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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF VENTURA**

10 **ADAM PRESS, DANA DELMAN, and**
11 **CARON COLODONATO, on behalf of**
themselves and all others similarly
situated,

12 **Plaintiffs**

13
14 vs.

15 **J. CREW GROUP, INC.; J. CREW**
16 **OPERATING CORP.; J. CREW, INC.;**
17 **J. CREW INTERNATIONAL, INC.;**
18 **CHINOS HOLDINGS, INC.; CHINOS**
INTERMEDIATE HOLDINGS A,
INC.; and CHINOS INTERMEDIATE
HOLDINGS B, INC.;

19 **Defendants.**
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CASE NO.

CLASS ACTION COMPLAINT

1. Violation of UCL "Unfair" Prong
2. Violation of UCL "Fraudulent" Prong
3. Violation of UCL "Unlawful" Prong
4. Violation of the FAL
5. Violations of the CLRA
6. Violation of NY General Business Law §§ 349 and 350
7. Violation of NJ Consumer Fraud Act
8. Violation of NJ Truth in Consumer Contract, Warranty, and Notice Act
9. Breach of Contract
10. Breach of Implied Covenant of Good Faith and Fair Dealing
11. Breach of Express Warranty
12. Unjust Enrichment
13. Negligent Misrepresentation

24 **Plaintiffs Adam Press, Dana Delman, and Caron Colodonato ("Plaintiffs")**
25 **bring this action against Defendants J. Crew Group, Inc.; J. Crew Operating Corp.,**
26 **J. Crew, Inc.; J. Crew International, Inc.; Chinos Holdings, Inc.; Chinos**
27 **Intermediate Holdings A, Inc.; and Chinos Intermediate Holdings B, Inc.**
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VIA FAX

1 (collectively "Defendants" or "J. Crew") on behalf of themselves, and all others
2 similarly situated, upon information and belief, except as to their own actions, the
3 investigation of their counsel, and the facts that are a matter of public record, as
4 follows:

5 INTRODUCTION

6
7 1. This class action arises out of Defendants' unlawful, unfair, and
8 fraudulent business practice commonly referred to as "false reference pricing."
9 "False reference pricing" is the act of misrepresenting the former, original or regular
10 price of some good that is purportedly offered at a "sale price," a business practice
11 that Defendants engage in to increase sales. As alleged herein, during at least the
12 past six years, Defendants have misled consumers by advertising false former,
13 original or regular prices which were fabricated, and corresponding phantom
14 "savings" on women's, men's, and children apparel, shoes, and accessories sold in
15 their J. Crew Factory stores located at outlet malls (the "Factory Stores"), J. Crew
16 Factory retail website (the "Website"), and J. Crew Mercantile stores located at
17 convenient retail shopping centers away from typical outlet malls (the "Mercantile
18 Stores") in California, New York, and New Jersey. The products sold at the J. Crew
19 Factory Stores, Website, and Mercantile Stores are essentially the same.

20 2. Federal regulations mandate that a retailer offer only genuine discounts
21 from regular retail prices; not false discounts from inflated original prices. *See* 16
22 C.F.R. §233.1. California law also prohibits the discounting of retail merchandise
23 from its original price for more than ninety (90) days. *See* California Business &
24 Professions Code §17501.

25 3. Some retailers, such as J. Crew, employ false reference pricing because
26 it misleads consumers into believing that they are "getting a good deal," thereby
27 increasing sales. The United States Court of Appeals for the Ninth Circuit
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1 succinctly explained: “Most consumers have, at some point, purchased merchandise
2 that was marketed as being ‘on sale’ because the proffered discount seemed too
3 good to pass up. Retailers, well aware of consumers’ susceptibility to a bargain,
4 therefore have an incentive to lie to their customers by falsely claiming that their
5 products have previously sold at a far higher ‘original’ price in order to induce
6 customers to purchase merchandise at a purportedly marked-down ‘sale’ price.
7 Because such practices are misleading – and effective – the California Legislature
8 has prohibited them.” *Hinojos v. Kohl’s Corp.*, 718 F.3d 1098, 1101 (9th Cir.
9 2013).

10 4. The intentional use of false and fraudulent reference pricing tactics is
11 increasingly deceiving consumers in the market. To illustrate, on January 30, 2014,
12 four members of Congress demanded a Federal Trade Commission (“FTC”)
13 investigation of misleading marketing practices by outlet stores across the United
14 States. The four Members of Congress described a pricing scheme similar to the
15 one implemented at J. Crew Factory Stores, Website, and Mercantile Stores and
16 stated: “[h]owever, we are concerned that outlet store consumers are being misled
17 into believing they are purchasing products originally intended for sale at the regular
18 retail store. Many outlets may also be engaged in deceptive reference pricing. It is a
19 common practice at outlet stores to advertise a retail price alongside the outlet store
20 price – even on made-for-outlet merchandise that does not sell at regular retail
21 locations. Since the item was never sold in the regular retail store or at the retail
22 price, the retail price is impossible to substantiate. We believe this practice may be
23 a violation of the FTC’s Guides Against Deceptive Pricing (16 CFR 233).” See
24 [www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-stores-may-be-](http://www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-stores-may-be-misleading-consumers)
25 [misleading-consumers](http://www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-stores-may-be-misleading-consumers).

26 5. During the Class Period (defined below), Defendants continuously
27 advertised false price discounts for merchandise sold in their J. Crew Factory Stores,
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1 Website, and Mercantile Stores in California, New York, and New Jersey
2 (collectively "J. Crew Products"). Defendants would offer substantial discounts off
3 a false "Reference Price" listed on every price tag. As used throughout the
4 Complaint, Reference Price shall mean the ticketed price listed on the item's price
5 tag or the "valued at" price listed on the website. As addressed in detail below,
6 Plaintiffs and reasonable consumers typically understand the Reference Price to be
7 the former, original, or regular price of the item on which it appears.

8 6. Specifically, Defendants represented – on the price tags and via the
9 "valued at" prices of J. Crew Products – Reference Prices that were overstated and
10 did not represent a bona fide price at which the J. Crew Products were previously
11 sold. Nor was the advertised Reference Price a prevailing market retail price within
12 three months immediately preceding the publication of the advertised former prices,
13 as required by California law.

14 7. Defendants convey their deceptive pricing scheme through in store
15 signage and website banners offering steep discounts from the Reference Prices,
16 which are fake prices utilized only to perpetuate Defendants' fake-discount scheme.
17 The pricing scheme is prominently displayed on virtually all items throughout the
18 store and on the website. In store, there are typically large placard signs on top of or
19 alongside each rack of clothing or accessories, advertising a "discounted % off," or
20 a "discounted whole-price" reduction for the item. For example, a product may
21 have a price tag with a "Reference Price" of \$59.50 and the related signage
22 advertising "Take 40% Off Ticketed Price," which is substantially less than the
23 former regular price listed on the price tag. Another example is a product having a
24 price tag with a "Reference Price" of \$54.50 and the related signage advertising a
25 "sale price" of \$24.99. On the website, Defendants will advertise, for example, a
26 "50% OFF EVERYTHING" sale via a large banner at the top of their website, and
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1 list the following on the items individual web page: "valued at \$29.50 your price
2 \$14.99."

3 8. However, the "Reference Price" listed on the price tags and website
4 have never existed, as required by federal law, and/or were not the prevailing market
5 retail prices for such products within the three months next immediately preceding
6 the publication of the price tags, as required by California law. They are fictional
7 creations intentionally designed to enable Defendants' phantom markdowns.
8 Furthermore, upon check-out, Defendants provide in-store consumers, including
9 Plaintiffs, with sales receipts continuing the misrepresentations regarding false price
10 reductions. For example, the stated *discount* from the false former "Reference
11 Price" is listed for each item purchased.

12 9. J. Crew knows consumers are bargain-hunters, and knows consumers
13 are lured by the prospect of a bargain at "Outlet" stores and websites. "Outlet"
14 stores are commonly understood by the public to be selling the same merchandise
15 that the manufacturer typically sells at its regular non-outlet retail stores, but at a
16 discount. According to Business Insider, "[t]he common assumption about outlet
17 stores is that you're getting the same goods that are in a regular store without the big
18 price tag." See [http://www.businessinsider.com/outlet-stores-arent-a-good-deal-](http://www.businessinsider.com/outlet-stores-arent-a-good-deal-2014-5)
19 2014-5. However, outlet stores typically sell different merchandise than their retail
20 counterparts.

21 10. In this case, Defendants offer for sale J. Crew Products designed and
22 manufactured *exclusively* for sale in their Factory Stores, Website, and Mercantile
23 Stores, which means that such items were never sold – or even intended to be sold –
24 at the advertised Reference Prices. These J. Crew Products were never offered for
25 sale at the company-operated mainline retail stores in California, New York, or New
26 Jersey. Further exacerbating consumers' perception of deep discounts is the fact
27 that Defendants sell higher quality products at their mainline retail stores.
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1 Defendants know that consumers expect to receive a discount when shopping at
2 their Factory Stores, Website, and Mercantile Stores, and accordingly, prey on
3 consumer expectations by artificially marking up the Reference Price of J. Crew
4 Products and then offering discounts off of the artificially inflated Reference Price
5 to induce consumers to purchase such products. The truth is that the J. Crew
6 Products are not discounted off former, regular, or original prices. Rather, the
7 Reference Price exists to provide an illusory discount when compared to the actual
8 sales price offered. This tactic is called "reference pricing." The Reference Price
9 listed on the products' price tags were and are the prices chosen by Defendants to
10 enable them to engage in their phantom markdown scheme.

11 11. Defendants convey their deceptive pricing scheme to consumers
12 through promotional materials, in-store advertising displays, website banners, and
13 print advertisements which are uniform. Upon information and belief, Defendants'
14 false price advertising scheme has been rampant throughout California, New York,
15 and New Jersey as part of a massive, years-long, pervasive campaign and has been
16 consistent across all of Defendants' exclusive branded apparel and accessories sold
17 in their J. Crew Factory Stores, Website, and Mercantile Stores. Indeed, most, if not
18 all products sold in the Factory Stores, Website, and Mercantile Stores are subject to
19 the same fraudulent pricing scheme complained of herein.

20 12. Upon information and belief, thousands of Defendants' consumers in
21 California, New York, and New Jersey, including Plaintiffs, were victims of
22 Defendants' deceptive, misleading, and unlawful false pricing scheme. This
23 deception will continue if Defendants are not enjoined from continuing their pricing
24 scheme.

25 13. Defendants know or should reasonably know that their comparative
26 (reference) price advertising is false, deceptive, misleading and unlawful under
27 California, New York, and New Jersey law.

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1 14. Defendants fraudulently concealed from, and intentionally failed to
2 disclose to, Plaintiffs and other members of the Class, the fact that Reference Prices
3 advertised and displayed for the J. Crew Products do not reflect a former, regular, or
4 original price.

5 15. At all relevant times, Defendants have been under a duty to Plaintiffs
6 and the Class to disclose the truth about their Reference Prices and false discounts.

7 16. The facts which Defendants misrepresented or failed to disclose are
8 material facts that a reasonable person would have considered material, *i.e.*, facts
9 which would contribute to a reasonable person's decision to purchase Defendants'
10 merchandise. Defendants' false representations of Reference Prices and false
11 representations of purported savings, discounts and bargains are objectively material
12 to the reasonable consumer, including Plaintiffs, and therefore reliance upon such
13 representations may be presumed as a matter of law.

14 17. Plaintiffs relied upon Defendants' false representations of Reference
15 Prices and discounts when purchasing merchandise from Defendants' stores and
16 website in California, New York, and New Jersey. Plaintiffs would not have made
17 such purchases, but for Defendants' false representations and fraudulent omissions
18 of the Reference Price of the items they purchased, as compared with the supposedly
19 discounted price at which J. Crew Stores and Website offered the items for sale.

20 18. Plaintiffs reasonably believed the truth of the Reference Prices
21 regarding products purchased at the J. Crew Factory Store, Website, and Mercantile
22 Stores, which expressly represented that Plaintiffs were getting a substantial
23 percentage discount or whole-price reduction off the original price. Plaintiffs
24 reasonably understood the Reference Price representation to indicate a true former
25 price. Indeed, one cannot truly "save" off anything other than a true former price on
26 the identical product. Otherwise, one is not "saving," one is simply buying a
27 different product than the one that bears a higher price.

1 19. Plaintiffs and the Class reasonably and justifiably acted and relied on
2 the substantial price differences that Defendants advertised, and made purchases
3 believing that they were receiving a substantial discount on an item of greater value
4 than it actually was. Plaintiffs and the Class reasonably understood the Reference
5 Price to be a valid representation of a true former price on the identical product.
6 However, the Reference Price did not represent a true former price or the prevailing
7 market retail price in the preceding three months for the products. Plaintiffs, like
8 other Class members, were lured in, relied on, and were damaged by these pricing
9 schemes that Defendants carried out.

10 20. Defendants intentionally concealed and failed to disclose material facts
11 regarding the truth about their misrepresentations and false former price advertising
12 scheme for the purpose of inducing Plaintiffs and Class members to purchase
13 merchandise in their J. Crew Factory Stores, Website, and Mercantile Stores.

14 21. Through their false and deceptive marketing, advertising and pricing
15 scheme, Defendants have violated, and continue to violate California, New York,
16 New Jersey, and common law prohibiting advertising goods for sale as discounted
17 from purported former prices which are false, and prohibiting misleading statements
18 about the existence and amount of price reductions. Specifically, Defendants have
19 violated, and continue to violate, California's Business & Professions Code §§
20 17200, *et seq.* (the "UCL"), California's Business & Professions Code §§ 17500, *et*
21 *seq.* (the "FAL"), and the California Consumers' Legal Remedies Act, California
22 Civil Code §§1750, *et seq.* (the "CLRA"), and the Federal Trade Commission Act
23 ("FTCA"), which prohibits "unfair or deceptive acts or practices in or affecting
24 commerce" (15 U.S.C. § 45(a)(1)) and false advertisements. 15 U.S.C. § 52(a).
25 Defendants also have violated, and continue to violate, New York Gen. Bus. Laws §
26 349 and § 350; the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*; and
27 the New Jersey Truth in Consumer Contract, Warranty, and Notice Act, N.J.S.A. §
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1 56:12-14, et seq.; and are liable to Plaintiffs under the common law theories of
2 breach of contract, breach of the implied covenant of good faith and fair dealing,
3 breach of express warranty, unjust enrichment, and negligent misrepresentation.

4 22. Plaintiffs bring this action on behalf of themselves and other similarly
5 situated consumers who have purchased one or more items at J. Crew Factory
6 Stores, Website, and/or Mercantile Stores in California, New York, and New Jersey
7 that were deceptively represented as discounted from false former prices in order to
8 halt the dissemination of this false, misleading, and deceptive pricing scheme, to
9 correct the false and misleading perception it has created in the minds of consumers,
10 and to obtain redress for those who have purchased such products. Plaintiffs seek
11 damages, restitution, and other appropriate legal and equitable remedies.

12 JURISDICTION AND VENUE

13

14 23. This Court has original jurisdiction of this action because Plaintiff
15 Dana Delman is a resident of Ventura County, California.

16 24. This Court has personal jurisdiction over the Defendants named herein
17 because Defendants do sufficient business in the State of California, have sufficient
18 minimum contacts with California and/or otherwise intentionally avail themselves
19 of the markets within California through their ownership and operation of J. Crew
20 Factory Stores, Website, and Mercantile Stores in California where Defendants
21 employed, and continue to employ, the sale tactics detailed herein to render the
22 exercise of jurisdiction by California courts and the application of California law to
23 the claims of the Plaintiffs permissible under traditional notions of fair play and
24 substantial justice.

25 25. Venue is proper in Ventura County, California because Defendants
26 transact substantial business in this county and a substantial part of the events or
27 omissions giving rise to Plaintiffs' claims arose here, given that Plaintiff Delman
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1 resides in this county and purchased items from Defendants in this county. Plaintiff
2 Press also entered into the transaction giving rise to this Action in the County of
3 Ventura.

4 THE PARTIES

5 A. Plaintiffs

6
7 26. Plaintiff Adam Press ("Press") is a citizen and resident of Los Angeles
8 County, California. It is alleged that on January 7, 2017, in reliance on Defendant's
9 false and deceptive advertising, marketing and pricing schemes, Plaintiff purchased
10 J. Crew Factory Products from the J. Crew Factory Store located at the Camarillo
11 Premium Outlets in Camarillo, California, and was damaged thereby.

12 27. Plaintiff Dana Delman ("Delman") resides in Ventura County,
13 California and is a citizen of California. Beginning in or about early 2016, on three
14 separate occasions, Plaintiff purchased goods through the Factory Website. Plaintiff
15 was deceived by Defendants in that she was of the belief she was obtaining marked
16 down goods of the value represented by the "Valued At" price. Plaintiff did not
17 receive the value promised, or the significant discounts claimed, and suffered
18 ascertainable harm and monetary damages as a result of Defendants' unlawful
19 conduct. Plaintiff would not have purchased the items she purchased from J.Crew
20 had she known of this deceptive misconduct. Plaintiff and the Class are entitled to
21 such damages and restitutionary relief as the law may permit, as well as injunctive
22 relief.

23 28. Plaintiff Caron Coladonato is an individual and a resident and citizen of
24 New Jersey. During the class period, Plaintiff purchased goods from Defendants'
25 online J. Crew Factory website and from Defendants' physical J. Crew Factory retail
26 stores on numerous occasions, and suffered an ascertainable loss and monetary
27 damages as a result of Defendants' unlawful conduct alleged herein.

1 B. Defendants

2 29. Defendant J. Crew Group, Inc. ("J. Crew") is a Delaware corporation
3 which is licensed to do, and is doing, business throughout the United States, with its
4 principal place of business located at 770 Broadway, New York, New York 10003.

5 30. Defendant J. Crew Operating Corp. is a for-profit corporation formed
6 and existing under the laws of the State of Delaware with its principal place of
7 business at 770 Broadway, New York, New York 10003, and thus is a citizen of
8 Delaware and New York. Defendant J. Crew Operating Corp. may be served with
9 process by service upon its registered agent, Corporation Service Company, 80 State
10 Street, Albany, New York 12207.

11 31. Defendant J. Crew, Inc. is a for-profit corporation formed and existing
12 under the laws of the State of Delaware with its principal place of business at 770
13 Broadway, New York, New York 10003, and thus is a citizen of Delaware and New
14 York. Defendant J. Crew, Inc. may be served with process by service upon its
15 registered agent, Corporation Service Company, 830 Bear Tavern Road, Ewing,
16 New Jersey 08628.

17 32. Defendant J. Crew International, Inc. is a for-profit corporation formed
18 and existing under the laws of the State of Delaware with its principal place of
19 business at 770 Broadway, New York, New York 10003, and thus is a citizen of
20 Delaware and New York. Defendant J. Crew International, Inc. may be served with
21 process by service upon its registered agent, Corporation Service Company, 2711
22 Centerville Road, Suite 400, Wilmington, Delaware 19808.

23 33. Defendant Chinos Holdings, Inc. is a for-profit corporation formed and
24 existing under the laws of the State of Delaware with its principal place of business
25 at 770 Broadway, New York, New York 10003, and thus is a citizen of Delaware
26 and New York. Defendant Chinos Holdings, Inc. may be served with process by
27 service upon its registered agent, Corporation Service Company, 2711 Centerville
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1 Road, Suite 400, Wilmington, Delaware 19808.

2 34. Defendant Chinos Intermediate Holdings A, Inc. is a for-profit
3 corporation formed and existing under the laws of the State of Delaware with its
4 principal place of business at 770 Broadway, New York, New York 10003, and thus
5 is a citizen of Delaware and New York. Defendant Chinos Intermediate Holdings
6 A, Inc. may be served with process by service upon its registered agent, Corporation
7 Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

8 35. Defendant Chinos Intermediate Holdings B, Inc. is a for-profit
9 corporation formed and existing under the laws of the State of Delaware with its
10 principal place of business at 770 Broadway, New York, New York 10003, and thus
11 is a citizen of Delaware and New York. Defendant Chinos Intermediate Holdings
12 B, Inc. may be served with process by service upon its registered agent, Corporation
13 Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

14 36. Upon information and belief, all Defendants have a parent-subsidary
15 relationship, in that Defendant J. Crew International, Inc. is a wholly-owned
16 subsidiary of Defendant J. Crew, Inc., which is a wholly-owned subsidiary of
17 Defendant J. Crew Operating Corp., which is a wholly-owned subsidiary of
18 Defendant J. Crew Group, Inc., which is a wholly-owned subsidiary of Defendant
19 Chinos Intermediate Holdings B, Inc., which is a wholly-owned subsidiary of
20 Defendant Chinos Intermediate Holdings A, Inc., which is a wholly-owned
21 subsidiary of Defendant Chinos Holdings, Inc.

22 37. As of January 28, 2017, Defendants together operate 256 J. Crew
23 mainline retail stores, 136 Factory Stores, and 39 Mercantile Stores throughout the
24 United States, and advertises, markets, distributes, and/or sells women's, men's and
25 children's apparel, shoes, and accessories.

26 38. Defendants also own and operate the online J. Crew and J. Crew
27 Factory retail websites, which advertise, market, and sell retail products in every
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1 state in the United States, including California, New York and New Jersey, and have
2 done so throughout the relevant class period. Defendants operate the online J. Crew
3 Factory website out of their headquarters in New York, which operation entails,
4 *inter alia*, the creation and implementation of the advertising, marketing, and sales
5 policies described herein, including the planning of website sales and the pricing
6 and sale of items.

7 39. The only physical retail stores that are the subject of this Complaint are
8 the J. Crew Factory Stores and Mercantile Stores in California, New York, and New
9 Jersey. The Complaint expressly excludes any J. Crew Factory and Mercantile
10 Products sold at Factory Stores and Mercantile Stores, or the Website, that
11 advertised a Reference Price that was a prevailing market retail price within the
12 three months preceding.

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14 D. Agency/Aiding And Abetting

15 42. Plaintiffs are informed and believe, and on that basis allege, that at all
16 times herein mentioned, Defendants, and each of them, were an agent or joint
17 venturer of each of the other Defendants, and in doing the acts alleged herein, were
18 acting within the course and scope of such agency. Each Defendant had actual
19 and/or constructive knowledge of the acts of each of the other Defendants, and
20 ratified, approved, joined in, acquiesced and/or authorized the wrongful acts of each
21 co-defendant, and/or retained the benefits of said wrongful acts.

22 43. Plaintiffs are further informed and believe, and on that basis allege, that
23 Defendants, and each of them, aided and abetted, encouraged and rendered
24 substantial assistance to the other Defendants in breaching their obligations to
25 Plaintiffs and the Class, as alleged herein. In taking action, as particularized herein,
26 to aid and abet and substantially assist the commissions of these wrongful acts and
27 other wrongdoings complained of, each of the Defendants acted with an awareness
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1 of his/her/its primary wrongdoing and realized that his/her/its conduct would
2 substantially assist the accomplishment of the wrongful conduct, wrongful goals,
3 and wrongdoing.

4 44. Whenever reference is made in this Complaint to any act of "J. Crew"
5 or "Defendants," such shall be deemed to mean that officers, directors, agents,
6 employees, or representatives of the Defendants named in this lawsuit committed or
7 authorized such acts, or failed and omitted to adequately supervise or properly
8 control or direct their employees while engaged in the management, direction,
9 operation or control of the affairs of the Defendants and did so while acting within
10 the scope of their employment or agency.

11
12 **CONDUCT GIVING RISE TO THE VIOLATIONS OF THE LAW**

13 A. Plaintiff Press's Purchases

14 45. On January 7, 2017, Plaintiff Press went shopping at the J. Crew
15 Factory Store which is located at the Camarillo Premium Outlets in Camarillo,
16 California to purchase clothing for himself. He observed a large exterior window
17 display that advertised "40% - 60% Off Everything."

18 46. Upon entering the store, Plaintiff Press observed prominent signage on
19 top of or alongside each rack of clothing or accessories, advertising a "discounted %
20 off," or a "discounted whole-price" reduction for each item offered for sale.
21 Believing he was able to pay significantly less than the Reference Price for the
22 identical products normally charged in the retail marketplace, Plaintiff was induced
23 to purchase three different items, all of which were offered at prices significantly
24 lower than their stated "Reference Prices." Plaintiff purchased the items after relying
25 on Defendant's false discounts and false Reference Prices for such products.

26 47. Specifically, relying upon Defendants' misrepresentations and false and
27 deceptive advertising, Plaintiff Press was induced to purchase the following three
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1 items: a long-sleeve slim washed shirt in mini-gingham, Style B8636, SKU number
2 099104205416 bearing a Reference Price of "\$59.50" on the price tag, and two slim
3 washed V-neck tee-shirts, Style 40993, SKU number 099102917037 bearing a
4 Reference Price of "\$19.50" on each price tag.

5 48. Plaintiff Press observed signage adjacent to and above these items that
6 advertised percentage discounts and whole-price discounts, clearly indicating that
7 the items were being sold at significant discounts off their Reference Prices. The
8 long-sleeve shirt contained a price tag representing it to have a Reference Price of
9 "\$59.50," and the signage which represented that the shirt was on sale for "Now
10 Only \$24.99." The tee-shirts contained price tags representing them to have a
11 Reference Price of "\$19.50," and the signage which represented that the tee shirts
12 were on sale for "40% Off Ticketed Price," leaving a discount and savings of \$7.80,
13 and purchase price at \$11.70.

14 49. Relying on Defendants' misrepresentations and false and deceptive
15 advertising and believing that he was receiving a significant discount from the
16 Reference Price listed on the price tags by purchasing the merchandise, Plaintiff
17 Press decided to purchase the items and proceeded to the cash register where he did
18 in fact purchase the items. Plaintiff also believed he was purchasing merchandise
19 that was of the same like, kind and quality of that sold in the regular company-
20 operated retail stores. These purported Reference Prices and corresponding price
21 reductions and savings were false and deceptive, as the prevailing market retail price
22 for the three shirts during the three months immediately prior to Plaintiff's purchase
23 of such items were never at the represented former Reference Prices. Plaintiff
24 would not have purchased the shirts in the absence of Defendants'
25 misrepresentations. Instead, Defendants continuously offered the subject shirts, like
26 the vast majority of products offered for sale at J. Crew Factory Stores and
27 Mercantile Stores in California for sale at discounted prices. As a result, Plaintiff
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1 Press has been personally victimized by and suffered economic injury as a direct
2 result of Defendants' unlawful, unfair and fraudulent conduct.

3 50. Furthermore, upon check-out on January 7, 2017, Defendants provided
4 Plaintiff Press with a sales receipt containing the same misrepresentations regarding
5 false price reductions off the Reference Prices on the three shirts. The sales receipt
6 clearly sets forth the false Reference Price for each item purchased, and that Plaintiff
7 was receiving the benefit of a discount off the Reference Price for each item
8 purchased and listed the discount or savings amount for each item, and then the
9 sales price amount after the purported discount. Additionally, below the total
10 amount purchased at the bottom of the sales receipt, Defendants misrepresented to
11 Plaintiff the total amount purportedly saved on the entire purchase transaction with
12 the words "*You have saved \$50.11.*"

13 B. Plaintiff Delman's Purchases

14 51. Plaintiff Delman purchased apparel from the Factory Website on three
15 occasions: March 7, 2016; July 13, 2016; and September 13, 2016. (Copies of
16 Plaintiff Delman's purchases are annexed hereto as Exh. F.)

17 52. Plaintiff's investigator purchased the items which were originally
18 purchased by Plaintiff Delman. The items with respect to Delman's March 7, 2016
19 purchase are:

- 20 a. J.Crew Factory long-sleeve sunwashed garment-dyed T-shirt
- 21 (E8029);
- 22 b. J.Crew Factory slim washed pocket T-shirt (53623); and
- 23 c. J.Crew Factory girls' pocket T-shirt (C9271).

24 53. Plaintiff's investigator also purchased the items with respect to
25 Delman's July 13, 2016 purchase:

- 26 a. J.Crew Factory slim heathered washed pocket T-shirt (53870);
- 27 b. J.Crew Factory slim heathered washed T-shirt (06506);

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1 c. J.Crew Factory featherweight slub cotton V-neck T-shirt
2 (33505); and

3 d. J.Crew Factory girls' heart pocket T-shirt (F4458).

4 54. Plaintiff's investigator also purchased the items with respect to
5 Delman's September 13, 2016 purchase:

6 a. JCrew Factory Girls' flannel shirtdress (E5537);

7 b. JCrew Factory Girls' skinny cord (02098).

8 c. JCrew Factory Girls' long sleeve layering T-shirt (C9274); and

9 d. JCrew Factory Girls' leggings (38566).

10 55. The investigator sought out comparison garments from multiple
11 different retail web sites she selected. The purpose of the comparison shopping was
12 to find garments which were comparable to the Factory Website purchased garments
13 in appearance, manufactured with the same or similar fabrics and where possible,
14 produced in the same country of origin.

15 56. The objectives of the study were twofold: (1) to ascertain whether
16 similar garments were selling at other comparable retailers at the same or similar
17 "Valued At" prices; and (2) to ascertain whether similar garments were available at
18 retail prices which were equal to, or even lower than, J.Crew's "Your Price." As
19 discussed below, the investigator found that the "Your Price" value was similar to
20 retail value at other retailers, and did not reflect a significant discount of any type.

21 57. The investigator found the following information with respect to
22 Plaintiff Delman's purchases:

23 a. The J.Crew Factory Men's Long-Sleeve Sunwashed Garment-
24 Dyed T-Shirt made of 100% cotton and imported had a "Valued At" price of \$39.50
25 and a "Your Price" price of \$23.50 (E8029). A very similar men's garment dyed
26 heavy-weight Tee made of 100% cotton and imported, was selling at Old Navy at a
27 full retail price of \$19.94; another very similar men's long-sleeve T-shirt, also made
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1 of 100% cotton and imported, was selling at H&M at a full retail price of \$12.99.
2 Both the Old Navy and H&M garments were selling below the "Valued At" price as
3 well as below the "Your Price" price offered by J.Crew.

4 b. The JCrew Factory Men's Slim Washed Pocket T-Shirt made of
5 100% cotton and imported had a "Valued At" price of \$19.50 and a "Your Price"
6 price of \$14.50 (53623). A very similar men's T-shirt, made of 100% cotton and
7 imported, was selling at Target at a full retail price of \$9.00; another very similar
8 men's T-shirt, also made of 100% cotton and imported, was selling at H&M at a full
9 retail price of \$9.99. Both the Target and the H&M garments were selling at below
10 the "Valued At" price as well as below the "Your Price" price offered by J.Crew.
11 Although Plaintiff Delman paid \$11.50 for this item, the "Your Price" at the time
12 was still above the comparative selling price of the item and the "Valued At" price
13 was far above comparable prices.

14 c. The JCrew Factory Girl's Pocket T- T-Shirt made of 100%
15 cotton and imported had a "Valued At" price of \$18.50 and a "Your Price" price of
16 \$12.99 (C9271). A very similar girl's T-shirt, made of 100% cotton and imported,
17 was selling at H&M at a full retail price of \$12.99 for a two-pack set; another
18 similar girl's T-shirt, made of cotton/poly blend and imported, was selling at
19 Walmart at a full retail price of \$4.88. Both the H&M and the Walmart garments
20 were selling below the "Valued At" price as well as below the "Your Price" price
21 offered by J.Crew. Although Plaintiff Delman paid \$11.00 for this item, the "Your
22 Price" at the time was still above the comparative selling price of the item and the
23 "Valued At" price was far above comparable prices.

24 d. The J.Crew Factory Men's Slim Heathered Washed Pocket T-
25 Shirt, made of a cotton/poly blend and imported had a "Valued At" price of \$19.50
26 and a "Your Price" price of \$14.50 (53870). A very similar men's T-shirt, made of
27 a cotton/poly blend and imported, was selling at Target at a full retail price of \$9.00;
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1 another similar men's T-shirt, also made of cotton/poly blend and imported, was
2 selling at Target at a full retail price of \$7.99. Both the Target garments were
3 selling below the "Valued At" price as well as below the "Your Price" price offered
4 by J.Crew. Although Plaintiff Delman paid \$4.99 for this item on a final close-out,
5 this does not alter Defendants' continued wrongful conduct as alleged, as the value
6 advertised was not the value received.

7 e. The J.Crew Factory Men's Slim Heathered Washed Pocket T-
8 Shirt, made of a cotton/poly blend and imported had a "Valued At" price of \$19.50
9 and a "Your Price" price of \$14.50 (06506). A very similar men's T-shirt, made of
10 a cotton/poly blend and imported, was selling at Old Navy at a full retail price of
11 \$10.94; another similar men's T-shirt, also made of cotton/poly blend and imported,
12 was selling at Target at a full retail price of \$9.00. Both the Old Navy and the
13 Target garments were selling at below the "Valued At" price as well as below the
14 "Your Price" price offered by J.Crew. Although Plaintiff Delman paid \$6.49 for this
15 item on a final close-out, this does not alter Defendants' continued wrongful
16 conduct as alleged, as the value advertised was not the value received.

17 f. The J.Crew Factory Women's Featherweight Slub Cotton V-
18 Neck T-Shirt made of 100% cotton and imported was "Valued At" at \$22.50 and
19 had a "Your Price" price of \$11.00 (33505). A very similar women's T-shirt made
20 of 100% cotton and imported was selling at Walmart at a full price of \$5.25; Target
21 was also selling a very similar women's T-shirt, made of 100% cotton and imported,
22 at a full retail price of \$9.00. Plaintiff Delman paid \$14.50 for the shirt, which was
23 far in excess of the comparative selling prices.

24 g. The J.Crew Factory Girls' Heather Pocket T-Shirt made of a
25 cotton/poly blend and imported had a "Valued At" price of \$18.50 and a "Your
26 Price" price of \$14.50 (F4458). A very similar girl's T-shirt, made of a cotton/poly
27 blend and imported, was selling at Walmart at a full retail price of \$4.88; a similar
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1 girls drapery T, a cotton/poly blend and imported, was selling at Target at a full
2 retail price of \$7.99. Plaintiff Delman paid \$11.00 for the shirt, which was far in
3 excess of the comparative selling prices.

4 h. The J.Crew Factory Girls' Flannel Shirdress made of 100%
5 cotton and imported had a "Valued At" price of \$65.00 and a "Your Price" price of
6 \$39.00 (E5527). A similar girl's dress, made of 100% cotton and imported, was
7 selling at Target at a full retail price of \$19.90; a similar girls dress, made of 100%
8 cotton and imported, was selling at Zara at a full retail price of \$35.90. Plaintiff
9 Delman paid \$45.50 for the dress, which was far in excess of the comparative
10 selling prices.

11 i. The J.Crew Factory Girls' Skinny Cord made of 100% cotton
12 and imported had a "Valued At" price of \$44.50 and a "Your Price" price of \$29.50
13 (02098). A very similar girl's pants, made of 100% cotton and imported, was
14 selling at Zara at a full retail price of \$19.90; a very similar girls pants, made of
15 100% cotton and imported, was selling at Target at a full retail price of \$16.99.
16 Plaintiff Delman paid \$24.50 for the pants, which was far in excess of the
17 comparative selling prices.

18 j. The J.Crew Factory Girls' Long-Sleeve Layering T-Shirt made
19 of 100% cotton and imported had a "Valued At" price of \$19.50 and a "Your Price"
20 price of \$12.99 (C9274). A very similar girl's T-shirt, made of 100% cotton and
21 imported, was selling at Old Navy at a full retail price of \$8.00; a similar girls T-
22 shirt, made of a cotton/poly blend and imported, was selling at Target at a full retail
23 price of \$6.00. Plaintiff Delman paid \$11.50 for the item, which was far in excess
24 of the comparative selling prices.

25 k. The J.Crew Factory Girls' Leggings made of a cotton/Spandex
26 blend and imported had a "Valued At" price of \$18.50 and a "Your Price" of \$11.00
27 (38566). A very similar girl's leggings, made of a cotton/Spandex blend and
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1 imported, was selling at Target at a full retail price of \$6.00; a very similar girls
2 leggings, made of a cotton/Spandex blend and imported, was selling at H&M at a
3 full retail price of \$14.99 for a two-pack. Plaintiff Delman paid \$12.00 for the shirt,
4 which was far in excess of the comparative selling prices.

5 58. Plaintiff Delman was unaware of Defendants' unlawful conduct alleged
6 herein and did not know she was actually paying the everyday, regular prices for
7 Defendants' products, rather than a discounted or bargain price for apparel which
8 had a value equal to the "Valued At" price. Plaintiff did not receive goods with the
9 specified value, as promised. Delman would purchase more apparel from
10 Defendants if Defendants ceased the wrongful practices set forth herein. As a result,
11 Delman was harmed by the Defendants' continued wrongful conduct which makes
12 her unable to purchase from the Factory Website.

13 C. Plaintiff Colodonato's Purchases

14 59. Between 2015 and the present, Plaintiff Colodonato made certain
15 purchases both from Defendants' J. Crew Factory website and from Defendants'
16 physical J. Crew Factory retail stores.

17 60. All of the items purchased by Plaintiff Colodonato were advertised as
18 being on sale, and were offered for sale by Defendants at purported discounts off
19 their stated "valued at" and ticketed prices at the time Plaintiff purchased the items.

20 61. None of the items purchased by Plaintiff Colodonato were ever sold or
21 offered for sale at their advertised "valued at" and ticketed prices, however; thus, the
22 sales and discounted prices advertised by Defendants were illusory.

23 62. For example, on or about February 22, 2015, Plaintiff Colodonato
24 purchased a 3" Chino Short, Item 36234 ("Chino Short"), from Defendants' J. Crew
25 Factory website.

1 63. The Chino Short was included in one of Defendants' site-wide sales,
2 and was advertised to be discounted at least 40% off the "valued at" price of \$34.50,
3 at a purported sale price of \$20.83.

4 64. Plaintiff Colodonato paid Defendants \$20.83 for the Chino Short on
5 February 22, 2015.

6 65. The listed "valued at" price of \$34.50 for the Chino Short purchased by
7 Plaintiff Colodonato was an unlawful fictitious former price under 16 C.F.R. § 233.1
8 because the Chino Short was not sold or offered for sale at that price for a
9 reasonably substantial period of time.

10 66. Indeed, the Chino Short was never sold or offered for sale at the
11 "valued at" price of \$34.50, but was always sold or offered for sale at a price
12 approximately equal to – or less than – the purported discounted, "sale" price of
13 \$20.83 that Plaintiff paid for the item.

14 67. In fact, according to the publicly-available price history of the Chino
15 Short, it is most commonly offered for sale on Defendants' website at a price of
16 \$16.95.

17 68. For instance, in November 2015, the Chino Short was offered at a
18 "valued at" price of \$34.50 with a "your price" of \$17.00 on Defendants' website.

19 69. Similarly, in April 2015, the Chino Short was offered at a "valued at"
20 price of "39.50" with a "your price" of "19.50" on Defendants' website. At the time,
21 this purported 50% discount was only valid at jcrewfactory.com from April 16,
22 2015, 12:01 am ET through April 20, 2015, 11:59, ET.

23 70. On September 12, 2015, the Chino Short was also offered at a "valued
24 at" price of "\$39.50" with a "your price" of \$19.50 on Defendants' website.

25 71. In addition to these examples, the Chino Short was offered for sale on
26 Defendants' website at a price of \$16.95: as part of a "30% OFF NEW
27 ARRIVALS" sale on August 15, 2015; as part of a "50 STYLES UNDER \$50" sale
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1 on January 31, 2016; as part of an "UP TO 60% OFF NEW ARRIVALS" sale on
2 April 7, 2017; and as part of an "UP TO 50% OFF EVERYTHING" sale on April
3 10, 2017.

4 72. Other sale prices for the Chino Short include a low of \$14.95 (as part of
5 a "50% OFF EVERYTHING" sale on April 12, 2017 and an "UP TO 60% OFF
6 EVERYTHING" sale on June 1, 2017) to a high of \$17.00 (as part of an "EXTRA
7 50% OFF CLEARANCE" sale on March 31, 2017).

8 73. Thus, it is alleged that the regular, everyday price of the Chino Short is
9 actually \$16.95 rather than the asserted "valued at" price of \$34.50. Consequently,
10 when Plaintiff Colodonato purchased the Chino Short for \$20.83, she was not
11 getting the 40% discount claimed by Defendants, and indeed was not getting any
12 discount at all. Rather, she actually paid a price that was higher than the actual
13 regular, everyday price of the item.

14 74. Had the Chino Short actually been discounted by 40% off its regular,
15 everyday price, as advertised by Defendants, Plaintiff would have been charged only
16 \$10.17 for the item.

17 75. Then, on or about March 17, 2016, Plaintiff Colodonato purchased a
18 pair of Seaside Sandals, Item E8846 ("Seaside Sandals"), from Defendants' J. Crew
19 Factory website.

20 76. On that date, Defendants' website advertised an "UP TO 60% OFF
21 EVERYTHING" sale in large letters on a brightly-colored banner across the top of
22 the page.

23 77. Defendants' website further represented that the sale was valid for a
24 limited time only: "from March 17, 2016, 12:01am ET through March 21, 2016,
25 11:59 pm ET."
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1 78. Despite the "UP TO 60% OFF" representation on Defendants' website,
2 the Seaside Sandals were offered for sale at a price of \$35.50 – an approximate 40%
3 discount off the assigned "valued at" price of \$59.50.

4 79. Plaintiff Colodonato paid Defendants \$35.50 for the Seaside Sandals on
5 March 17, 2016.

6 80. The listed "valued at" price of \$59.50 for the Seaside Sandals
7 purchased by Plaintiff was an unlawful fictitious former price under 16 C.F.R. §
8 233.1 because the Seaside Sandals were not sold or offered for sale at that price for
9 a reasonably substantial period of time.

10 81. Indeed, the Seaside Sandals were never sold or offered for sale at the
11 "valued at" price of \$59.50, but was always sold or offered for sale at a price
12 approximately equal to – or less than – the purported discounted, "sale" price of
13 \$35.50 that Plaintiff paid for the item.

14 82. In fact, according to the publicly-available price history of the Seaside
15 Sandals, they are most commonly offered for sale on Defendants' website at a price
16 of \$24.99.

17 83. For example, the Seaside Sandals were offered for sale on Defendants'
18 website at a price of \$24.99 during four consecutive "sales:" on March 31, 2017 as
19 part of an "EXTRA 50% OFF CLEARANCE" sale; on April 7, 2017 as part of an
20 "UP TO 60% OFF NEW ARRIVALS" sale; on April 10, 2017 as part of an "UP TO
21 50% OFF EVERYTHING" sale; and on April 12, 2017 as part of a "50% OFF
22 EVERYTHING" sale.

23 84. Thus, it is alleged that the regular, everyday price of the Seaside
24 Sandals is actually \$24.99 rather than the asserted "valued at" price of \$59.50.
25 Consequently, when Plaintiff Colodonato purchased the Seaside Sandals for \$35.50,
26 she was not getting the "UP TO 60% OFF" discount claimed by Defendants, and
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1 indeed was not getting any discount at all. Rather, she actually paid a price that was
2 higher than the actual regular, everyday price of the item.

3 85. Had the Seaside Sandals actually been discounted by 60% off their
4 regular, everyday price, as advertised by Defendants, Plaintiff Colodonato would
5 have been charged only \$10.00 for the item.

6 86. Thereafter, on November 25, 2016, Plaintiff Colodonato purchased two
7 shirts from the J. Crew Factory retail store located in the Gloucester Premium
8 Outlets in Blackwood, New Jersey.

9 87. Both shirts were part of a storewide "Black Friday" sale, which
10 Defendants advertised as a discount of "60% OFF EVERYTHING" via large in-
11 store placards. Defendants further represented that the sale was valid only for a
12 limited time, through Sunday, November 27, 2016.

13 88. The first shirt purchased by Plaintiff Colodonato was a Boys' Long-
14 Sleeve Glow-in-the-Dark Paleontologist Storybook T-Shirt, Item F9528
15 ("Paleontologist T-Shirt"), which was advertised via a large, brightly-colored, in-
16 store placard to be discounted 60% off the ticketed price of \$29.50, at a purported
17 sale price of \$11.80.

18 89. The second was a Boys' Long-Sleeve Dino Storybook T-Shirt, Item
19 F9526 ("Dino T-Shirt"), which also was advertised via a large, brightly-colored, in-
20 store placard to be discounted 60% off the ticketed price of \$32.50, at a purported
21 sale price of \$13.00.

22 90. Plaintiff Colodonato paid Defendants \$11.80 for the Paleontologist T-
23 Shirt and \$13.00 for the Dino T-Shirt on November 25, 2016.

24 91. Plaintiff's receipt confirmed that both shirts were represented by
25 Defendants to be on sale at a discount of 60% off.

26 92. The ticketed price of \$29.50 for the Paleontologist T-Shirt purchased
27 by Plaintiff Colodonato was an unlawful fictitious former price under 16 C.F.R. §
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1 233.1 because the Paleontologist T-Shirt was not sold or offered for sale at that price
2 for a reasonably substantial period of time.

3 93. Indeed, the Paleontologist T-Shirt was never sold or offered for sale at
4 the ticketed price of \$29.50, but was always sold or offered for sale at a price
5 approximately equal to the purported discounted, "sale" price of \$11.80 that
6 Plaintiff Colodonato paid for the item.

7 94. In fact, according to the publicly-available price history of the
8 Paleontologist T-Shirt, it is most commonly offered for sale by Defendants at a price
9 of \$14.99.

10 95. For example, the Paleontologist T-Shirt was offered for sale on
11 Defendants' website at a price of \$14.99 during four consecutive "sales:" on March
12 31, 2017 as part of an "EXTRA 50% OFF CLEARANCE" sale; on April 7, 2017 as
13 part of an "UP TO 60% OFF NEW ARRIVALS" sale; on April 10, 2017 as part of
14 an "UP TO 50% OFF EVERYTHING" sale; and on April 12, 2017 as part of a
15 "50% OFF EVERYTHING" sale.

16 96. Thus, it is alleged that the regular, everyday price of the Paleontologist
17 T-Shirt is actually \$14.99 rather than the asserted ticketed price of \$29.50.
18 Consequently, when Plaintiff purchased the Paleontologist T-Shirt for \$11.80, she
19 was actually getting a discount of only approximately 21% off, rather than the 60%
20 off discount claimed by Defendants.

21 97. Had the Paleontologist T-Shirt actually been discounted by 60% off its
22 regular, everyday price, as advertised by Defendants, Plaintiff Colodonato would
23 have been charged only \$6.00 for the item.

24 98. Similarly, the ticketed price of \$32.50 for the Dino T-Shirt purchased
25 by Plaintiff Colodonato was an unlawful fictitious former price under 16 C.F.R. §
26 233.1 because the Dino T-Shirt was not sold or offered for sale at that price for a
27 reasonably substantial period of time.

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1 99. Indeed, the Dino T-Shirt was never sold or offered for sale at the
2 ticketed price of \$29.50, but was always sold or offered for sale at a price
3 approximately equal to the purported discounted, "sale" price of \$13.00 that
4 Plaintiff Colodonato paid for the item.

5 100. In fact, according to the publicly-available price history of the Dino T-
6 Shirt, it is most commonly offered for sale by Defendants at a price of \$14.99.

7 101. For example, the Dino T-Shirt was offered for sale on Defendants'
8 website at a price of \$14.99 during four consecutive "sales:" on March 31, 2017 as
9 part of an "EXTRA 50% OFF CLEARANCE" sale; on April 7, 2017 as part of an
10 "UP TO 60% OFF NEW ARRIVALS" sale; on April 10, 2017 as part of an "UP TO
11 50% OFF EVERYTHING" sale; and on April 12, 2017 as part of a "50% OFF
12 EVERYTHING" sale. The Dino T-Shirt was also offered for sale at a price of
13 \$14.99 on June 1, 2017 as part of an "UP TO 60% OFF EVERYTHING" sale.

14 102. Thus, it is alleged that the regular, everyday price of the Dino T-Shirt is
15 actually \$14.99 rather than the asserted ticketed price of \$32.50. Consequently,
16 when Plaintiff Colodonato purchased the Dino T-Shirt for \$13.00, she was actually
17 getting a discount of only approximately 13% off, rather than the 60% off discount
18 claimed by Defendants.

19 103. Had the Dino T-Shirt actually been discounted by 60% off its regular,
20 everyday price, as advertised by Defendants, Plaintiff Colodonato would have been
21 charged only \$6.00 for the item.

22 104. Accordingly, the "valued at" and ticketed prices assigned to each of the
23 four above-listed items that Plaintiff Colodonato purchased, and upon which
24 Defendants' advertised discounts were based, were fictitious, as none of the items
25 were sold at those "valued at" or ticketed prices for a reasonably substantial period
26 of time (if ever).

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1 105. Because the “valued at” and ticketed prices were false, the advertised
2 discounts allegedly applied by Defendants to Plaintiff’s purchases were similarly
3 false.

4 106. Indeed, the two items that Plaintiff Colodonato purchased online were
5 not actually on sale or discounted at all when Plaintiff purchased them, as
6 represented by Defendants. Rather, the purported “sale” price that Plaintiff paid for
7 the items were actually higher than the items’ regular, everyday prices.

8 107. Similarly, the two items that Plaintiff Colodonato purchased in-store
9 were actually discounted far less than the 60% off claimed by Defendants.

10 108. Notably, two of Defendants’ “sales” highlighted above – the March 31,
11 2017 “EXTRA 50% OFF CLEARANCE” sale and the April 7, 2017 “UP TO 60%
12 OFF NEW ARRIVALS” sale – did not directly apply to the Seaside Sandals,
13 Paleontologist T-Shirt, and Dino T-Shirt purchased by Plaintiff, as none of the three
14 items were identified either as “Clearance” items or “New Arrivals.” Yet, during
15 these two sales, Defendants offered the three items purchased by Plaintiff for sale at
16 the exact same prices as they were offered for sale during the April 10, 2017 “UP
17 TO 50% OFF EVERYTHING” sale and the April 12, 2017 “50% OFF
18 EVERYTHING” sale – both which of clearly covered all three items.

19 109. This further supports Plaintiff’s allegations that Defendants’ purported
20 “sale” prices are not actually discounted at all, but rather are in fact the everyday,
21 regular prices of the items offered for sale by Defendants on their website and in
22 their retail stores.

23 110. Defendants’ misrepresentations about their limited-time sales, fictitious
24 former prices, and significant discounts concerning the items purchased by Plaintiff
25 Colodonato were calculated and intended to, and did in fact, induce Plaintiff’s
26 purchases. Had Plaintiff known that the items she purchased were not on sale as
27 advertised, but instead were being sold at their everyday regular prices – or at
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1 prices that were in fact higher than their everyday regular prices – she never would
2 have purchased the items.

3 111. Indeed, at the time Plaintiff Colodonato purchased the Chino Short and
4 Seaside Sandals from Defendants' website, she reasonably understood Defendants'
5 use of the phrase "valued at" to be a representation of the actual price at which
6 Defendants actually sold the items at some point in time, and that the difference
7 between the purported "sale" price and the "valued at" price was a representation
8 that she was being offered an actual percentage discount off the actual price at
9 which Defendants had previously sold the items.

10 112. Similarly, at the time Plaintiff Colodonato purchased the
11 Paleontologist and Dino T-Shirts from Defendants' retail store, she reasonably
12 understood Defendants' ticketed price to be a representation of the actual price at
13 which Defendants actually sold the items at some point in time, and that the
14 difference between the purported "sale" price and the ticketed price was a
15 representation that she was being offered an actual percentage discount off the
16 actual price at which Defendants had previously sold the items.

17 113. This was exactly the understanding that Defendants intended their
18 actions to create in Plaintiff and the other class members, and the entirety of
19 Defendants' actions was intended by Defendants to create such a misleading
20 impression.

21 114. As a result of the aforementioned conduct, Plaintiffs and the Class have
22 been harmed, entitling them to relief, including damages, restitution and a
23 permanent injunction.

24 **D. Defendants Engage In Deceptive Advertising**

25 115. Subsequent to Plaintiffs' purchases, an investigation conducted on
26 behalf of Plaintiffs confirmed that the "Reference Prices" relating to Plaintiffs'
27 purchases were never the prevailing market retail price, and, with respect to the
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1 California Plaintiffs, not in the preceding 90 days before Plaintiffs' purchase.
2 Additionally, the investigation revealed that Defendants' deceptive advertising
3 practices were systematic and pervasive at J. Crew Factory Stores, Website, and J.
4 Crew Mercantile Stores as items remain continuously discounted from the
5 advertised Reference Price or they are not offered for sale at their Reference Price
6 for any substantial period of time, and in most cases, not at all, and in compliance
7 with applicable law. Indeed, in most instances, *new* items appear at the J. Crew
8 Factory Stores, Website, and J. Crew Mercantile Stores that are immediately
9 discounted, rendering the Reference Prices completely meaningless, false, and
10 misleading. The difference between the discounted sale prices and the Reference
11 Price is a false savings percentage or whole-price reduction used to lure consumers
12 into purchasing products they believe are significantly discounted. In addition, the
13 clothing and other items sold at J. Crew Factory Stores, Website, and J. Crew
14 Mercantile Stores are designed and manufactured for, and sold *exclusively* by, those
15 stores, which means that such items were never sold – or even intended to be sold –
16 at the advertised Reference Prices. The J. Crew Products were *never* offered for sale
17 at the J. Crew mainline retail stores in California, New York, or New Jersey.

18 116. By failing to price J. Crew Products at their actual regular price for a
19 substantial period of time, Defendants artificially inflated the market price or value
20 of the clothing and other items they sell, including the J. Crew Products purchased
21 by Plaintiffs. Moreover, by failing to price their J. Crew Factory, Website, and
22 Mercantile Products, including the J. Crew Products purchased by Plaintiffs at their
23 regular price for a substantial period of time, and in compliance with applicable law,
24 Defendants interfered with market forces, driving the selling price of their products
25 higher than they would be if Defendants had complied with the law.

26 117. Defendants' false discounting practice, as described herein, has the
27 effect of setting an artificially high market value for their "on sale" merchandise.
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1 Customers, like Plaintiffs, purchase merchandise from Defendants believing they
2 are receiving a substantial discount on their purchases, when in fact they are not.
3 They are instead purchasing an item they would not otherwise buy and paying a
4 higher price than they would otherwise pay were the products subject to fair market
5 competition and pricing.

6 118. Plaintiffs' and Class members' reliance upon Defendants' false price
7 comparison advertising was not only reasonable, but entirely intended by
8 Defendants. In fact, empirical marketing studies demonstrate that false reference
9 pricing actually creates an impression of higher value and an incentive for retailers
10 to engage in this false and fraudulent behavior:

11 [c]omparative price advertising offers consumers a basis for
12 comparing the relative value of the product offering by suggesting
13 a monetary worth of the product and any potential savings

14 [A] comparative price advertisement can be construed as
15 deceptive if it makes any representation, or involves any
16 practice that may materially mislead a reasonable consumer.

17 *Comparative Price Advertising: Informative or Deceptive?*, Dhruv Grewal
18 and Larry D. Compeau, *Journal of Public Policy & Marketing*, Vol. 11,
19 No. 1, at 52 (Spring 1992). Furthermore:
20

21 [b]y creating an impression of savings, the presence of a higher
22 reference price enhances subjects' perceived value and willingness
23 to buy the product. . . . Thus, if the reference price is not truthful, a
24 consumer may be encouraged to purchase as a result of a false
25 sense of value.

26 *Id.* at 55, 56.
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1 119. A retailer's "reference price," the stated price presented alongside the
2 retailer's "on sale" price, provides consumers a reference point with which to
3 evaluate the prospective purchase. The reference price is often described with terms
4 such as "Regular Price," "Original Price," and/or "Former Price."

5 120. A retailer's reference price impacts the consumer's behavior in the
6 marketplace. As the reference price increases, so does the consumer's perception of
7 the value of the transaction, the consumer's willingness to make the purchase, and
8 the amount of money the consumer is willing to pay for the product.

9 121. When the reference price is bona fide and truthful, it helps consumers
10 make informed purchasing decisions. In contrast, consumers are harmed when
11 merchants advertise their products alongside falsely-inflated former prices, *i.e.*,
12 "false reference prices," as consumers are provided a false sense of value. In this
13 context, the reference price is no longer informative but deceptive because
14 consumers are deprived of a full and fair opportunity to accurately evaluate the
15 specific sales offer in its relevant market. As the Ninth Circuit recognizes,
16 "[m]isinformation about a product's "normal" price is . . . significant to many
17 consumers in the same way as a false product label would be." *See Hinojos v.*
18 *Kohl's Inc.* 718 F.3d at 1106.

19 122. Moreover, the hidden nature of false discounting makes it effective.
20 Consumers, like Plaintiffs, unaware of the practices at issue, instead complete their
21 purchases believing that they "got a good deal." Retailers, like Defendants, make
22 falsely-discounted sales without suspicion because consumers do not have access to
23 the comprehensive historical pricing information necessary to reveal the deception.

24 123. The full extent of Defendants' false and deceptive pricing scheme can
25 only be revealed through a full examination of records exclusively in the possession
26 of Defendants.

1 124. Despite the Reference Price scheme used at J. Crew Factory Stores,
2 Website, and Mercantile Stores, Plaintiffs would purchase Defendants' products in
3 the future from J. Crew Factory Stores, Website, or Mercantile Stores, if price tags
4 and "valued at" prices accurately reflect "former" prices and discounts. Currently,
5 however, Plaintiffs and other consumers have no realistic way to know which – if
6 any – of Defendant's price tags, "valued at" prices, advertised discounts, and sale
7 prices are not false or deceptive. If the Court were to issue an injunction ordering
8 Defendants to comply with applicable comparative price advertising laws, and
9 prohibiting Defendants' use of the deceptive practices discussed herein, Plaintiffs
10 would be able to make informed purchase decisions for Defendants' products at J.
11 Crew Factory Stores, Website, and Mercantile Stores.

12
13 **PLAINTIFFS' CLASS ACTION ALLEGATIONS**

14 125. Plaintiffs bring this action as a class action on behalf of themselves, and
15 all others similarly situated pursuant to California Rule of Civil Procedure 382. The
16 proposed Class that Plaintiffs seek to represent is defined as follows:

17
18 **California Class:** All persons who, while in California, and during the
19 period of time beginning December 13, 2012 through the date the Court
20 enters preliminary approval, purchased one (1) or more products at a J.
21 Crew Factory and/or J. Crew Mercantile store, and/or from the J. Crew
22 Factory website, and did not receive a refund or credit for their
23 purchase(s).

24 **New York Class:** All persons who, while in New York, and during the
25 period of time beginning June 7, 2014 through the date the Court enters
26 preliminary approval, purchased one (1) or more products at a J. Crew
27 Factory and/or J. Crew Mercantile store, and/or from the J. Crew
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1 Factory website, and did not receive a refund or credit for their
2 purchase(s).

3 New Jersey Class: All persons who, while in New Jersey, and during
4 the period of time beginning June 7, 2011 through the date the Court
5 enters preliminary approval, purchased one (1) or more products at a J.
6 Crew Factory and/or J. Crew Mercantile store, and/or from the J. Crew
7 Factory website, and did not receive a refund or credit for their
8 purchase(s).

9 126. Excluded from the Class are Defendants; their corporate parents,
10 subsidiaries, affiliates, and any entity in which Defendants have a controlling
11 interest; any of their officers, directors, employees, or agents; the legal
12 representatives, successors or assigns of any such excluded persons or entities; and
13 the judicial officers to whom this matter is assigned as well as their court staff.
14 Plaintiffs reserve the right to expand, limit, modify, or amend these class definitions,
15 including the addition of one or more subclasses, in connection with their motion for
16 class certification, or at any other time, based upon, *inter alia*, changing
17 circumstances and/or new facts obtained during discovery.

18 127. The members of the Class are so numerous that joinder of all members
19 is impracticable. While the exact number of Class members is unknown to Plaintiffs
20 at this time, Plaintiffs estimate that the Class consists of thousands of members.
21 Moreover, Plaintiffs allege that the precise number of Class members, their
22 identities, and their locations can be ascertained through appropriate discovery and
23 records of Defendants and their agents. Defendants keep extensive computerized
24 records of their customers through, *inter alia*, customer loyalty programs, co-
25 branded credit cards and general marketing programs. Defendants have one or more
26 databases through which a significant majority of Class members may be identified
27 and ascertained, and they maintain contact information, including email and home
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1 mailing addresses, through which notice of this action could be disseminated to
2 potential Class members in accordance with due process requirements.

3 128. There are numerous questions of law and fact common to the Class
4 which predominate over any questions affecting only individual members of the
5 Class.

6 129. Among the questions of law and fact common to the Class are, *inter*
7 *alia*:

8 a. Whether, during the Class Period, Defendants used false price
9 representations and falsely advertised price discounts on J. Crew Products it sold in
10 J. Crew Factory Stores, Website, and Mercantile Stores in California, New York,
11 and New Jersey;

12 b. Whether Defendants intended their Reference Price to be
13 synonymous with the item's former, regular, or original price;

14 c. Whether, during the Class Period, the Reference Prices
15 advertised by Defendants were the prevailing market prices for the associated J.
16 Crew Products sold by Defendants, or were the prevailing market prices during the
17 three month period preceding the dissemination and/or publication of the advertised
18 Reference Prices;

19 d. Whether Defendants' use of false or deceptive price advertising
20 constituted false advertising under applicable law;

21 e. Whether Defendants engaged in unfair, unlawful and/or
22 fraudulent business practices under applicable law;

23 f. Whether Defendants misrepresented and/or failed to disclose
24 material facts about their product pricing and discounts;

25 g. Whether Defendants have made false or misleading statements of
26 fact concerning the reasons for, existence of, or amounts of price reductions;

27 h. Whether Defendants' conduct, as alleged herein, was intentional
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1 and knowing;

2 i. Whether Class members are entitled to damages and/or
3 restitution; and, if so, what is the amount of revenues and/or profits Defendants
4 received and/or was lost by Class members as a result of the conduct alleged herein;

5 j. Whether an injunction is necessary to prevent Defendants from
6 continuing to use false, misleading or illegal price comparisons; and

7 k. Whether Plaintiffs and Class members are entitled to an award of
8 reasonable attorneys' fees, pre-judgment interest and costs of suit.

9 130. Plaintiffs' claims are typical of the claims of the members of the Class
10 and, like all members of the Class, purchased goods from a J. Crew Factory Store,
11 Website, and/or Mercantile Store that conveyed a false Reference Price and a
12 fictitious discount. Plaintiffs and the Class they seek to represent have all been
13 deceived (or were likely to be deceived) by Defendants' false former price
14 advertising scheme, as alleged herein. Plaintiffs are advancing the same claims and
15 legal theories on behalf of themselves and all members of the Class. Accordingly,
16 Plaintiffs have no interests antagonistic to the interests of any other member of the
17 Class.

18 131. Plaintiffs are adequate representatives of the Class because they are
19 members of the Class and their interests do not conflict with the interests of the
20 Class members they seek to represent. Plaintiffs will fairly and adequately represent
21 and protect the interest of the Class because they are not antagonistic to the Class.
22 Plaintiffs have retained counsel who are competent and experienced in the
23 prosecution of consumer fraud and class action litigation.

24 132. The nature of this action and the nature of laws available to Plaintiffs
25 and the Class make the use of the class action format a particularly efficient and
26 appropriate procedure to afford relief to Plaintiffs and the Class for the wrongs
27 alleged and superior to individual actions because:
28

1 a. The individual amounts of damages involved, while not
2 insubstantial, are such that individual actions or other individual remedies are
3 impracticable and litigating individual actions would be too costly;

4 b. If each Class member was required to file an individual lawsuit,
5 the Defendants would necessarily gain an unconscionable advantage since it would
6 be able to exploit and overwhelm the limited resources of each individual Class
7 member with vastly superior financial and legal resources;

8 c. The costs of individual suits could unreasonably consume the
9 amounts that would be recovered;

10 d. Proof of a common factual pattern that Plaintiffs experienced is
11 representative of that experienced by the Class and will establish the right of each
12 member of the Class to recover on the cause of action alleged; and

13 e. Individual actions would create a risk of inconsistent results and
14 would be unnecessary and duplicative of this litigation.

15 133. Plaintiffs and Class members have all similarly suffered irreparable
16 harm and damages as a result of Defendants' unlawful and wrongful conduct. This
17 action will provide substantial benefits to Plaintiffs, the Class and the public
18 because, absent this action, Plaintiffs and Class members will continue to suffer
19 losses, thereby allowing Defendants' violations of law to proceed without remedy,
20 and allowing Defendants to retain proceeds of their ill-gotten gains.

21 134. All Class members, including Plaintiffs, were exposed to one or more
22 of Defendants' misrepresentations or omissions of material fact claiming that
23 advertised Reference Prices were in existence. Due to the scope and extent of
24 Defendants' consistent false price advertising scheme, disseminated in a massive,
25 years-long campaign to California, New York, and New Jersey consumers via in-
26 store display advertising, print advertising, website banners, and the like, it can be
27 reasonably inferred that such misrepresentations or omissions of material fact were
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1 uniformly made to all members of the Class. In addition, it can be reasonably
2 presumed that all Class members, including Plaintiffs, affirmatively acted in
3 response to the representations contained in Defendants' false advertising scheme
4 when purchasing J. Crew Products at J. Crew Factory Stores, Website, and/or
5 Mercantile Stores in California, New York, and New Jersey.

6 135. Defendants have acted or refused to act on grounds generally
7 applicable to the Class as a whole and Plaintiffs seek, *inter alia*, equitable remedies
8 with respect to the Class as a whole. As such, the systematic policies and
9 procedures of Defendants make final injunctive relief or declaratory relief with
10 respect to the Class as a whole appropriate.

11 FIRST CAUSE OF ACTION

12 VIOLATION OF THE "UNFAIR" PRONG OF THE UCL

13 136. Plaintiffs re-allege and incorporate by reference the allegations
14 contained in the preceding paragraphs as though fully set forth herein.

15 137. The UCL defines unfair business competition to include any "unlawful,
16 unfair or fraudulent" act or practice, as well as any "unfair, deceptive, untrue or
17 misleading" advertising. Cal. Bus. & Prof. Code § 17200.

18 138. The UCL imposes strict liability. Plaintiffs need not prove that
19 Defendants intentionally or negligently engaged in unlawful, unfair, or fraudulent
20 business practices – only that such practices occurred.

21 139. A business act or practice is "unfair" under the UCL if the reasons,
22 justifications and motives of the alleged wrongdoer are outweighed by the gravity of
23 the harm to the alleged victims.

24 140. Defendants have violated and continue to violate the "unfair" prong of
25 the UCL by representing a false Reference Price and corresponding price discount
26 for their J. Crew Products sold at J. Crew Factory Stores, Website, and Mercantile
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1 Stores in California. As a result, the inflated Reference Price was nothing more than
2 a false, misleading and deceptive price included to create the illusion of a discount.

3 141. Defendants' acts and practices are unfair because they caused
4 Plaintiffs, and reasonable consumers like them, to falsely believe that J. Crew
5 Factory Stores, Website, and Mercantile Stores are offering value, discounts or
6 bargains from the prevailing market worth of the products sold that did not, in fact,
7 exist. Defendants intended and intends for Plaintiffs and Class members to equate
8 the Reference Price with a higher original price. As a result, purchasers, including
9 Plaintiffs, reasonably perceived that they were receiving products that regularly sold
10 in the retail marketplace at substantially higher prices (and are, therefore, worth
11 more) than what they paid. This perception has induced reasonable purchasers,
12 including Plaintiffs, to buy J. Crew Products, which they otherwise would not have
13 purchased.

14 142. The gravity of the harm to members of the Class resulting from these
15 unfair acts and practices outweighed any conceivable reasons, justifications and/or
16 motives of Defendants for engaging in such deceptive acts and practices. By
17 committing the acts and practices alleged above, Defendants engaged in unfair
18 business practices within the meaning of California Business & Professions Code §§
19 17200, *et seq.*

20 143. As a direct and proximate result of Defendants' acts and practices,
21 Plaintiffs and Class members have suffered injury in fact and have lost money or
22 property as a result of purchasing Defendants' products.

23 144. Through their unfair acts and practices, Defendants have improperly
24 obtained money from Plaintiffs and the Class. As such, Plaintiffs request that this
25 Court cause Defendants to restore this money to Plaintiffs and all Class members,
26 and to enjoin Defendants from continuing to violate the UCL as discussed herein
27 and/or from violating the UCL in the future. Otherwise, Plaintiffs and the Class
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1 may be irreparably harmed and/or denied an effective and complete remedy if such
2 an order is not granted.

3
4 **SECOND CAUSE OF ACTION**

5 **VIOLATION OF THE "FRAUDULENT" PRONG OF THE UCL**

6 145. Plaintiffs re-allege and incorporate by reference the allegations
7 contained in the preceding paragraphs as though fully set forth herein.

8 146. The UCL defines unfair business competition to include any "unlawful,
9 unfair or fraudulent" act or practice, as well as any "unfair, deceptive, untrue or
10 misleading" advertising. Cal. Bus. & Prof. Code § 17200.

11 147. A business act or practice is "fraudulent" under the UCL if it is likely
12 to deceive members of the consuming public.

13 148. The price tags and "valued at" prices on the J. Crew Products and
14 advertising materials containing false Reference Prices were "fraudulent" within the
15 meaning of the UCL because they were likely to deceive, and did in fact deceive,
16 Plaintiffs and members of the Class into believing that Defendants were offering
17 value, discounts or bargains at J. Crew Factory Stores, Website, and Mercantile
18 Stores from the prevailing market value or worth of the products sold that did not, in
19 fact, exist. As a result, purchasers, including Plaintiffs, reasonably perceived that
20 they were receiving products that regularly sold in the retail marketplace at
21 substantially higher prices (and were, therefore, worth more) than what they paid.
22 This perception induced reasonable purchasers, including Plaintiffs, to buy such
23 products from Defendants, which they otherwise would not have purchased.

24 149. Defendants' acts and practices as described herein have deceived
25 Plaintiffs and were highly likely to deceive members of the consuming public.
26 Specifically, in deciding to purchase J. Crew Products from the J. Crew Factory
27 Store, Website, and Mercantile Store, Plaintiffs relied on Defendants' misleading
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1 and deceptive Reference Prices and advertised discounts. Each of these factors
2 played a substantial role in Plaintiffs' decision to purchase those products, and
3 Plaintiffs would not have purchased those items in the absence of Defendants'
4 misrepresentations. Accordingly, Plaintiffs suffered monetary loss as a direct result
5 of Defendants' practices described herein.

6 150. As a direct and proximate result of Defendants' acts and practices,
7 Plaintiffs and Class members have suffered injury in fact and have lost money or
8 property as a result of purchasing Defendants' products.

9 151. As a result of the conduct described above, Defendants have been
10 unjustly enriched at the expense of Plaintiffs and members of the proposed Class.
11 Specifically, Defendants have been unjustly enriched by obtaining revenues and
12 profits that they would not otherwise have obtained absent their false, misleading
13 and deceptive conduct.

14 152. Through their unfair acts and practices, Defendants have improperly
15 obtained money from Plaintiffs and the Class. As such, Plaintiffs request that this
16 Court cause Defendants to restore this money to Plaintiffs and all Class members,
17 and to enjoin Defendants from continuing to violate the UCL as discussed herein
18 and/or from violating the UCL in the future. Otherwise, Plaintiffs and the Class may
19 be irreparably harmed and/or denied an effective and complete remedy if such an
20 order is not granted.

21 **THIRD CAUSE OF ACTION**

22 **VIOLATIONS OF THE "UNLAWFUL" PRONG OF THE UCL**

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24 153. Plaintiffs re-allege and incorporate by reference the allegations
25 contained in the preceding paragraphs as though fully set forth herein.
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1 154. The UCL defines unfair business competition to include any "unlawful,
2 unfair or fraudulent" act or practice, as well as any "unfair, deceptive, untrue or
3 misleading" advertising. Cal. Bus. & Prof. Code § 17200.

4 155. A business act or practice is "unlawful" under the UCL if it violates
5 any other law or regulation.

6 156. The FTCA prohibits "unfair or deceptive acts or practices in or
7 affecting commerce" (15 U.S.C. § 45(a)(1)) and specifically prohibits false
8 advertisements. 15 U.S.C. § 52(a)). The FTC has established Guidelines that
9 describe false former pricing schemes, similar to Defendant's in all material
10 respects, as deceptive practices that would violate the FTCA:

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

24 (b) A former price is not necessarily fictitious merely because no sales
25 at the advertised price were made. The advertiser should be especially
26 careful, however, in such a case, that the price is one at which the
27 product was openly and actively offered for sale, for a reasonably
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1 substantial period of time, in the recent, regular course of her business,
2 honestly and in good faith – and, of course, not for the purpose of
3 establishing a fictitious higher price on which a deceptive comparison
4 might be based.

5 16 C.F.R. § 233.1.

6 157. California statutory and regulatory law also expressly prohibits false
7 former pricing schemes. Cal. Bus. & Prof. Code § 17501, entitled “*Value*
8 *determinations; Former price advertisements*,” states:

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

13 *No price shall be advertised as a former price of any advertised thing,*
14 *unless the alleged former price was the prevailing market price as*
15 *above defined within three months next immediately preceding the*
16 *publication of the advertisement* or unless the date when the alleged
17 former price did prevail is clearly, exactly and conspicuously stated in
18 the advertisement. [Emphasis added.]

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

24 159. Defendants also violated and continue to violate Business &
25 Professions Code § 17501, and Civil Code § 1770, sections (a)(9) and (a)(13) by
26 advertising false discounts from purported former prices that were, in fact, not the
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1 prevailing market prices within three months next preceding the publication and
2 dissemination of advertisements containing the false former prices.

3 160. Defendants' use of and reference to a materially false Reference Price,
4 and purported percentage discount or whole-price reduction in connection with their
5 marketing and advertisements concerning the J. Crew Products sold at J. Crew
6 Factory Stores, Website, and Mercantile Stores violated and continues to violate the
7 FTCA, 15 U.S.C. § 45(a)(1) and 15 U.S.C. § 52(a), as well as FTC Guidelines
8 published at Title 16, Code of Federal Regulations, Section 233.

9 161. As a direct and proximate result of Defendants' acts and practices,
10 Plaintiffs and Class members have suffered injury in fact and have lost money or
11 property as a result of purchasing Defendants' products.

12 162. As a result of the conduct described above, Defendants have been
13 unjustly enriched at the expense of Plaintiffs and members of the proposed Class.
14 Specifically, Defendants have been unjustly enriched by obtaining revenues and
15 profits that they would not otherwise have obtained absent their false, misleading
16 and deceptive conduct.

17 163. Through their unfair acts and practices, Defendants have improperly
18 obtained money from Plaintiffs and the Class. As such, Plaintiffs request that this
19 Court cause Defendants to restore this money to Plaintiffs and all Class members,
20 and to enjoin Defendants from continuing to violate the UCL as discussed herein
21 and/or from violating the UCL in the future. Otherwise, Plaintiffs and the Class may
22 be irreparably harmed and/or denied an effective and complete remedy if such an
23 order is not granted.

24 **FOURTH CAUSE OF ACTION**

25 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW** 26 **CALIFORNIA BUSINESS & PROFESSIONS CODE SECTIONS 17500,** 27 ***ET. SEQ.***

28 164. Plaintiffs re-allege and incorporate by reference the allegations

1 contained in the preceding paragraphs as though fully set forth herein.

2 165. The California False Advertising Law prohibits unfair, deceptive,
3 untrue, or misleading advertising, including, but not limited to, false statements as to
4 worth, value and former price.

5 166. Cal. Bus. & Prof. Code § 17500 provides that:

6 [i]t is unlawful for any . . . corporation . . . with intent . . . to dispose of
7 . . . personal property . . . to induce the public to enter into any
8 obligation relating thereto, to make or disseminate or cause to be made
9 or disseminated . . . from this state before the public in any state, in any
10 newspaper or other publication, or any advertising device, or by public
11 outcry or proclamation, or in any other manner or means whatever,
12 including over the Internet, any statement . . . which is *untrue* or
13 *misleading*, and which is known, or which by the exercise of
14 reasonable care should be known, to be untrue or misleading . . .

15 [Emphasis added.].

16 167. The “intent” required by Cal. Bus. & Prof. Code § 17500 is the intent
17 to dispose of property, and not the intent to mislead the public in the disposition of
18 such property.

19 168. Similarly, Cal. Bus. & Prof. Code § 17501 provides, “no price shall be
20 advertised as a former price of any advertised thing, unless the alleged former price
21 was the prevailing market price . . . within three months next immediately preceding
22 the publication of the advertisement or unless the date when the alleged former price
23 did prevail is clearly, exactly, and conspicuously stated in the advertisement.”

24 169. Defendant’s routine practice of including a false Reference Price on
25 price tags and “valued at” prices on J. Crew Products sold at J. Crew Factory Stores,
26 Websites, and Mercantile Stores, which were never the true prevailing prices of
27 those products was an unfair, deceptive and misleading advertising practice. This
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1 deceptive marketing practice gave consumers the false impression that the J. Crew
2 Products sold at J. Crew Factory Stores, Website, and Mercantile Stores were
3 regularly sold in the retail marketplace at substantially higher prices than they
4 actually were. Therefore, leading to the false impression that the merchandise was
5 worth more than it actually was. In fact, J. Crew Products that were made
6 exclusively for sale in the J. Crew Factory Stores, Website, and Mercantile Stores
7 were never sold at the Reference Price under any circumstances.

8 170. Defendants misled consumers by making untrue and misleading
9 statements and failing to disclose what is required as stated in the Code, as alleged
10 above.

11 171. As a direct and proximate result of Defendants' acts and practices,
12 Plaintiffs and Class members have suffered injury in fact and have lost money or
13 property as a result of purchasing Defendants' products.

14 172. Through their unfair acts and practices, Defendants have improperly
15 obtained money from Plaintiffs and the Class. As such, Plaintiffs request that this
16 Court cause Defendants to restore this money to Plaintiffs and all Class members,
17 and to enjoin Defendants from continuing to violate the False Advertising Law as
18 discussed herein in the future. Otherwise, Plaintiffs and the Class may be irreparably
19 harmed and/or denied an effective and complete remedy if such an order is not
20 granted.

21 **FIFTH CAUSE OF ACTION**

22 **FOR VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT**
23 **CALIFORNIA CIVIL CODE SECTIONS 1750, *ET. SEQ.***

24 173. Plaintiffs re-allege and incorporate by reference the allegations
25 contained in the preceding paragraphs as though fully set forth herein.

26 174. This cause of action is brought pursuant to the CLRA.
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1 175. Plaintiffs and each member of the proposed Class are “consumers”
2 within the meaning of California Civil Code § 1761(d).

3 176. Defendants’ sale of J. Crew Products at J. Crew Factory Stores,
4 Website, and Mercantile Stores to Plaintiffs and the Class were “transactions”
5 within the meaning of California Civil Code § 1761(e). The J. Crew Products
6 purchased by Plaintiffs and the Class are “goods” within the meaning of California
7 Civil Code § 1761(a).

8 177. As described herein, Defendants violated, and continue to violate, the
9 CLRA by falsely representing the nature, existence and amount of price discounts
10 by fabricating an inflated Reference Price and including that Reference Price on the
11 price tags and “valued at” prices for J. Crew Products. Such a pricing scheme is in
12 violation of Cal. Civ. Code § 1770, subsection (a)(9) (“[a]dvertising goods or
13 services with intent not to sell them as advertised”) and subsection (a)(13)
14 (“[m]aking false or misleading statements of fact concerning reasons for, existence
15 of, or amounts of price reductions”).

16 178. Plaintiffs relied on Defendants’ false representations in deciding to
17 purchase merchandise from Defendants. Plaintiffs would not have purchased such
18 merchandise absent Defendants’ unlawful conduct. As a result of these acts and
19 practices, Plaintiffs suffered damages in that they spent money at the J. Crew
20 Factory Stores, Website, and Mercantile Stores that they would not have otherwise
21 spent absent Defendants’ unlawful and misleading acts and practices.

22 179. Pursuant to Section 1782(a) of the CLRA, on June 9, 2017, Plaintiff
23 Press served Defendants by United States certified mail, return receipt requested,
24 with notice of Defendants’ particular violations of the CLRA and requested that
25 Defendants identify victims, notify victims and remedy their illegal conduct within
26 30 days. Similarly, on May 10, 2017, Plaintiff Delman served Defendants with an
27 appropriate CLRA notice. Both letters were sent on behalf of the respective
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1 Plaintiff and all others similarly situated. More than 30 days have passed since the
2 sending of the CLRA notices, and no cure has been effectuated.

3 180. Plaintiffs seek actual and punitive damages under the CLRA, in
4 addition to injunctive relief, as well as attorneys' fees and costs.

5 SIXTH CAUSE OF ACTION

6 VIOLATION OF NEW YORK GENERAL BUSINESS LAW §§ 349 and 350

7 181. Plaintiffs reallege and incorporate by reference all previous paragraphs
8 of this Complaint as if set forth fully herein.

9 182. Plaintiffs bring this claim individually and on behalf of all other class
10 members who purchased items from Defendants' website or stores in New York,
11 pursuant to New York Gen. Bus. Laws § 349 ("NYGBL § 349") and § 350
12 ("NYGBL § 350").

13 183. Plaintiffs specifically allege that Defendants' advertising and marketing
14 campaigns and their sales policies and practices relating to their website were
15 created by Defendants at their principal place of business in New York, and were
16 disseminated nationwide from New York. Accordingly, the unlawful acts and
17 practices alleged herein originated in New York, and Plaintiffs allege
18 that Defendants' marketing, advertising, and sale of merchandise from their retail
19 stores and websites are governed by, inter alia, New York law, including NYGBL
20 §§ 349 and 350, regardless of where in the United States the merchandise was
21 purchased.

22 184. Moreover, the transactions in which the Plaintiffs and class were and
23 are deceived occurred in New York.

24 185. The underlying deceptive "transactions" took place in New York,
25 regardless of the location of the Plaintiffs or the class.

26 186. The underlying deceptive "transactions" took place in New York,
27 regardless of where the Plaintiffs and class were and are deceived.

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1 187. A deceptive transaction in New York falls within the territorial reach of
2 NYGBL §§ 349 and 350 and suffices to give Plaintiffs and any other out-of-state
3 victim who engage in the transaction statutory standing to sue under NYGBL §§
4 349 and 350.

5 188. NYGBL § 349 prohibits “deceptive acts or practices in the conduct of
6 any business, trade or commerce or in the furnishing of any service in [New York].”

7 189. NYGBL § 350 makes “[f]alse advertising in the conduct of any
8 business, trade or commerce or in the furnishing of any service” in New York
9 unlawful.

10 190. Defendants’ advertising, marketing, and sales practices, as set out more
11 fully above, were deceptive and false in violation of NYGBL §§ 349 and 350 in that
12 they:

13 a. Set and advertised an arbitrary “valued at” price for every item
14 on their website, and an identical arbitrary ticketed price for every item in their retail
15 stores, which prices were represented to be the items’ “original” or “regular” prices
16 despite the fact that no item was ever sold or offered for sale at that price;

17 b. Continuously held site- and store-wide “sales” that purported to
18 offer items for sale at a specified percentage discount or amount off their “valued at”
19 and ticketed prices, when the “discounted” sale prices did not actually represent the
20 advertised savings since the items were never offered for sale at the “valued at” and
21 ticketed prices;

22 c. Represented that the sale prices were available only for a limited
23 time, when each sale was immediately followed by another, similar sale offering the
24 same items at same or substantially similar prices;

25 d. Represented that items were on sale and offered at discounted
26 prices when in fact the items were being offered for sale at their everyday, regular
27 prices (or at prices that were higher than their everyday, regular prices); and
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1 e. Charged their customers the full, regular price for the items sold
2 rather than the advertised sale or discounted price.

3 191. These deceptive advertising, marketing, and sales practices originated
4 from and were performed at Defendants' headquarters in New York, and therefore
5 were the products of "business, trade or commerce" in New York. Indeed,
6 Defendants operate their J. Crew Factory website out of their headquarters in New
7 York; thus, all of the advertising and sale of items on or from Defendants' website
8 occurred in New York.

9 192. Plaintiffs seek to enjoin these unlawful, deceptive practices on behalf of
10 themselves and the class for the J. Crew Factory website and stores.

11 193. As described herein, there was a causal connection between
12 Defendants' deceptive conduct and the injuries to Plaintiffs and the class arising out
13 of the J. Crew Factory website and stores.

14 194. Plaintiffs and each class member were intended victims of Defendants'
15 deceptive conduct alleged herein.

16 195. Plaintiffs and each class member were injured in fact and lost money as
17 a result of Defendants' deceptive conduct.

18 196. Plaintiffs and each class member have been deprived of the benefit of
19 their bargain, which is a valid measure of loss under New York law, in that they
20 received something less than what was advertised on Defendants' website and stores
21 – Defendants represented that Plaintiffs and the class were paying a sale price,
22 discounted by an advertised percentage, for the items they purchased, when in fact
23 they were not receiving the advertised discount, and in many instances were paying
24 the everyday, regular price (or an even higher price) for the items they purchased.

25 197. Plaintiffs and each class member believed Defendants'
26 misrepresentations that the items they purchased were in fact on sale and being
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1 offered at the advertised discounted prices, and would not have purchased such
2 items had they known that Defendants' advertisements were false.

3 198. Moreover, the Court can presume such reliance under the
4 circumstances of the case at bar, because the false statements regarding the prices of
5 the items were placed by Defendants on their website and stores for the purpose of
6 inducing the purchase of such items, as part of a course of conduct intended to
7 deceive Plaintiffs and the class members.

8 199. Consequently, the conduct of Defendants as alleged herein constitutes
9 deceptive acts and practices in violation of NYGBL § 349, and Defendants are liable
10 to Plaintiffs and each class member for not less than \$50.00 per person.

11 200. The conduct of Defendants as alleged herein also constitutes false
12 advertising in violation of NYGBL § 350, and Defendants are liable to Plaintiffs and
13 each class member for not less than \$500.00 per person.

14 201. Plaintiffs and the class seek declaratory relief, restitution for monies
15 wrongfully obtained, disgorgement of ill-gotten revenues and/or profits, injunctive
16 relief prohibiting Defendants from continuing to disseminate their false and
17 misleading statements and conduct the aforementioned practices, and for other relief
18 allowable under NYGBL §§ 349 and 350.

19 SEVENTH CAUSE OF ACTION

20 VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT

21 N.J.S.A. 56:8-1, et seq.

22 202. Plaintiffs reallege and incorporate by reference all previous paragraphs
23 of this Complaint as if fully set forth herein.

24 203. Plaintiffs bring this claim individually and on behalf of all other class
25 members who purchased items from Defendants' J. Crew Factory website and retail
26 stores in New Jersey.

1 204. The New Jersey Supreme Court has repeatedly held that the New
2 Jersey Consumer Fraud Act ("NJCFA") must be construed liberally in favor of the
3 consumer in order to accomplish its deterrent and protective purposes. See Furst v.
4 Einstein Moomjy, 182 N.J. 1, 11-12 (2004) ("The Consumer Fraud Act is remedial
5 legislation that we construe liberally to accomplish its broad purpose of
6 safeguarding the public.").

7 205. Indeed, the courts of New Jersey have repeatedly held that the NJCFA
8 is intended to be one of the strongest consumer protection statutes in the nation. See
9 New Mea Const. Corp. v. Harper, 203 N.J. Super. 315, 319 (App. Div. 1986) ("[t]he
10 available legislative history demonstrates that the Act was intended to be one of the
11 strongest consumer protection laws in the nation.")

12 206. As stated by the New Jersey Appellate Division in Dugan v. TGI
13 Friday's, Inc., 2011 WL 5041391 at *3 (App. Div. 2011):

14 Celebrated as "one of the strongest consumer protection laws in
15 the nation," the CFA has been propagated by an uninterrupted
16 history "of constant expansion of consumer protection." (citations
17 omitted)

18 207. The NJCFA prohibits not only a list of specifically enumerated acts, but
19 also any unconscionable or deceptive commercial practice. As stated by the New
20 Jersey Supreme Court in Gonzalez v. Wilshire Credit Corp., 207 N.J. 557, 576
21 (2011):

22 Because the "fertility" of the human mind to invent "new schemes
23 of fraud is so great," the CFA does not attempt to enumerate every
24 prohibited practice, for to do so would "severely retard[] its broad
25 remedial power to root out fraud in its myriad, nefarious
26 manifestations." Thus, to counteract newly devised stratagems
27 undermining the integrity of the marketplace, "[t]he history of the
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1 [CFA] [has been] one of constant expansion of consumer
2 protection.” (citations omitted) (emphasis added)

3 208. As held by the District of New Jersey in Katz v. Live Nation, C.A. No.
4 09-3740 (D.N.J. 2010):

5 We find that Defendants err in their assertion that New Jersey law
6 does not recognize a stand-alone claim for unconscionable
7 commercial practice....NJCFA claims for unconscionable
8 commercial practice need not allege an affirmative fraudulent
9 statement, representation, or omission by the defendant.

10 209. The CFA does not require a plaintiff to plead or prove any intent to
11 defraud. Indeed, the CFA has been held to prohibit sharp or unfair practices, even if
12 the defendant acts in good faith. See Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 12
13 (2004):

14 The Consumer Fraud Act is remedial legislation that we construe
15 liberally to accomplish its broad purpose of safeguarding the
16 public. The Act protects consumers from more than just “shifty,
17 fast-talking and deceptive merchant[s]” and “sharp practices and
18 dealings....” It also protects consumers from unfair practices “even
19 when, a merchant acts in good faith.” (emphasis added)

20 210. The CFA does not require a plaintiff to plead or prove “reliance” or even
21 a fraudulent act. Rather, the plain language of N.J.S.A. § 56:8-2 states that any
22 deceptive and unconscionable commercial practice violates the CFA, even if there is
23 no actual fraud and even if no one has actually been misled or deceived by the
24 practice. See Skeer v. EMK Motors, Inc., 187 N.J. Super. 465, 470 (App. Div.
25 1982):

26 Violation of the act can be shown even though a consumer has not
27 in fact been misled or deceived. N.J.S.A. § 56:8-2. It is not
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1 necessary to show actual deceit or a fraudulent act; any
2 unconscionable commercial practice is prohibited. (emphasis
3 added)

4 211. An “unconscionable commercial practice” is not limited to false
5 statements of fact or fraud. Cowger v. Cherry Hill Mitsubishi, Inc., No. A-3408-
6 09T4, 2011 N.J. Super. Unpub. LEXIS 620, at *10 (Super. Ct. App. Div. Mar. 14,
7 2011) (“Lost in that dust-up is the fact that the CFA not only prohibits fraud and
8 misrepresentations but unconscionable commercial practices as well.”)

9 212. Rather, the NJCFA recognizes a “stand alone” violation, even in the
10 absence of conduct which would constitute common law fraud, called an
11 “unconscionable commercial practice.”

12 213. As with every other aspect of the CFA, the meaning of the term
13 “unconscionable commercial practice” in N.J.S.A. § 56: 8-2 must be broadly
14 defined. This catch-all term was added to the CFA by amendment in 1971 to ensure
15 that the Act covered “exorbitant prices, unfair bargaining advantages and
16 incomplete disclosures.” Skeer v. EMK Motors, Inc., 187 N.J. Super. 465, 472
17 (App. Div. 1982).

18 214. In describing what constitutes an “unconscionable commercial practice,”
19 the New Jersey Supreme Court has noted that it is an amorphous concept designed
20 to establish a broad business ethic. See Cox v. Sears Roebuck & Co., 138 N.J. 2, 18
21 (N.J. 1994). As stated by the District of New Jersey in Pollitt v. DRS Towing, LLC,
22 2011 WL 1466378 at *7 (D.N.J. 2011):

23 The New Jersey Supreme Court has stated that ‘unconscionability’
24 is an amorphous concept obviously designed to establish a broad
25 business ethic.

26 215. As a matter of law, the CFA does not require a plaintiff to request a
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1 refund from the seller, and the availability of a refund does not negate a CFA claim.
2 Rather the New Jersey Supreme Court has specifically rejected both arguments,
3 holding that to allow the availability of a refund to nullify a CFA claim would create
4 a "safe harbor" for misconduct by merchants and would be contrary to the purpose
5 of the CFA. See Bosland v. Warnock Dodge, Inc., 197 N.J. 543, 561 (2009):

6 Plainly, if we require plaintiffs, as a precondition to filing a
7 complaint under the CFA, to first demand a refund, we will create
8 a safe harbor for an offending merchant. A merchant could rely on
9 the pre-suit refund demand requirement, boldly imposing inflated
10 charges at no risk, and planning to refund the overcharges only
11 when asked. Such an analysis of the CFA would limit relief by
12 making it available only to those consumers who are alert enough
13 to ask for a refund, while allowing the offending merchant to reap
14 a windfall....Because reading a pre-suit demand for refund
15 requirement into the CFA would thwart those salutary purposes,
16 we will not endorse it.

17 216. Moreover, the fact that a merchant has offered a refund after suit has
18 been filed does not negate a CFA claim. Furst v. Einstein Moomjy, Inc., 182 N.J. 1,
19 6 (2004).

20 217. By the acts alleged herein, Defendants have committed multiple acts that
21 constitute unconscionable commercial practices under N.J.S.A. § 56:8-2 of the
22 NJCFA. Specifically, Defendants:

23 a. Set and advertised an arbitrary "valued at" price for every item
24 on their website, and an identical arbitrary ticketed price for every item in their retail
25 stores, which prices were represented to be the items' "original" or "regular" prices
26 despite the fact that no item was ever sold or offered for sale at that price;

27 b. Continuously held site- and store-wide "sales" that purported to
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1 offer items for sale at a specified percentage discount or amount off their "valued at"
2 and ticketed prices, when the "discounted" sale prices did not actually represent the
3 advertised savings since the items were never offered for sale at the "valued at" and
4 ticketed prices;

5 c. Represented that the sale prices were available only for a limited
6 time, when each sale was immediately followed by another, similar sale offering the
7 same items at same or substantially similar prices;

8 d. Represented that items were on sale and offered at discounted
9 prices when in fact the items were being offered for sale at their everyday, regular
10 prices (or at prices that were higher than their everyday, regular prices); and

11 e. Charged their customers the full, regular price for the items sold
12 rather than the advertised sale or discounted price.

13 218. In addition, Defendants made written affirmative misrepresentations of
14 fact in the sale of goods, which is an unlawful practice under the plain language of
15 N.J.S.A. § 56:8-2.

16 219. Specifically, Defendants' website and in-store placards advertised that
17 Plaintiffs were purchasing items at a specific percentage discount (e.g., "60%") off
18 their "valued at" and ticketed prices, and that the discounted prices were valid only
19 for a limited time.

20 220. As indicated previously, neither of these statements of fact was true.
21 The items were not discounted to the extent claimed by Defendants, as they were
22 never sold at their "valued at" and ticketed prices. Rather, the items were being sold
23 to Plaintiffs at a price equal to (or much closer or even higher than) the everyday
24 price at which Defendants regularly sold those items. Moreover, the purportedly
25 discounted prices did not end as advertised by Defendants, but rather continued
26 indefinitely.

27 221. In addition, Defendants engaged in knowing, material omissions of fact
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1 that constitute unlawful practices under the plain language of N.J.S.A. § 56:8-2.

2 222. Defendants were aware that, without some explanation of the phrase
3 “valued at,” consumers would naturally assume that the “valued at” prices set forth
4 on their website were real prices at which Defendants had actually sold the items at
5 some point in time.

6 223. Similarly, Defendants were aware that, without additional explanation,
7 consumers would assume that the ticketed prices set forth on items’ in-store price
8 tags were real prices at which Defendants had actually sold the items at some point
9 in time.

10 224. Despite this, Defendants failed to advise Plaintiffs and the class that
11 the “valued at” and ticketed prices were not prices at which Defendants had ever
12 sold the items in question.

13 225. Nor did Defendants advise Plaintiffs and the class that the items offered
14 for sale on their website and in their retail stores were not actually sold at the
15 advertised discounts, and in many instances were not discounted at all, but rather
16 were being sold by Defendants at or close to their everyday, regular prices.

17 226. Moreover, because Defendant’s conduct described herein is a violation
18 of 16 C.F.R. § 233.1, such conduct constitutes a per se violation of the CFA,
19 N.J.S.A. § 56:8-1, et seq.

20 227. Furthermore, Defendants’ practices, as alleged in greater detail herein,
21 violate several New Jersey regulations promulgated under the NJCFA. Under well-
22 established law, such regulatory violations constitute per se violations of the
23 NJCFA.

24 228. Specifically, the conduct of Defendants, as described herein, violates
25 N.J.A.C. § 13:45A-9.6(a), which states: “An advertiser shall not use a fictitious
26 former price. Use of a fictitious former price will be deemed to be a violation of the
27 Consumer Fraud Act.”

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1 229. In addition, Defendants' use of "valued at" and ticketed prices is a
2 deceptive representation in violation of N.J.A.C. § 13:45A-9.6(b)(1). This
3 regulation requires that Defendants be able to substantiate that there were "a
4 substantial number of sales of the advertised merchandise, or comparable
5 merchandise of like grade or quality made within the advertiser's trade area in the
6 regular course of business at any time within the most recent 60 days..."

7 230. Defendants cannot do this. As alleged herein, Defendants' "valued at"
8 and ticketed prices were and are completely arbitrary statements of fictitious prices
9 invented by Defendants, designed to induce customers into erroneously believing
10 they were buying discounted merchandise at prices significantly less than what the
11 items were objectively worth and/or being sold for. Defendants' "valued at" and
12 ticketed prices were not based on any actual prices at which comparable
13 merchandise was actually sold in New Jersey in the regular course of business by
14 anyone within the last 60 days, as required by N.J.A.C. § 13:45A-9.6(b)(1).

15 231. Likewise, Defendants' use of "valued at" and ticketed prices is a
16 deceptive representation in violation of N.J.A.C. § 13:45A-9.6(b)(2). This regulation
17 requires that Defendants substantiate "That the advertised merchandise, or
18 comparable merchandise of like grade or quality, was actively and openly offered
19 for sale at that price within the advertiser's trade area in the regular course of
20 business during at least 28 days of the most recent 90 days before or after the
21 effective date of the advertisement..."

22 232. Again, Defendants cannot do this. Defendants' "valued at" and
23 ticketed prices were not based on any actual price at which comparable merchandise
24 was actually sold in New Jersey in the regular course of business by anyone within
25 28 of the last 90 days, as required by N.J.A.C. § 13:45A-9.6(b)(2).

26 233. Indeed, Defendants' practices violate the illustrations of prohibited
27 practices listed in N.J.A.C. § 13:45A-9.6, which specifically states it is a violation of
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1 this regulation for an advertiser to use terms such as "retail value" for a product,
2 when the purported "retail value" price listed is not based on the prevailing,
3 representative price actually being charged in the area where the consumer is
4 shopping. See N.J.A.C. § 13:45A-9.6, noting "the advertisement of 'Retail Value \$
5 15.00' would suggest a prevailing, and not merely an isolated and unrepresentative
6 price in the area in which they shop."

7 234. These uniform practices by Defendants constitute unlawful, sharp and
8 unconscionable commercial practices relating to the sale of goods in violation of the
9 NJCFA, N.J.S.A. § 56:8-1, et seq.

10 235. As alleged herein, Defendants have engaged in deceptive conduct which
11 creates a likelihood of confusion or misunderstanding.

12 236. As such, Defendants have acted with knowledge that their conduct was
13 deceptive and with intent that such conduct deceive purchasers.

14 237. Plaintiffs and the class members reasonably and justifiably expected
15 Defendants to comply with applicable law, but Defendants failed to do so.

16 238. As a direct and proximate result of these unlawful actions by
17 Defendants, Plaintiff and the class have been injured and have suffered an
18 ascertainable loss of money, in that they failed to receive the full benefit of the
19 bargain promised by Defendants.

20 239. That loss is measured, inter alia, by the loss of the specific percentage
21 discount that Defendants promised, but did not deliver, on each of Plaintiff's and the
22 class member's purchases. In actuality, Plaintiffs and the class received a much
23 lesser discount – or no discount at all – and the prices they paid for the items they
24 purchased were the regular, undiscounted prices normally charged by Defendants, or
25 very close thereto.

26 240. The purported discounts offered by Defendants were illusory because
27 their purported existence was premised on Defendants' misleading representations
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1 that Defendants were offering these items for sale at a discounted price that was
2 lower than the actual price at which the items were regularly sold.

3 241. Under New Jersey law, the presumptive value of an item is its regular
4 selling price.

5 242. By listing "valued at" prices on their website and in-store price tags,
6 Defendants promised bargains to Plaintiffs and the class in which they would
7 receive items that were in fact worth the advertised "valued at" prices. However,
8 Plaintiffs and the class did not receive the benefit of that promised bargain because
9 the items were never sold at their "valued at" prices, and thus were not actually
10 worth the advertised "valued at" prices, but rather were worth less than those prices.
11 By receiving items worth less than their promised value, Plaintiffs and the class
12 were deprived of the benefit of the promised bargain.

13 243. Plaintiffs and the class also suffered an out of pocket loss of money in
14 that they were induced to pay money to purchase items based on Defendants'
15 deceptive and misleading marketing policies described herein. But for Defendants'
16 deceptive and misleading conduct, Plaintiffs and the class would not have purchased
17 the items from Defendants.

18 244. Thus, Plaintiffs' damages arising from their purchases referenced
19 herein may be measured in three ways. First, because Plaintiffs would not have
20 purchased any of the items but for Defendants' misrepresentation that they were on
21 sale, Plaintiffs should be entitled to a full refund of what they paid for the items they
22 purchased. Alternatively, Plaintiffs should receive the difference between their
23 purchase price for each item and the amount they would have paid had the promised
24 discount been applied to each item's regular price. At the absolute minimum,
25 Plaintiffs should receive a refund of the amounts they overpaid for items that were
26 not discounted at all when Plaintiffs purchased them, as advertised by Defendants,
27 but rather were sold to Plaintiffs at prices higher than their everyday regular prices.

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1 The actual damages of the class could be similarly calculated from Defendants'
2 records.

3 245. Pursuant to N.J.S.A. 56:8-19 of the NJCFA, Plaintiffs seek, inter alia,
4 actual damages, treble damages and injunctive relief for themselves and the class.

5 **EIGHTH CAUSE OF ACTION**

6 VIOLATION OF THE NEW JERSEY TRUTH IN CONSUMER CONTRACT,
7 WARRANTY AND NOTICE ACT, N.J.S.A. § 56:12-14, et seq.

8 246. Plaintiffs reallege and incorporate by reference all previous paragraphs
9 of this Complaint as if fully set forth herein.

10 247. Plaintiffs bring this claim individually and on behalf of all other
11 class members who were customers of Defendants' J. Crew Factory website and
12 retail stores in New Jersey.

13 248. Plaintiffs and the class are "consumers" within the meaning of
14 N.J.S.A. §§ 56:12-15 and 16.

15 249. Defendants are "sellers" within the meaning of N.J.S.A. §§ 56:12-15
16 and 16.

17 250. The advertisements and representations on Defendants' website and
18 posted on in-store placards, stating, e.g., that items are on "sale" and being
19 discounted by certain percentages or amounts, are both a consumer "notice" and
20 "warranty" within the meaning of N.J.S.A. §§ 56:12-15 and 16.

21 251. By the acts alleged herein, Defendants have violated N.J.S.A. § 56:12-
22 16 because, in the course of Defendants' business, Defendants have offered written
23 consumer notices and warranties to Plaintiffs and the class which contained
24 provisions that violated their clearly established legal rights under state law and
25 federal regulations, within the meaning of N.J.S.A. § 56:12-15.

26 252. Specifically, the clearly established rights of Plaintiffs and the class
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1 under state law include the right not to be subjected to unconscionable commercial
2 practices, omissions of material fact, and false written affirmative statements of fact
3 in the sale of goods, as described herein, which acts are prohibited by the NJCFA,
4 N.J.S.A. § 56:8-2.

5 253. Further, the clearly established rights of Plaintiffs and the class
6 under federal law include the right not to be subjected to false advertising in
7 violation of 16 C.F.R. § 233.1.

8 254. Moreover, the clearly established rights of Plaintiffs and the class
9 include the right not to be subjected to advertising practices prohibited by N.J.A.C.
10 § 13:45A-9.6, N.J.A.C. § 13:45A-9.3, and N.J.A.C. § 13:45A-9.5(a)(1).

11 255. Pursuant to N.J.S.A. § 56:12-17, Plaintiffs seek a statutory penalty of
12 \$100 for each class member, as well as actual damages and attorneys' fees and
13 costs.

14 NINTH CAUSE OF ACTION

15 BREACH OF CONTRACT

16 256. Plaintiffs reallege and incorporate by reference all previous paragraphs
17 of this Complaint as if fully set forth herein.

18 257. Plaintiffs and the class members entered into contracts with Defendants.

19 258. The contracts provided that Plaintiffs and the class members would pay
20 Defendants for their products.

21 259. The contracts further provided that Defendants would provide Plaintiffs
22 and the class members a specific discount on the price of their purchases. This
23 specified discount was a specific and material term of each contract.

24 260. Plaintiffs and the class members paid Defendants for the products they
25 purchased, and satisfied all other conditions of the contracts.

26 261. Defendants breached the contracts with Plaintiffs and the class members
27 by failing to comply with the material term of providing the promised discount, and
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1 instead charged Plaintiffs and the class members a higher, or full, price of the
2 products they purchased.

3 262. As a direct and proximate result of Defendants' breach, Plaintiffs and
4 the class members have been injured and have suffered actual damages in an amount
5 to be established at trial.

6 **TENTH CAUSE OF ACTION**

7 **BREACH OF CONTRACT UNDER THE IMPLIED COVENANT** 8 **OF GOOD FAITH AND FAIR DEALING**

9 263. Plaintiffs reallege and incorporate by reference all previous paragraphs
10 of this Complaint as if fully set forth herein.

11 264. There was no written contract between Defendants and their customers,
12 including Plaintiffs and the class members.

13 265. Rather, by operation of the law of each state, there existed an implied
14 contract for the sale of goods between each customer who purchased items from
15 Defendants' J. Crew Factory website and retail stores.

16 266. By operation of the law of each state, there also existed an implied duty
17 of good faith and fair dealing in each such contract.

18 267. By the acts alleged herein, Defendants have violated that duty of good
19 faith and fair dealing, thereby breaching the implied contract between Defendants
20 and each class member.

21 268. Specifically, it was a violation of the duty of good faith and fair dealing
22 for Defendants to represent that the items on their website were discounted by a
23 specific percentage or amount when in fact they were not discounted at all, or by a
24 far lesser percentage, but instead were offered for sale at their regular prices (or at a
25 price very close thereto).

26 269. It was also a violation of the duty of good faith and fair dealing for
27 Defendants to charge Plaintiffs and class members prices that were higher than
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1 promised by Defendants' advertised percentage off discounts, and that were in many
2 cases the regular prices for the items purchased by Plaintiffs and the class.

3 270. As a direct and proximate result of Defendants' breach of the implied
4 covenant of good faith and fair dealing, Plaintiffs and the class members have been
5 injured and have suffered actual damages in an amount to be established at trial.

6 **ELEVENTH CAUSE OF ACTION**

7 **BREACH OF EXPRESS WARRANTY**

8 271. Plaintiffs reallege and incorporate by reference all previous paragraphs
9 of this Complaint as if fully set forth herein.

10 272. Plaintiffs and the class members formed contracts with Defendants at
11 the time they purchased items from Defendants' website and retail stores. The terms
12 of such contracts included the promises and affirmations of fact made by Defendants
13 through their marketing campaigns, as alleged herein, including, but not limited to,
14 representing that the items for sale on Defendants' J. Crew Factory website and
15 retail stores were being discounted.

16 273. This product advertising constitutes express warranties, became part of
17 the basis of the bargain, and is part of the contracts between Defendants and
18 Plaintiffs and the class members.

19 274. The affirmations of fact made by Defendants were made to induce
20 Plaintiffs and the class members to purchase items from Defendants' website and
21 retail stores.

22 275. Defendants intended that Plaintiffs and the class members would rely on
23 those representations in making their purchases, and Plaintiffs and the class
24 members did so.

25 276. All conditions precedent to Defendants' liability under these express
26 warranties have been fulfilled by Plaintiffs and the class members in terms of paying
27 for the goods at issue, or have been waived. Defendants had actual and/or
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1 constructive notice of their own false advertising, marketing, and sales practices but
2 to date have taken no action to remedy their breaches of express warranty.

3 277. Defendants breached the terms of the express warranty because the
4 items purchased by Plaintiffs and the class members did not conform to the
5 description provided by Defendants – that they were being sold at a specified
6 discount. In fact, they were not.

7 278. As a direct and proximate result of Defendants' breach of express
8 warranty, Plaintiffs and the class members have been injured and have suffered
9 actual damages in an amount to be established at trial.

10 TWELVETH CAUSE OF ACTION

11 UNJUST ENRICHMENT

12 279. Plaintiffs reallege and incorporate by reference all previous paragraphs
13 of this Complaint as if fully set forth herein.

14 280. Plaintiffs bring this claim individually and on behalf of all other class
15 members asserting in the alternative to a finding of breach of contract. This claim
16 asserts that it is unjust to allow Defendants to retain profits from their deceptive,
17 misleading, and unlawful conduct alleged herein.

18 281. Plaintiffs and the class members were charged by – and paid –
19 Defendants for the items they purchased from Defendants' website and retail stores.
20 Consequently, Plaintiffs and the New Jersey class have conferred substantial
21 benefits on Defendants by purchasing the items, and Defendants have knowingly
22 and willingly accepted and enjoyed these benefits.

23 282. Defendants represented that these items were discounted by a certain
24 percentage or amount, with the specific intent that such representation would induce
25 customers to purchase said items.

26 283. As detailed herein, the items purchased by Plaintiffs and the class
27 members were not discounted to the extent claimed by Defendants, and in some
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1 cases were not discounted at all.

2 284. Because the items were advertised as being discounted when they
3 actually were not, Defendants collected more money than they would have if the
4 items were discounted as promised.

5 285. As a result of these complained-of actions by Defendants, Defendants
6 received benefits under circumstances where it would be unjust for them to retain
7 those benefits.

8 286. Defendants have knowledge or an appreciation of the benefit conferred
9 upon them by Plaintiffs and the class members.

10 287. Equity demands disgorgement of Defendants' ill-gotten gains.
11 Defendants will be unjustly enriched unless Defendants are ordered to disgorge
12 those profits for the benefit of Plaintiffs and the class members.

13 288. Plaintiffs and the class members are entitled to restitution and/or
14 disgorgement of all profits, benefits, and other compensation obtained and retained
15 by the Defendants from their deceptive, misleading, and unlawful conduct described
16 herein.

17 **THIRTEENTH CAUSE OF ACTION**

18 **NEGLIGENT MISREPRESENTATION**

19 289. Plaintiffs reallege and incorporate by reference all previous paragraphs
20 of this Complaint as if fully set forth herein.

21 290. Plaintiffs bring this claim individually and on behalf of the class
22 members.

23 291. Defendants have negligently represented that the items offered for sale
24 on their J.Crew Factory website and in their J. Crew Factory retail stores are
25 discounted by a specific percentage, when in fact they are not.

26 292. This is a material fact that Defendants have misrepresented to the public,
27 including Plaintiffs and the class Members.

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1 293. Defendants know that the prices of the items offered for sale on their
2 website and in their retail stores – and specifically whether such prices are
3 discounted or sale prices – are material to the reasonable consumer, and Defendants
4 intend for consumers to rely upon such misstatements when choosing to purchase
5 items from their website and retail stores.

6 294. Defendants knew or should have known that these misstatements or
7 omissions would materially affect Plaintiffs' and the class members' decisions to
8 purchase items from Defendants.

9 295. Plaintiffs and other reasonable consumers, including the class
10 members, reasonably relied on Defendants' representations set forth herein, and, in
11 reliance thereon, purchased items from Defendants' website and retail stores.

12 296. The reliance by Plaintiffs and the class members was reasonable and
13 justified in that Defendants appeared to be, and represented themselves to be, a
14 reputable business.

15 297. Plaintiffs and the class members would not have been willing to pay for
16 the items they purchased, or would not have paid what they paid for the items they
17 purchased, if they knew that such items were not in fact discounted by the
18 advertised percentages from their everyday, regular prices.

19 298. As a direct and proximate result of Defendants' misrepresentations,
20 Plaintiffs and the class members were induced to purchase items from Defendants'
21 website and retail stores, and have suffered damages to be determined at trial, in
22 that, among other things, they have been deprived of the benefit of their bargain in
23 that they bought items that were purported to be discounted by a specified
24 percentage, when in fact they were not.

25 299. Plaintiffs seek all available remedies, damages, and awards as a result of
26 Defendants' negligent misrepresentations.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and members of the Class, prays for relief and judgment against Defendants as follows:

1. For an order certifying this matter as a class action and designating Plaintiffs as the Class Representatives and Plaintiffs' Counsel as Class Counsel;

2. For an order awarding restitution and disgorgement of all profits and unjust enrichment that Defendants obtained from Plaintiffs and the Class members as a result of their unlawful, unfair, and fraudulent business practices described herein;

3. For appropriate injunctive relief as permitted by law or equity;

4. For an order directing Defendants to engage in a corrective advertising campaign;

5. For all damages and statutory penalties available by law, including treble damages;

6. For an award of attorneys' fees as authorized by statute including, but not limited to, the provisions of California Civil Code § 1780(e), California Code of Civil Procedure § 1021.5, as authorized under the "common fund" doctrine, and as authorized by the "substantial benefit" doctrine;

7. For costs of the suit incurred herein;

8. For prejudgment interest at the legal rate; and

9. For such other and further relief as the Court may deem proper.


///

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs hereby demand a trial by jury for Plaintiffs and the Class as to all
3 issues so triable.
4

5 Dated: May 29, 2018

STONEBARGER LAW, APC

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