and/or “benefit-of-
18 the-bargain” theories, all of which can yield different sums of damages.³⁷

19 78. Plaintiffs have standing to seek injunctive relief because they face a real
20 and substantial risk of future harm, absent judicial intervention. Plaintiffs regularly
21 shop at Tommy Hilfiger outlet stores and have a continued interest in doing so given
22 their preference for the brand and its styles. However, they are unable to determine

23 ³⁷ The purchase price theory allows a plaintiff to recover what they paid for the product,
24 essentially a full refund. The price premium theory utilizes regression analyses to
25 determine the outward shift of the demand curve of Defendants’ merchandise due to
26 the false price-discounting scheme, and thus the increase in price as a result of the surge
27 in demand, the amount of which can be recovered as damages. Lastly, the benefit-of-
28 the-bargain theory calculates the difference between the value represented (reference
price) and the actual value received, which can be recovered as damages. Without
expert analysis to determine the outward shift in the demand curve or the actual value
received, Plaintiff does not know at the pleading stage, especially before the benefits
of discovery, whether legal damages or equitable restitution would adequately remedy
Plaintiffs’ and the putative Class’s monetary losses.

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1 with any reliability whether Defendants have ceased the deceptive reference pricing
2 practices challenged herein. The nature of outlet shopping—characterized by rapid
3 product turnover, fluctuating inventory, and changing promotional signage—makes it
4 virtually impossible for Plaintiffs to discern whether a particular product’s reference
5 price is legitimate or deceptive. Plaintiffs are not trained pricing auditors, nor do they
6 have access to Defendants’ internal pricing histories. Without injunctive relief,
7 Plaintiffs remain at serious risk of being deceived again.

8 79. Defendants’ widespread and opaque use of fictitious reference pricing
9 exacerbates the difficulty consumers face in distinguishing between legitimate
10 markdowns and false price comparisons. Given the volume and diversity of Tommy
11 Hilfiger outlet merchandise, and the fact that Defendants may at any time introduce
12 new MFO products using similar deceptive reference pricing, there is a substantial
13 likelihood that Plaintiffs will again be misled in future purchases—even if
14 unintentionally. Plaintiffs should not be required to launch an independent
15 investigation into Defendants’ pricing structure before each visit to a Tommy Hilfiger
16 outlet store. Injunctive relief is necessary to ensure that future purchases are not tainted
17 by the same misrepresentations that harmed them before.

18 80. Plaintiffs, the Class, and the general public will suffer irreparable harm
19 absent an injunction barring Defendants from continuing their deceptive pricing
20 practices. Monetary damages cannot police future misconduct or restore marketplace
21 integrity, as they are limited to compensating past harm and do not proactively restrain
22 unlawful conduct. Any deterrent effect is speculative and may be disregarded
23 altogether—particularly where, as here, a company may rationally choose
24 noncompliance if the cost of reform exceeds its expected liability. Injunctive relief is
25 uniquely suited to prevent the recurrence of deceptive pricing schemes that are
26 inherently difficult to detect without greater transparency.

27 81. Indeed, courts routinely recognize that deceptive pricing harms not only
28 past purchasers but also future consumers who rely on similar representations in

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1 making purchase decisions. An injunction is therefore necessary to prevent ongoing
2 violations and ensure meaningful consumer protection. Plaintiffs lack an adequate
3 remedy at law because no amount of damages can ensure that Defendants’ future
4 pricing representations will comply with state and federal law.

5 82. Plaintiffs also lack an adequate remedy at law for purposes of seeking
6 equitable restitution. Under *Sonner*, Plaintiffs must plead facts showing that legal
7 damages are inadequate—and they do. At this stage, Plaintiffs have not yet retained a
8 damages expert to determine whether legal damages (such as out-of-pocket loss or
9 benefit-of-the-bargain measures) will fully compensate for the monetary harm they
10 suffered. Unlike legal damages, equitable restitution focuses on disgorging ill-gotten
11 gains and restoring money wrongfully obtained by Defendants through their uniform
12 scheme. There is no certainty at this juncture that a legal remedy will be available,
13 quantifiable, or coextensive with equitable relief. Accordingly, Plaintiffs may properly
14 plead both in the alternative.

15 83. In particular, Plaintiffs—purchasers of Tommy Hilfiger outlet
16 merchandise in California—lack an adequate **legal** remedy for any injury measured
17 under the “value represented minus price paid” theory (*i.e.*, the benefit-of-the-bargain).
18 California law prohibits recovery of such damages under fraud or CLRA legal damages
19 theories, but **may permit** this measure of relief through equitable restitution. *See* Cal.
20 Civ. Code § 3343. Equitable restitution thus offers a distinct avenue of redress where
21 legal relief may fail.³⁸

22 84. Furthermore, the UCL’s four-year statute of limitations extends one full
23 year beyond the three-year limitation period applicable to CLRA claims. *See* Cal.

24 ³⁸ Decisions in numerous false discounting cases have accepted similar allegations
25 where the defendant has challenged the plaintiffs’ ability to seek equitable relief
26 following the decision in *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 844 (9th
27 Cir. 2020). *See, e.g., Dahlin*, 2020 WL 6647733, at *4-5; *Adams*, 2021 WL 4907248,
28 at *3-4 (C.D. Cal. Mar. 1, 2021); *Fallenstein*, No. 21-cv-01690 (S.D. Cal. Jan. 3, 2023)
at Dkt. No. 29 (Order Denying Defendants’ Motion to Dismiss Plaintiff’s First
Amended Complaint). *Dahlin v. The Donna Karan Co. Store, LLC*, No. 21-cv-07711
(C.D. Cal. Mar. 16, 2022) at Dkt. No. 30 (Order Denying Motion to Dismiss Plaintiff’s
First Amended Complaint) at 5-10.

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1 Bus. & Prof. Code § 17208; Cal. Civ. Code § 1783. If Plaintiffs’ (equitable) UCL
2 claims were dismissed on the theory that legal damages were adequate, a full year of
3 monetary relief would be lost, despite clear allegations of continuing harm. Such a
4 result would contravene public policy and the remedial goals of the UCL.

5 85. Finally, Plaintiffs’ UCL claims—particularly those brought under the
6 “unfair” prong—reach conduct that legal remedies under the CLRA do not. *See Allen v.*
7 *Hylands, Inc.*, 773 F. App’x 870, 874 (9th Cir. 2019). While the CLRA is generally
8 limited to fraud-based consumer deception (“reasonable consumer” test), the UCL’s
9 unfairness standard encompasses a broader set of harms, including practices that
10 violate established public policy or that are immoral, unethical, oppressive, or
11 unscrupulous. The ability to plead this theory is critical to capturing broader
12 marketplace injuries that legal claims may not address—and thus further illustrates why
13 Plaintiffs lack an adequate remedy at law and are entitled to pursue equitable claims in
14 the alternative.

15 **V. CLASS ALLEGATIONS**

16 86. Plaintiffs bring this action on behalf of themselves and all other similarly
17 situated Class members pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules
18 of Civil Procedure and seek certification of the following Class against Defendants:

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

22 87. Excluded from the Class are Defendants, as well as their officers,
23 employees, agents or affiliates, parent companies and/or subsidiaries, and each of their
24 respective officers, employees, agents or affiliates, and any judge who presides over
25 this action. Plaintiffs reserve the right to expand, limit, modify, or amend this Class
26 definitions, including the addition of one or more class, in connection with their motion
27 for Class certification, or at any other time, based upon, *inter alia*, changing
28 circumstances and/or new facts obtained during discovery.

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1 88. ***Numerosity***: The Class members are so numerous that joinder of all
2 members is impracticable. Plaintiffs are informed and believe that the proposed Class
3 contain hundreds of thousands of individuals who have been damaged by Defendants'
4 conduct as alleged herein. The precise number of Class members is unknown to
5 Plaintiffs.

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

- 10 a. whether, during the Class Period, Defendants used false advertised
11 reference prices on their Tommy Hilfiger outlet product labels and falsely
12 advertised price discounts on merchandise sold in their outlet stores;
- 13 b. whether Defendants ever offered items for sale or sold items at their
14 advertised reference price;
- 15 c. whether, during the Class Period, the original price advertised by
16 Defendants was the prevailing market price for the products in question
17 during the three months preceding the dissemination and/or publication of
18 the advertised former prices;
- 19 d. whether, during the Class Period, any of the original prices advertised by
20 Defendants were false or misleading;
- 21 e. whether Defendants' purported sale prices advertised in their Tommy
22 Hilfiger outlet stores reflected any actual discounts or savings;
- 23 f. whether Defendants' purported percentage-off discounts advertised in
24 their Tommy Hilfiger outlet stores reflected any actual discounts or
25 savings;
- 26 g. whether Defendants' alleged conduct constitutes violations of the laws
27 asserted;
- 28

- 1 h. whether Defendants’ alleged conduct constitutes violations of federal
- 2 and/or California pricing regulations;
- 3 i. whether Defendants engaged in an unconscionable commercial practice,
- 4 and/or employed deception or misrepresentation under the laws asserted;
- 5 j. whether Plaintiffs and Class members are entitled to damages and the
- 6 proper measure of that loss; and
- 7 k. whether an injunction is necessary to prevent Defendants from continuing
- 8 to use false, misleading or illegal price comparisons.

9 90. **Typicality:** Plaintiffs’ claims are typical of the claims of the Class
10 members because, *inter alia*, all Class members have been deceived (or were likely to
11 be deceived) by Defendants’ false and deceptive price advertising scheme, as alleged
12 herein. Plaintiffs are advancing the same claims and legal theories on behalf of
13 themselves and all Class members.

14 91. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of the
15 Class members. Plaintiffs have retained counsel experienced in complex consumer
16 class action litigation, and Plaintiffs intend to prosecute this action vigorously.
17 Plaintiffs have no antagonistic or adverse interests to those of the Class.

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

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

11 94. Plaintiffs are informed that Defendants keep extensive computerized
12 records of their Tommy Hilfiger outlet customers through, *inter alia*, customer loyalty
13 programs, credit card programs, and general marketing programs. Defendants have one
14 or more databases through which a significant majority of Class members may be
15 identified and ascertained, and they maintain contact information, including email and
16 home addresses, through which notice of this action could be disseminated in
17 accordance with due process requirements.

18 **VI. CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**

20 **Violation of California’s False Advertising Law (“FAL”)**
21 **CAL. BUS. & PROF. CODE §§ 17500, *et seq.***

22 95. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1-
23 94 as if fully set forth herein.

24 96. Plaintiffs bring this claim individually and on behalf of the members of
25 the Class against Defendants for violations of California’s FAL, Cal. Bus. & Prof. Code
26 §§ 17500, *et seq.*

27 97. Cal. Bus. & Prof. Code § 17500 provides:

28 It is unlawful for any . . . corporation . . . with intent directly or indirectly
to dispose of . . . personal property or to perform services, professional or
otherwise, or 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 . . . which is *untrue or misleading*, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading . . .

(emphasis added).

98. The FAL further provides:

No price shall be advertised as a former price of any advertised thing, unless the alleged former price was the prevailing market price . . . within three months next 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.

Cal Bus. & Prof. Code § 17501.

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

100. As a direct and proximate result of Defendants’ misleading and false advertisements, as well as Defendants’ deceptive and unfair acts and practices made during the course of Defendants’ business, Plaintiffs and members of the Class suffered economic injury.

101. Plaintiffs, on behalf of themselves and the Class, request that this Court order Defendants to restore this money to Plaintiffs and the Class, and to enjoin Defendants from continuing these unfair practices in violation of the FAL in the future. Otherwise, Plaintiffs, members of the Class, and the broader general public will be irreparably harmed and/or denied an effective and complete remedy.

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

102. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1-94 as if fully set forth herein.

103. Plaintiffs bring this claim individually and on behalf of the members of the proposed Class against Defendants for violations of the UCL, Cal. Bus. & Prof. Code §§ 17200, *et seq.*

104. The UCL defines “unfair business competition” to include any “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal. Bus. Prof. Code § 17200.

105. The UCL imposes strict liability. Plaintiffs and members of the proposed Class need not prove that Defendants intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices—but only that such practices occurred.

“Unfair” Prong

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

107. Defendants’ actions constitute “unfair” business practices because, as alleged above, Defendants engaged in misleading and deceptive price comparison advertising that represented false reference prices and corresponding deeply discounted phantom “sale” prices. Defendants’ acts and practices offended an established public policy of transparency in pricing, including regulations enacted by the FTC, and they constituted immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to consumers.

108. The harm emanating from this practice to Plaintiffs and members of the proposed Class outweighs any utility it provides because Defendants’ practice of

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1 advertising false discounts provides no utility. There were reasonably available
2 alternatives to further Defendants’ legitimate business interests other than the
3 misleading and deceptive conduct described herein.

4 ***“Fraudulent” Prong***

5 109. A business act or practice is “fraudulent” under the UCL if it is likely to
6 deceive members of the consuming public.

7 110. Defendants’ acts and practices alleged above constitute fraudulent
8 business acts or practices as Defendants have deceived Plaintiffs and members of the
9 proposed Class and are highly likely to deceive members of the consuming public.
10 Plaintiffs and members of the proposed Class relied on Defendants’ fraudulent and
11 deceptive representations regarding their false ticket prices for products sold by
12 Defendants. These misrepresentations played a substantial role in Plaintiffs’ and
13 members of the proposed Class’s decision to purchase products at a purportedly steep
14 discount, and Plaintiffs and members of the proposed Class would not have purchased
15 products without Defendants’ misrepresentations.

16 ***“Unlawful” Prong***

17 111. A business act or practice is “unlawful” under the UCL if it violates any
18 other law or regulation.

19 112. Defendants’ acts and practices alleged above constitute unlawful business
20 acts or practices as Defendants have violated state and federal law in connection with
21 their deceptive pricing scheme. The FTCA prohibits “unfair or deceptive acts or
22 practices in or affecting commerce,” 15 U.S.C. § 45(a)(1), and prohibits the
23 dissemination of any false advertisements. 15 U.S.C. § 52(a). Under the FTC, false
24 former pricing schemes, like Defendants’, are described as deceptive practices that
25 violate the FTCA:

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

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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 a case, the "reduced" price is, in reality, probably just the seller's regular price

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

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

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

For the purpose of this article the worth or value of any thing advertised is the 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.

No price shall be advertised as a former price of any advertised thing, unless the alleged former price was the prevailing market price as above defined within three months next 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.

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

114. Defendants violate § 17501 because they advertise items, including the items that Plaintiffs purchased and are described herein, with a former price that greatly exceeds the prevailing market price of those items. For the most part, Defendants advertise on their price tags a reference price that is unadorned by any qualifying language (e.g., "Compare At") which could arguably put consumers on notice to review prices outside of the Tommy Hilfiger outlet store.

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1 115. In doing so, Defendants reasonably convey to consumers that these
2 reference prices represent their *own* former price for that same merchandise. *See supra*
3 note 14 (citing *Vizcarra*, 710 F.Supp.3d at 725). Accordingly, the “prevailing” market
4 price of those items can be measured exclusively by reference to Defendants’ own
5 historical sales data. *See Harris*, 2020 WL 3965022, at *4 (the need for allegations
6 pertaining to a false discounting plaintiff’s counsel’s investigation of outside market
7 “*only arises when the language of the advertisement implies a comparison to another*
8 *retailer.*”) (emphasis added); *see* ¶ 34.

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

14 117. As detailed in the Third Cause of Action below, the CLRA, Cal. Civ. Code
15 § 1770(a)(9), prohibits a business from “[a]dvertising goods or services with intent not
16 to sell them as advertised,” and subsection (a)(13) prohibits a business from “[m]aking
17 false or misleading statements of fact concerning reasons for, existence of, or amounts
18 of price reductions.”

19 118. As detailed herein, and for the same reason that Defendants’ acts and
20 practices violate the FTCA and the FAL, they also violate the CLRA, thus establishing
21 another “unlawful” act in violation of the UCL.

22 119. Defendants’ practices, as set forth above, misled Plaintiffs, the Class, and
23 the public in the past and will continue to mislead them in the future. Consequently,
24 Defendants’ practices constitute an unlawful, fraudulent, and unfair business practice
25 within the meaning of the UCL.

26 120. Defendants’ violations of the UCL, through unlawful, unfair, and
27 fraudulent business practices, are ongoing and present a continuing threat to Plaintiffs,
28 members of the Class, and the public who, if Defendants’ false pricing scheme is

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1 permitted to continue, will be deceived into purchasing products based on illegal price
2 comparisons. These false comparisons lead to artificial and increased demand, which in
3 turn, leads to higher prices and financial harm for consumers like Plaintiffs and the
4 members of the Class as described herein. Because of the surreptitious nature of
5 Defendants’ deception, these injuries cannot be reasonably avoided and will continue to
6 be suffered by the consuming public absent a mandated change in Defendants’ practice.

7 121. Pursuant to Bus. & Prof. Code § 17203, Plaintiffs and members of the
8 Class are entitled to preliminary and permanent injunctive relief enjoining Defendants
9 from continuing to engage in this unfair competition alleged above, as well as
10 disgorgement and restitution to Plaintiffs and the Class of all Defendants’ revenues
11 wrongfully obtained from them as a result of Defendants’ unfair competition, or such
12 portion of those revenues as the Court may find equitable.

13 **THIRD CAUSE OF ACTION**

14 **Violation of California’s Consumers Legal Remedies Act (“CLRA”)**
15 **CAL. CIV. CODE § 1750, *et seq.***

16 122. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1-
17 94 as if fully set forth herein.

18 123. Plaintiffs bring this claim individually and on behalf of the members of the
19 Class against Defendants for violations of the CLRA, Cal. Civ. Code § 1750, *et seq.*

20 124. Plaintiffs and each member of the Class are “consumers” as defined by
21 Cal. Civ. Code § 1761(d). Defendants’ sale of products were “transactions” within the
22 meaning of Cal. Civ. Code § 1761(e). The products purchased by Plaintiffs and
23 members of the Class are “goods” or “services” within the meaning of Cal. Civ. Code
24 § 1761(a)-(b).

25 125. Defendants violated and continue to violate the CLRA by engaging in the
26 following practices proscribed by Cal. Civ. Code § 1770(a) in transactions with
27 Plaintiffs and the Class, which were intended to result in, and did result in, the sale of
28 products sold at their Tommy Hilfiger outlet stores:

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- 1 a. advertising goods or services with intent not to sell them as advertised;
- 2 § 1770(a)(9); and
- 3 b. making false or misleading statements of fact concerning reasons for,
- 4 existence of, or amounts of price reductions; § 1770(a)(13).

5 126. Plaintiffs and the Class are consumers who have suffered economic injury
 6 and damages, including benefit of the bargain damages, as a result of Defendants’ use
 7 and employment of the false and misleading reference pricing alleged herein. Pursuant
 8 to Cal. Civ. Code § 1780(a), Plaintiffs therefore seek an order enjoining such methods,
 9 acts, or practices as well as any other relief the Court deems proper. Plaintiffs
 10 additionally seek costs and reasonable attorney’s fees pursuant to Cal. Civ. Code
 11 § 1780(e).

12 127. Plaintiffs, through counsel, will send CLRA demand letters by certified
 13 mail to Defendants that provide notice of Defendants’ violation of the CLRA as alleged
 14 herein, and demand that Defendants notify all members of the Class and correct, repair,
 15 replace, or otherwise rectify the unlawful, unfair, false, and deceptive practices
 16 complained of herein. If Defendants do not respond to Plaintiffs’ letters and agree to
 17 rectify the problems associated with the actions detailed above and give notice to all
 18 affected consumers within 30 days of the date of written notice pursuant to §1782,
 19 Plaintiffs will amend this complaint to seek actual, punitive, and statutory damages, as
 20 appropriate against Defendants.

21 **VII. PRAYER FOR RELIEF**

22 Wherefore, Plaintiffs, on behalf of themselves and on behalf of the other members
 23 of the Class, request that this Court award relief against Defendants as follows:

- 24 1. an order certifying the Class and designating Plaintiffs as the Class
- 25 Representatives, and their counsel as Class Counsel;
- 26 2. awarding restitution and disgorgement of all profits and unjust enrichment
- 27 that Defendants obtained from Plaintiffs and the Class members as a result of their
- 28 unlawful, unfair, and fraudulent business practices described herein;

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- 1 3. awarding declaratory and injunctive relief as permitted by law or equity,
- 2 including: preliminarily and permanently enjoining Defendants from continuing the
- 3 unlawful practices as set forth herein, and directing Defendants to identify, with Court
- 4 supervision, victims of their misconduct and pay them all money they are required to pay;
- 5 4. retaining jurisdiction to monitor Defendants’ compliance with permanent
- 6 injunctive relief;
- 7 5. ordering Defendants to engage in a corrective advertising campaign;
- 8 6. awarding attorneys’ fees and costs;
- 9 7. for leave to amend these pleadings to conform to evidence adduced at trial;
- 10 and
- 11 8. for such other and further relief as the Court may deem necessary or
- 12 appropriate.

VIII. DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial for all claims so triable.

Dated: June 30, 2026

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