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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **EASTERN DIVISION**

16	THERESA METOYER, an individual;	)	CASE NO.: 5:15-cv-01480
17	ROBIN BERKOFF, an individual;)	
18	individually and on behalf of all others	)	CLASS ACTION COMPLAINT
19	similarly situated,)	
20	Plaintiffs,	)	1. UNFAIR BUSINESS PRACTICES;
21	vs.	)	2. FRAUDULENT BUSINESS
22		)	PRACTICES;
23	THE TJX COMPANIES, INC., a	)	3. UNLAWFUL BUSINESS
24	Delaware corporation; HOMEGOODS,	)	PRACTICES;
25	INC., a Delaware corporation; and	)	4. FALSE ADVERTISING; and,
26	DOES 1 through 100, inclusive,	)	5. VIOLATION OF CALIFORNIA
27	Defendant.	)	CONSUMER LEGAL REMEDIES
28		)	ACT

1 Come now Plaintiffs THERESA METOYER (“METOYER”) and ROBIN
2 BERKOFF (“BERKOFF”) (collectively referred to as “Plaintiffs”), individually
3 and on behalf of all others similarly situated (collectively referred to as “Class
4 Members”), and for causes of action against Defendants and each of them, based
5 upon personal knowledge, information and belief, and investigation of their
6 counsel, allege as follows:

7 **JURISDICTION AND VENUE**

- 8 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332(d)
9 (the Class Action Fairness Act of 2005 (“CAFA”)) because the amount in
10 controversy exceeds the value of \$5,000,000, exclusive of interest and costs,
11 because the class consists of 100 or more putative Class Members, and
12 because at least one putative Class Member is diverse from both Defendants
13 THE TJX COMPANIES, INC. (“TJX”), a Delaware corporation with its
14 principal place of business in Framingham, Massachusetts, and
15 HOMEGOODS, INC. (“HOMEGOODS”), a Delaware corporation with its
16 principal place of business in Framingham, Massachusetts. (TJX and
17 HOMEGOODS are collectively referred to herein as “Defendants.”).
- 18 2. This is a civil action brought under and pursuant to California Business &
19 Professions Code §17200, *et seq.* (the Unfair Competition Law or “UCL”),
20 California Business & Professions Code §17500, *et seq.* (the False
21 Advertising Law or “FAL”), and California Civil Code §1750, *et seq.* (the
22 California Consumer Legal Remedies Act or “CLRA”).
- 23 3. Venue is proper in the Eastern Division of the Central District of California
24 because Defendants transact a substantial amount of business in this District,
25 Plaintiffs METOYER and BERKOFF both reside in Riverside County,
26 California, and the transactions which form the basis of each Plaintiffs’
27 claims against Defendants occurred in the cities of Palm Desert, Bermuda
28 Dunes, and Mira Loma, in Riverside County, California.

1 4. The Central District of California has personal jurisdiction over the
2 Defendants named in this action because TJX is a corporate business entity
3 authorized to do business in the State of California, and HOMEGOODS is a
4 corporate business entity authorized and licensed by the California Secretary
5 of State to do business in the State of California. Both Defendants have
6 sufficient minimum contacts in California. Defendants have otherwise
7 intentionally availed themselves of the California market through the
8 ownership and operation of approximately 59 retail stores within the State of
9 California, such that the exercise of jurisdiction over Defendants by the
10 California courts is consistent with traditional notions of fair play and
11 substantial justice.

12 5. Defendants transact business within the county of Riverside, and elsewhere
13 throughout the State of California. The violations of law alleged herein have
14 been carried out within the County of Riverside and throughout the State of
15 California.

INTRODUCTION

17 6. This is a case about deceptive advertising – about one of the nation’s largest
18 retailers of home goods using deceptive comparative prices to trick its
19 customers into mistakenly believing they are saving specific and substantial
20 amounts on name brand items. Both Plaintiffs METOYER and BERKOFF
21 are typical American consumers who, like all reasonable consumers, are
22 motivated by the promise of a good deal. HOMEGOODS, a wholly owned
23 subsidiary of TJX, is a large national retailer that makes enormous profits by
24 promising consumers a good deal. Defendants own and operate a chain of
25 so called “off-price” department stores in California known as HomeGoods
26 stores. Plaintiffs occasionally shop at HomeGoods because of Defendants’
27 promise that they can get name brand products offered at department stores
28 for up to 60% off department store prices. Defendants support that promise

1 with price tags on each item that feature Defendants’ selling price alongside
2 a much higher supposedly comparative price. The comparative price assures
3 consumers like Plaintiffs that they are receiving an exceptionally good deal
4 and saving a specific dollar amount equal to the difference between the two
5 prices. Defendants’ price tags deceptively instruct customers to “compare”
6 the sale prices of their products to these higher comparative prices. The
7 comparative prices, however, are false. They are not true, bona fide
8 comparative prices. Plaintiffs, having been duped by Defendants’ deceptive
9 pricing practices like all other HomeGoods customers, bring this action
10 against Defendants for false, deceptive and misleading advertising on behalf
11 of themselves and all other consumers who have purchased items at
12 HomeGoods stores in California throughout the period from July 23, 2011,
13 to the present (the “Class Period”).

14 **PARTIES**

15 7. Plaintiff METOYER is, and at all times relevant hereto has been, an
16 individual and a resident of Riverside County, California. On over 10
17 occasions throughout the Class Period, METOYER purchased products from
18 Defendants’ Mira Loma, California, HomeGoods store which were falsely,
19 deceptively, and/or misleadingly labeled with false, deceptive, and/or
20 misleading, comparative prices. The marked “Compare At” prices for the
21 products which METOYER purchased from Defendants were not actual
22 prices that other retailers were selling those products for. METOYER
23 purchased products from Defendants throughout the Class Period in reliance
24 on Defendants’ false, deceptive and misleading advertising, marketing and
25 pricing schemes, which she would not otherwise have purchased absent
26 Defendants’ deceptive advertising and pricing scheme, and METOYER has
27 lost money and/or property, and has been damaged as a result.
28

- 1 8. Plaintiff BERKOFF is, and at all times relevant hereto has been, an
2 individual and a resident of Riverside County, California. On at over 10
3 occasions throughout the Class Period, BERKOFF purchased products from
4 Defendants' Palm Desert and Bermuda Dunes, California, HomeGoods
5 stores which were falsely, deceptively, and/or misleadingly labeled with
6 false, deceptive, and/or misleading, comparative prices. The marked
7 "Compare At" prices for the products which BERKOFF purchased from
8 Defendants were not actual prices that other retailers were selling those
9 products for. BERKOFF purchased products from Defendants throughout
10 the Class Period in reliance on Defendants' false, deceptive and misleading
11 advertising, marketing and pricing schemes, which she would not otherwise
12 have purchased absent Defendants' deceptive advertising and pricing
13 scheme, and BERKOFF has lost money and/or property, and has been
14 damaged as a result.
- 15 9. Plaintiffs are informed and believe, and on that basis allege, that Defendant
16 TJX is a Delaware corporation, organized under the laws of the state of
17 Delaware, which conducts substantial business on a regular and continuous
18 basis in the state of California. TJX's principal place of business is in
19 Framingham, Massachusetts.
- 20 10. Plaintiffs are informed and believe, and on that basis allege, that Defendant
21 HOMEGOODS is a Delaware corporation, organized under the laws of the
22 state of Delaware, which conducts substantial business on a regular and
23 continuous basis in the state of California. HOMEGOODS's principal place
24 of business is in Framingham, Massachusetts.
- 25 11. The true names and capacities of the Defendants named herein as DOES 1
26 through 100, inclusive, whether individual, corporate, associate or otherwise,
27 are unknown to Plaintiffs who therefore sue such Defendants under fictitious
28 names. Plaintiffs are informed and believe, and on that basis allege, that

1 these Defendants, DOES 1 through 100, are in some manner or capacity, and
2 to some degree, legally responsible and liable for the damages of which
3 Plaintiffs complain. Plaintiffs will seek leave of Court to amend this
4 Complaint to set forth the true names and capacities of all fictitiously-named
5 Defendants within a reasonable time after they become known.

6 **FACTUAL ALLEGATIONS**

7 12. During the Class Period, METOYER bought numerous items from the
8 HomeGoods store in Mira Loma, California, including, without limitation,
9 bath rugs, lamps, dinnerware, and other items.

10 13. During the Class Period, BERKOFF also bought numerous items from the
11 HomeGoods stores in Palm Desert and Bermuda Dunes, California,
12 including, without limitation, home decorations, storage items, candles, and
13 other items.

14 14. Plaintiffs were each lured into Defendants' stores with the promise of
15 significant savings on name brand and department store merchandise such
16 as, without limitation, bed, bath and home items.

17 15. Each item offered for sale at HomeGoods is displayed with a comparative
18 price tag which provides 2 prices: the HomeGoods sale price and another
19 significantly higher price described simply as the "Compare At" price.

20 16. Consumers are not told exactly what the phrase "Compare At" means, or
21 given any information about the comparative price other than the dollar
22 amount and the phrase, "Compare At." Nor are they told where Defendants
23 came up with the "Compare At" price. They are simply presented with the 2
24 prices (the HomeGoods sale price, and the higher "Compare At" reference
25 price), left to guess what the "Compare At" price is, and are led to believe
26 that they are actually saving the difference between the 2 prices.

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- 1 17. This type of comparison pricing, where the retailer contrasts its selling price
2 for a product with a generally much higher reference price, has become
3 increasingly common in the retail marketplace.
- 4 18. Retailers, like Defendants, present these reference prices (commonly
5 referred to as “advertised reference prices” or “ARPs”) to consumers with
6 short tag-line phrases such as “former price,” “regular price,” “list price,”
7 “MSRP,” or “compare at.” These marketing phrases are commonly referred
8 to as “semantic cues.”
- 9 19. The semantic cues used by retailers can be either informative or deceptive,
10 depending on the specificity of the language and the truthfulness or accuracy
11 of the ARP.
- 12 20. In the case of specifically worded semantic cues such as “former price” or
13 “regular price,” the ARP can be informative if, and only if, the ARP
14 provided by the retailer is a true, accurate, bona fide former or regular price
15 which the retailer has charged for the item.
- 16 21. On the other hand, vague terms or phrases which are susceptible to more
17 than one reasonable interpretation, such as “compare at,” are almost always
18 misleading and deceptive.
- 19 22. If a semantic cue (a word or phrase attached to an ARP) is clear and
20 susceptible to only one reasonable interpretation, then the use of that word or
21 phrase in connection with an ARP may not be legally prohibited so long as
22 the ARP is a true, bona fide price.
- 23 23. If, on the other hand, a semantic cue is unclear or open to multiple
24 interpretations, as is the case when an ARP is preceded by the undefined and
25 unqualified phrase “compare at,” then the use of that word or phrase in
26 connection with an ARP is deceptive and is thus prohibited by, among other
27 things, the Federal Trade Commission (“FTC”) regulations, 16 C.F.R.
28 §233.1, *et seq.* (commonly referred to as the “FTC Pricing Guides”).

- 1 24. Plaintiffs were each confronted with ARPs on the items they purchased from
2 Defendants, accompanied by the simple, undefined, unqualified phrase,
3 “Compare At.” Plaintiffs reasonably believed, like all reasonable
4 consumers, that the “Compare At” price represented the price that they
5 would expect to pay for those same items at other retailers in their general
6 area. In other words, Plaintiffs reasonably believed that the “Compare At”
7 prices referred to the then prevailing retail prices for those same items - that
8 if they left HomeGoods and shopped around for those same items, they
9 would likely find them elsewhere at the higher “Compare At” prices
10 provided by Defendants.
- 11 25. Defendants, however, had a different definition of what they meant by
12 “Compare At” - a definition undisclosed to consumers and not consistent
13 with the common meaning of the phrase “compare at.”
- 14 26. Had Plaintiffs been savvy enough, and stopped their shopping to get to a
15 computer, log onto Defendants’ website, navigate to the bottom of the web
16 page, find the “Compare At Pricing” link in the fine print on the bottom of
17 the page along with over a dozen other links (including, among others, site
18 map, privacy, and terms of use), and click on the “Compare At Pricing”
19 hyperlink, Plaintiff would have found Defendants’ definition of “Compare
20 at” as follows:

21
22 **WHAT DO WE MEAN BY “COMPARE AT”?**

23 The "compare at" price is our buying staff's estimate of the regular, retail price at
24 which a comparable item in finer catalogs, specialty or department stores may
25 have been sold. We buy products from thousands of vendors worldwide, so the
26 item may not be offered by other retailers at the "compare at" price at any
27 particular time or location. We encourage you to do your own comparison
28 shopping as another way to see what great value we offer. We stand for bringing

1 you and your family exceptional value every day – it’s the foundation of our
2 business.

3
4 27. Nowhere on Defendants’ price tags, or in Defendants’ price advertising, is it
5 made clear to consumers, including Plaintiffs, that the advertised “Compare
6 At” price is merely Defendants’ buying staff’s “estimate” of what a
7 “comparable” item “may have” sold at.

8 28. Nowhere on Defendants’ price tags, or in Defendants’ price advertising, is it
9 made clear to consumers, including Plaintiffs, that the advertised “Compare
10 At” price may not even be a price at which any other retailer ever offered the
11 particular item at any time or location.

12 29. Nowhere on Defendants’ price tags, or in Defendants’ price advertising, are
13 consumers warned or told that they should do their own comparison
14 shopping before relying on Defendants’ “Compare At” prices.

15 30. Consumers should not have to sleuth their way into Defendants’ website just
16 to find Defendants’ misleading, unreasonable, and non-intuitive
17 interpretation of what they mean by the phrase “Compare At.”

18 31. Even if a consumer were to find Defendants’ interpretation of the phrase
19 “Compare At” on their website before purchasing a product from
20 HomeGoods, it is still not clear from Defendants’ definition exactly what
21 their “Compare At” price actually represents.

22 32. Defendants’ “Compare At” price could be the regular, retail price of the
23 same item at other department stores. Or, it could be the regular, retail price
24 of a “comparable” item. Or neither. It could simply be an “estimate” of
25 what a comparable item might sell at. Or, it could be none of the above. It
26 may be that the particular item, or even a comparable item, was never
27 offered for sale at the “Compare At” price by any other retailer, at any time,
28

- 1 or in any location. And consumers, even if they were to find Defendants’
2 definition, would still be left to guess what a “comparable” item might be.
- 3 33. The Better Business Bureau (“BBB”) Code of Advertising suggests that if a
4 retailer means to compare its selling price to a higher reference price of
5 supposed identical merchandise, the retailer should use clear language in its
6 advertising such as “selling elsewhere at.”
- 7 34. If the reference price provided by Defendants is meant by them to be the
8 price of a “comparable item,” then the semantic cue (or phrase) attached to
9 that reference price by Defendants should inform the consumer that the
10 reference price is supposedly the “regular, retail price” of a “comparable
11 item.”
- 12 35. The BBB Code of Advertising further suggests that if a retailer means to
13 compare its selling price to a higher reference price of comparable
14 merchandise, the retailer should use clear language in its advertising such as
15 “comparative value,” “compares with merchandise selling at,” or “equal to
16 merchandise selling for.”
- 17 36. Because Defendants’ “Compare At” prices are based on Defendants’
18 “estimate,” they admittedly may not be the “regular” or “retail” price of
19 either the same item or a comparable item.
- 20 37. So, what is the “Compare At” price?
- 21 38. Confronted with the simple phrase, “Compare At,” a reasonable consumer
22 would believe that the higher reference price represents the price at which
23 the same item currently sells for in the marketplace – the then-prevailing
24 retail or market price.
- 25 39. After reading Defendants’ interpretation of the phrase “Compare At,” a
26 reasonable consumer would not know what the reference price represents. It
27 could be the actual original price of the same item; the actual original price
28 of a comparable item; the regular, retail price of the same item; the regular,

1 retail price of a “comparable” item (whatever that is); simply what
2 Defendants “estimate” to be the original price of the same item; what
3 Defendants “estimate” to be the price of a comparable item; or it may not be
4 a price that any retailer ever sold the item, or a similar item, for at any time
5 or in any location.

6 40. Where, as here, the retailer and the consumer do not share the same meaning
7 of the semantic cue (“compare at”), and thus the phrase is open to more than
8 one interpretation, the use of that phrase is misleading and deceptive.

9 41. Where, as here, the retailer ascribes a secret, undisclosed meaning to the
10 semantic cue that differs from that which reasonable consumers, such as
11 Plaintiffs, would ascribe to it, the use of that phrase is misleading and
12 deceptive.

13 42. It is a deceptive marketing act and/or practice for Defendants to define their
14 reference prices as either estimates of regular, retail prices, or possibly not
15 even prices that any other retailer anywhere ever sold the items, or
16 comparable items, for, but fail to adequately disclose that definition to
17 consumers. There is no reason, other than deception, to use a term like
18 “Compare At” and then provide multiple definitions of that term buried in a
19 website without adequately disclosing that definition to consumers.

20 43. Reasonable consumers, like Plaintiffs, would believe that Defendants’
21 “Compare At” prices referred to the retail prices that consumers would pay
22 at other full-price retailers for the advertised merchandise.

23 44. Unbeknownst to Plaintiffs and other consumers, Defendants’ “Compare At”
24 prices do not refer to retail prices at other full-price retailers for the
25 advertised products. Rather, they misleadingly and deceptively may refer to
26 one of many multiple possible prices provided by Defendants’ definition.

27 45. Plaintiffs did not, and reasonable consumers would not, interpret the
28 semantic phrase “Compare At” the way Defendants interpret it.

1 46. Therefore, Defendants’ use of the semantic phrase “compare at” in
2 connection with their ARPs for their products was, and is, false, misleading,
3 and/or deceptive.

4 **GENERAL FACTUAL ALLEGATIONS**

5 47. Defendants own and operate approximately 59 HomeGoods stores
6 throughout the state of California.

7 48. Throughout the Class Period Defendants routinely and systematically made
8 the untrue, deceptive, and misleading comparative advertising claims
9 described herein about the prices of their products.

10 49. Defendants compared the prices of their products with higher ARPs which
11 consumers were led to believe were the prices supposedly charged by other
12 merchants for the same products. Defendants labeled those higher
13 comparative prices as the “Compare At” prices for those products.

14 50. The price tags placed by Defendants on or near the products they sell to
15 consumers in their California HomeGoods stores include, and have included,
16 that price at which Defendants offered the particular product to consumers,
17 as well as a different, and higher reference price which reasonable
18 consumers would believe to be the price at which other merchants
19 supposedly sell the same product - called the “Compare At” price. The
20 “Compare At” price, however, is, and has been throughout the Class Period,
21 false, deceptive, and/or misleading.

22 51. In advertising the “Compare At” price for a product, Defendants did not, and
23 do not, actually present the prevailing market price for that product, i.e. the
24 price at which other merchants were selling the identical product. Rather,
25 Defendants used, and continue to use, vague, misleading, and/or subjective
26 measures to inflate the comparative prices, and thus artificially increased the
27 discounts they claimed to be offering consumers.

28

- 1 52. The FTC Guides Against Deceptive Pricing (“Pricing Guides”), 16 C.F.R.
2 §233.2, provide rules for merchants such as Defendants that claim “to offer
3 goods at prices lower than those being charged by others for the same
4 merchandise in the advertiser’s trade area.”
- 5 53. The FTC Pricing Guides require that when a merchant such as Defendants
6 uses advertising that compares its prices to higher comparative prices for the
7 same merchandise, “the advertised higher price must be based on fact, and
8 not be fictitious or misleading.” The FTC Pricing Guides further provide:
9 “Whenever an advertiser represents that he is selling below the prices
10 being charged in his area for a particular article, he should be
11 reasonably certain that the higher price he advertises does not
12 appreciably exceed the price at which substantial sales of the article
13 are being made in the area - that is, a sufficient number of sales so that
14 a consumer would consider a reduction from the price to represent a
15 genuine bargain or saving.”
- 16 54. Plaintiffs are informed and believe, and on that basis allege, that the prices
17 which Defendants advertise, and have advertised, as “Compare At” prices
18 are not based on fact, are fictitious, and/or are misleading.
- 19 55. Plaintiffs are informed and believe, and on that basis allege, that when
20 Defendants advertised prices as “Compare At” prices on the price tags of
21 items sold in their California HomeGoods stores, Defendants were not
22 reasonably certain that the higher price they advertised did not appreciably
23 exceed the price at which substantial sales of the items were being made in
24 the area.
- 25 56. Where the advertiser’s comparison price is purportedly based on prices
26 being charged for similar or “comparable” products, “for other merchandise
27 of like grade and quality - in other words, comparable or competing
28 merchandise - to that being advertised,” the FTC Pricing Guides require that
the advertiser make “clear to the consumer that a comparison is being made
with other merchandise and the other merchandise is, in fact, of essentially
similar quality and obtainable in the area.” In such a case:

1 “The advertiser should, however, be reasonably certain, just as in the
2 case of comparisons involving the same merchandise, that the price
3 advertised as being the price of comparable merchandise does not
4 exceed the price at which such merchandise is being offered by
5 representative retail outlets in the area.”

6 57. According to Defendants’ definition, the prices advertised by Defendants as
7 the “Compare At” prices for some or all of the items sold at Defendants’
8 California HomeGoods stores was a price that Defendants allege to be the
9 price of comparable items.

10 58. Defendants did not make clear to consumers that the “Compare At” price
11 was supposed to be the original price of products of similar quality and/or
12 style.

13 59. Plaintiffs are informed and believe, and on that basis allege, that when
14 Defendants’ “Compare At” price allegedly referred to the price of
15 comparable items, Defendants were not reasonably certain that the
16 “Compare At” price did not exceed the price at which similar merchandise
17 was offered by representative retail outlets in the area.

18 60. Plaintiffs are informed and believe, and on that basis allege, that when
19 Defendants’ “Compare At” price allegedly referred to the price of
20 comparable items, the items that Defendants offered for sale were not of like
21 grade and/or quality to other retailers’ items supposedly being compared to.

22 61. Where the advertiser’s comparison price is purportedly based on a
23 manufacturer’s suggested retail price (“MSRP”), the FTC Pricing Guides
24 provide as follows:

25 “Many members of the purchasing public believe that a
26 manufacturer’s list price, or suggested retail price, is the price at
27 which an article is generally sold. Therefore, if a reduction from this
28 price is advertised, many people will believe that they are being
offered a genuine bargain. To the extent that list or suggested retail
prices do not in fact correspond to prices at which a substantial
number of sales of the article in question are made, the advertisement
of a reduction may mislead the consumer.”

1 62. With respect to advertised MSRPs, the FTC Pricing Guides provide:

2 “[t]he widespread failure to observe manufacturer’s suggested or list
3 prices, and the advent of retail discounting on a wide scale, have
4 seriously undermined the dependability of list prices as indicators of
5 the exact prices at which articles are in fact generally sold at retail. . . .
6 Today, only in the rare case are all sales of an article at the
7 manufacturer’s suggested retail or list price.”

8 63. According to the FTC Pricing Guides, an advertised MSRP:

9 “[w]ill not be deemed fictitious if it is the price at which substantial
10 (that is, not isolated or insignificant) sales are made in the advertiser’s
11 trade area (the area in which he does business). Conversely, if the list
12 price is significantly in excess of the highest price at which substantial
13 sales in the trade area are made, there is a clear and serious danger of
14 the consumer being misled by an advertised reduction from this price.
15 . . . [B]efore advertising a manufacturer’s list price as a basis for
16 comparison with his own lower price, the retailer should ascertain
17 whether the list price is in fact the price regularly charged by principal
18 outlets in his area.”

19 64. Plaintiffs are informed and believe, and on that basis allege, that the

20 “Compare At” prices which Defendants allege to be, and have been, MSRPs
21 for their products were not prices at which substantial sales of those products
22 were made in the relevant trade area(s), but were significantly in excess of
23 the highest prices at which substantial sales of those products were made in
24 the relevant trade areas(s).

25 65. Plaintiffs are informed and believe, and on that basis allege, that Defendants
26 did not ascertain whether the “Compare At” prices which Defendants allege
27 to be MSRPs were in fact the prices regularly charged by principal outlets in
28 the relevant area(s).

66. Defendants’ depiction of prices, as described herein, falsely represented to
consumers that the “Compare At” price was the price at which the product
typically sold in the marketplace, from which Defendants offered a discount.

67. Plaintiffs are informed and believe, and on that basis allege, that even if and
when a “Compare At” price for a product may have represented an actual
“recent documented selling price” of the same product, Defendants chose the

- 1 highest price at which the product was selling in the marketplace, and
2 presented that price to consumers as the “Compare At” price.
- 3 68. Plaintiffs are informed and believe, and on that basis allege, that Defendants’
4 untrue and misleading representations accompanied virtually every product
5 sold in their California stores each and every day throughout the Class
6 Period, and that Defendants are still making such untrue and misleading
7 comparative price claims for many, if not all, of the products in their
8 California HomeGoods stores.
- 9 69. Defendants have routinely and systematically made untrue and misleading
10 comparative advertising claims about the prices which other merchants
11 charge for the identical products offered by Defendants.
- 12 70. Plaintiffs are informed and believe, and on that basis allege, that often
13 Defendants have not determined or verified the prices other merchants
14 charge for the identical products they sell. Rather, Defendants have used
15 various misleading methods to make up their own prices which they claim
16 other merchants charge for those products, and then claim that their own
17 prices are significantly lower than those “Compare At” prices.
- 18 71. Plaintiffs are informed and believe, and on that basis allege, that Defendants
19 have advertised comparative prices which do not exist.
- 20 72. Plaintiffs are informed and believe, and on that basis allege, that Defendants
21 have made up prices supposedly charged by other merchants.
- 22 73. Defendants knew or should have known that their representations
23 concerning their “Compare At” prices, or other merchants’ prices for
24 identical products, were untrue and/or misleading.
- 25 74. Defendants’ representations were likely to mislead reasonable consumers
26 into believing that Defendants’ prices were significantly lower than the
27 prices offered by other merchants for the identical products, and that
28

1 consumers would enjoy significant savings by purchasing those products
2 from Defendants instead of from other merchants.

3 75. Defendants' false and/or misleading comparative pricing representations
4 made it more likely that consumers would purchase particular products from
5 Defendants. For some products, Defendants' misleading claims of a huge
6 discount were likely to persuade consumers who were not inclined to
7 purchase the product at all to buy it from Defendants solely because they
8 were misled into believing that they were getting an unusually good deal.

9 76. Defendants' misrepresentations about their pricing were likely to mislead
10 consumers into believing that Defendants' prices would always be
11 significantly lower than the prices offered by other merchants for the
12 identical products.

13 77. Defendants misrepresented the existence, nature and amount of price
14 discounts by purporting to offer specific dollar discounts from expressly
15 referenced comparative prices, which were misrepresented as "Compare At"
16 prices. These purported discounts were false, however, because the
17 referenced comparative prices were fabricated and did not represent true
18 comparative prices for identical products sold by other merchants.
19 Furthermore, the advertised "Compare At" prices were not the prevailing
20 market retail prices for the products sold by Defendants.

21 78. Plaintiffs are informed and believe, and on that basis allege, that the alleged
22 comparative prices affixed to each item at Defendants' California
23 HomeGoods stores at all relevant times throughout the Class Period were
24 false prices and not true prices that other merchants had sold any such item
25 for at any time during the time that any such item was marked with the
26 alleged "Compare At" price.

27 79. Defendants have engaged in a company-wide, pervasive and continuous
28 campaign of falsely claiming that each of their products sold at a far higher

- 1 price by other merchants in order to induce Plaintiffs and all Class Members
2 to purchase merchandise at purportedly marked-down sale prices. Because
3 such practices are misleading, yet effective, California law prohibits them.
- 4 80. Plaintiffs are informed and believe, and on that basis allege, that Defendants’
5 false comparative price advertising scheme, disseminated to California
6 consumers via representations on price tags, as well as in-store advertising,
7 print advertising, and/or internet advertising, has been rampant throughout
8 California as part of a massive, years-long, pervasive campaign and has been
9 consistent across all of Defendants’ merchandise at each of its HomeGoods
10 stores throughout California. For example, Defendants’ pricing scheme has
11 throughout the Class Period been prominently displayed directly on the price
12 tag of each item sold, with express references to alleged comparative prices
13 that have never existed and/or do not, and/or did not then, currently
14 constitute the prevailing market retail prices for such merchandise.
- 15 81. Plaintiffs and all other Class Members were each exposed to Defendants’
16 false, untrue, deceptive and/or misleading comparative price advertising as
17 described herein.
- 18 82. Plaintiffs are informed and believe, and on that basis allege, that tens of
19 thousands, if not hundreds of thousands, of California consumers have been
20 victims of Defendants’ deceptive, misleading and unlawful pricing scheme.
- 21 83. Defendants know and have known, should reasonably know, or should have
22 known, that their comparative price advertising scheme is, and has been,
23 false, deceptive, misleading, fraudulent, unfair and/or unlawful.
- 24 84. Defendants have fraudulently concealed from, and intentionally failed to
25 disclose to, Plaintiffs and all other Class Members the truth about their
26 alleged comparative prices.
- 27
28

- 1 85. At all times relevant herein, Defendants have been under a duty to Plaintiffs
2 and all other Class Members to adequately disclose the truth about their
3 alleged “Compare At” prices.
- 4 86. The facts that Defendants misrepresented and/or failed to disclose are
5 material facts that a reasonable person would have considered material; i.e.,
6 facts that would contribute to a reasonable person’s decision to purchase
7 merchandise offered for sale by Defendants. Defendants’ false
8 representations of discounts from false, misleading or deceptive comparative
9 prices, and false representations of purported savings, discounts and/or
10 bargains, are objectively material to the reasonable consumer, and therefore
11 reliance upon such representations may be presumed as a matter of law.
- 12 87. Plaintiffs each relied upon Defendants’ false, deceptive and/or misleading
13 representations of comparative prices and false representations of purported
14 savings, discounts and bargains when purchasing merchandise from
15 Defendant’s HomeGoods stores in California.
- 16 88. Plaintiffs and all other Class Members reasonably and justifiably acted and
17 relied to their detriment on Defendants’ false, deceptive and/or misleading
18 comparative price advertising, and/or Defendants’ failure to disclose, and
19 concealment of, the truth about their false comparative price advertising
20 scheme, in purchasing merchandise at Defendants HomeGoods stores
21 throughout California.
- 22 89. Defendants intentionally concealed and failed to disclose the truth about
23 their misrepresentations and false comparative price advertising scheme for
24 the purpose of inducing Plaintiffs and other Class Members to purchase
25 apparel and other merchandise at each of their HomeGoods stores
26 throughout California.
- 27 90. Through their false and deceptive marketing, advertising and pricing
28 scheme, Defendants have violated, and continue to violate, California law

1 which prohibits advertising goods for sale at a discount when compared to
2 false prices at which other merchants purportedly sell the goods, and
3 prohibits misleading statements about the existence and amount of
4 comparative prices. Specifically, Defendants have violated, and continue to
5 violate, the UCL, the FAL, the CLRA, and the Federal Trade Commission
6 Act (“FTCA”), which 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)).

9 91. Under the FTCA, advertising must be truthful and non-deceptive, advertisers
10 such as Defendants must have evidence to back up their claims, and
11 advertisements cannot be unfair. An advertisement is deceptive, according
12 to the FTC, if it contains a misstatement or omits information that is likely to
13 mislead consumers acting reasonably under the circumstances, and the
14 statement or omitted information is material - that is, important to a
15 consumer’s decision to buy or use the product.

16 92. Throughout the Class Period, Defendants’ “Compare At” prices contained
17 material misstatements, and/or omitted material information, about their
18 comparative prices that were likely to mislead reasonable consumers.

19 93. A reasonable consumer would interpret Defendants’ “Compare At” price as
20 the price at which a substantial number of vendors are selling the identical
21 product.

22 94. Plaintiffs are informed and believe, and on that basis allege, that Defendants
23 were often ignorant of the price at which other merchants were selling the
24 identical products to consumers, and that Defendants did not know whether
25 the “Compare At” price they advertised accurately reflected the price at
26 which the product was typically offered in the marketplace.

27 95. Plaintiffs are informed and believe, and on that basis allege, that Defendant
28 failed to verify that their “Compare At” prices for their products did not

1 exceed the prices at which substantial sales of the products were being made
2 in the marketplace.

3 96. The result of Defendants' ignorance of the accuracy of their "Compare At"
4 prices, and their failure to verify that accuracy, was that consumers were
5 misled into believing that they were receiving substantial savings on the
6 purchase of Defendants' products when compared to prices charged for
7 those same products at other retailers. Plaintiffs are informed and believe,
8 and on that basis allege, that consumers were on occasion misled into paying
9 more for Defendants' products than they would have paid for identical
10 products sold by other merchants.

11 97. Defendants' decision to advertise a price which did not actually exist was
12 likely to deceive consumers by representing that the marketplace had
13 assigned a retail price to that product, and that Defendants' discount off that
14 retail price made Defendants' price attractive. Defendants' representation of
15 the "Compare At" price as an actual price being charged for that product was
16 unlawful, unfair, and/or fraudulent.

17 98. Defendants knew or should have known that creating either a fictitious or
18 inflated "Compare At" price to create either a fictitious or inflated discount
19 or savings, was unlawful.

20 99. The use of the phrase "Compare At" by Defendants on the price tags of the
21 products sold in their California HomeGoods stores constituted the
22 dissemination of untrue, deceptive and/or misleading statements to
23 consumers about the prices of the products so listed as compared with the
24 prices offered by other merchants for the same products. Defendants knew,
25 or by the exercise of reasonable care should have known, that those
26 statements were untrue, deceptive, and/or misleading. Each such statement
27 constitutes, and has constituted, a separate violation of California Business
28

1 & Professions Code §17500. Each such statement also violates, and has
2 violated, California Civil Code §1750(a)(13).

3 100. Plaintiffs, individually and on behalf of all others similarly situated, seek
4 restitution and injunctive relief under the UCL, FAL and CLRA to stop
5 Defendants' pervasive and rampant false and misleading advertising and
6 marketing campaign.

7 **PLAINTIFFS' PURCHASES**

8 101. Plaintiffs purchased numerous products throughout the Class Period from
9 Defendant's HomeGoods stores in Mira Loma, Palm Desert, and Bermuda
10 Dunes, California, in reliance on Defendants' false advertising and false
11 price comparisons, which they would not otherwise have purchased but for
12 Defendants' false, deceptive and/or misleading advertising, and false,
13 deceptive and/or misleading price comparison scheme as described herein.

14 **Plaintiff METOYER's Purchases:**

15 102. For example, and without limitation, April 11, 2015, METOYER purchased
16 storage items, bath rugs, dinnerware, and other home décor items from
17 Defendants' Mira Loma, California, HomeGoods store for a total payment,
18 including sales tax, of \$99.33. Each item purchased by METOYER was
19 advertised with a price tag which contained an untrue, deceptive, and/or
20 misleading "Compare At" price representation, as discussed herein – i.e., a
21 higher, yet false, deceptive, and/or misleading "Compare At" reference
22 price. For example, the one home décor item selling for \$29.99 stated
23 "Compare At \$75.00."

24 103. METOYER is informed and believes, and on that basis alleges, that the
25 comparative prices on the items she purchased on April 11, 2015, including,
26 without limitation, the "Compare At" price of "\$75.00," on the home décor
27 item, were not true, bona fide reference prices as discussed herein – i.e., that
28

1 they did not represent then prevailing retail prices in the marketplace for
2 those handbags.

3 104. As a further example, and without limitation, on May 30, 2015, METOYER
4 purchased a food product, bath rugs, and a lamp from Defendants' Mira
5 Loma, California, HomeGoods store for a total payment, including sales tax,
6 of \$85.58. Each item purchased by METOYER was advertised with a price
7 tag which contained an untrue, deceptive, and/or misleading "Compare At"
8 price representation, as discussed herein – i.e., a higher, yet false, deceptive,
9 and/or misleading "Compare At" reference price.

10 105. When METOYER shopped at Defendants' Mira Loma, California, store, she
11 was exposed to, saw, believed, and relied on Defendants' "Compare At"
12 price advertising.

13 106. When METOYER shopped at Defendants' Mira Loma, California, store, she
14 was unaware of Defendants' definition or interpretation of the "Compare
15 At" price found on Defendants' website. Defendants failed to adequately
16 disclose their definition or interpretation to METOYER or any other Class
17 Member.

18 107. The comparison prices on the items purchased by METOYER at
19 Defendants' Mira Loma, California, HomeGoods store, and the
20 corresponding price reductions and/or savings, were false, misleading and/or
21 deceptive.

22 108. METOYER is informed and believes, and on that basis alleges, that the
23 prevailing retail prices for the items that she purchased from Defendants
24 were materially lower than the "Compare At" prices advertised by
25 Defendants. METOYER reasonably believed that the "Compare At" prices
26 associated with the items that she purchased from Defendants were the then
27 prevailing retail prices for the items at other full-price retailers. She
28 reasonably believed that the "Compare At" prices were the prices she would

1 pay for those items at other retailers in her general area. METOYER did not
2 interpret the “Compare At” prices provided by Defendants to be the prices of
3 “comparable” items, for any of the items that she purchased. METOYER
4 would not have purchased any such product from Defendants in the absence
5 of Defendants’ false, misleading and/or deceptive advertising, and/or
6 misrepresentations as described more fully herein.

7 109. In addition to METOYER’s purchases described herein, METOYER made
8 numerous other purchases of products from Defendant’s Mira Loma,
9 California, HomeGoods stores throughout the Class Period. With respect to
10 each such purchase, including the purchases described herein, METOYER
11 purchased those products from Defendants after viewing and relying on
12 Defendants’ advertising which included the false, deceptive, and/or
13 misleading comparison prices discussed herein placed on the price tags of
14 the items which she purchased. METOYER is informed and believes, and
15 on that basis alleges, that the comparison prices, and the corresponding price
16 reductions and/or savings, were false, misleading and/or deceptive.
17 METOYER is further informed and believes, and on that basis alleges, that
18 the prevailing retail prices for the items that she purchased from Defendants
19 were materially lower than the “Compare At” prices advertised by
20 Defendants. METOYER reasonably believed that the “Compare At” prices
21 associated with the items that she purchased from Defendants were the then
22 prevailing retail prices for the items at other full-price retailers. She
23 reasonably believed that the “Compare At” prices were the prices she would
24 pay for those items at other retailers in her general area. METOYER did not
25 interpret the “Compare At” prices provided by Defendants to be the prices of
26 “comparable” or “similar” items, for any of the items that she purchased.
27 METOYER would not have purchased any such product from Defendants in
28

1 the absence of Defendants' false, misleading and/or deceptive advertising,
2 and/or misrepresentations as described more fully herein.

3 **Plaintiff BERKOFF's Purchases:**

4 110. By way of example, and without limitation, on May 3, 2015, BERKOFF
5 purchased candles, storage items, and other housewares from Defendants'
6 Palm Desert, California, HomeGoods store for prices ranging from \$9.99 to
7 \$24.99. Each item purchased by BERKOFF was advertised with a price tag
8 which contained an untrue, deceptive, and/or misleading "Compare At"
9 price representation, as discussed herein – i.e., a higher, yet false, deceptive,
10 and/or misleading "Compare At" reference price. For example, and without
11 limitation, one item that BERKOFF purchased had a price tag which listed a
12 selling price of "\$24.99," and which also stated "Compare At \$40.00."

13 111. BERKOFF is informed and believes, and on that basis alleges, that the
14 comparative price of "\$40.00," as well as the other "Compare At" prices on
15 the other items she purchased on May 3, 2015, were not true, bona fide
16 reference prices as discussed herein – i.e., that they did not represent the
17 then prevailing retail prices in the marketplace for the items advertised.

18 112. By way of additional example, and without limitation, on May 9, 2015,
19 BERKOFF purchased 3 items from Defendants' Bermuda Dunes, California,
20 HomeGoods store with prices ranging from \$6.99 to \$14.99. Each item
21 purchased by BERKOFF on May 9, 2015, was advertised with a price tag
22 which contained an untrue, deceptive, and/or misleading "Compare At"
23 price representation, as discussed herein – i.e., a higher, yet false, deceptive,
24 and/or misleading "Compare At" reference price.

25 113. BERKOFF is informed and believes, and on that basis alleges, that the
26 comparative prices of the items she purchased on May 9, 2015 not true, bona
27 fide reference prices as discussed herein – i.e., that they did not represent the
28 then prevailing retail prices in the marketplace for the items advertised.

1 114. When BERKOFF shopped at Defendants' Palm Desert and Bermuda Dunes,
2 California, stores, she was exposed to, saw, believed, and relied on
3 Defendants' "Compare At" price advertising.

4 115. When BERKOFF shopped at Defendants' Palm Desert and Bermuda Dunes,
5 California, stores, she was unaware of Defendants' definition or
6 interpretation of the "Compare At" price found on Defendants' website.
7 Defendants failed to adequately disclose their definition or interpretation to
8 BERKOFF or any other Class Member.

9 116. The comparison prices on the items purchased by BERKOFF at Defendants'
10 Palm Desert and Bermuda Dunes, California, HomeGoods stores, and the
11 corresponding price reductions and/or savings, were false, misleading and/or
12 deceptive.

13 117. BERKOFF is informed and believes, and on that basis alleges, that the
14 prevailing retail prices for the items that she purchased from Defendants
15 were materially lower than the "Compare At" prices advertised by
16 Defendants. BERKOFF reasonably believed that the "Compare At" prices
17 associated with the items that she purchased from Defendants were the then
18 prevailing retail prices for the items at other full-price retailers. She
19 reasonably believed that the "Compare At" prices were the prices she would
20 pay for those items at other retailers in her general area. BERKOFF did not
21 interpret the "Compare At" prices provided by Defendants to be the prices of
22 "comparable" items, for any of the items that she purchased. BERKOFF
23 would not have purchased any such product from Defendants in the absence
24 of Defendants' false, misleading and/or deceptive advertising, and/or
25 misrepresentations as described more fully herein

26 118. In addition to BERKOFF's purchases described herein, BERKOFF made
27 numerous other purchases of products from Defendant's Palm Desert and
28 Bermuda Dunes, California, HomeGoods stores throughout the Class Period.

1 With respect to each such purchase, including the purchases described
2 herein, BERKOFF purchased those products from Defendants after viewing
3 and relying on Defendants' advertising which included the false, deceptive,
4 and/or misleading comparison prices discussed herein placed on the price
5 tags of the items which she purchased. BERKOFF is informed and believes,
6 and on that basis alleges, that the comparison prices, and the corresponding
7 price reductions and/or savings, were false, misleading and/or deceptive.
8 BERKOFF is further informed and believes, and on that basis alleges, that
9 the prevailing retail prices for the items that she purchased from Defendants
10 were materially lower than the "Compare At" prices advertised by
11 Defendants. BERKOFF reasonably believed that the "Compare At" prices
12 associated with the items that she purchased from Defendants were the then
13 prevailing retail prices for the items at other full-price retailers. She
14 reasonably believed that the "Compare At" prices were the prices she would
15 pay for those items at other retailers in her general area. BERKOFF did not
16 interpret the "Compare At" prices provided by Defendants to be the prices of
17 "comparable" or "similar" items, for any of the items that she purchased.
18 BERKOFF would not have purchased any such product from Defendants in
19 the absence of Defendants' false, misleading and/or deceptive advertising,
20 and/or misrepresentations as described more fully herein.

21 **CLASS ACTION ALLEGATIONS**

22 119. Plaintiffs brings this action on behalf of themselves and on behalf of all
23 other persons similarly situated (the "Class" or "Class Members"), namely:

24 All persons who, while in the State of California, and between July
25 23, 2011, and the present (the "Class Period"), purchased from
26 HOMEGOODS one or more items at any HOMEGOODS store in the
27 State of California with a price tag that contained a "Compare At"
28 price which was higher than the price listed as the HOMEGOODS
sale price on the price tag, and who have not received a refund or
credit for their purchase(s). Excluded from the Class are Defendants,
as well as Defendants' officers, employees, agents or affiliates, and

1 any judge who presides over this action, as well as all past and present
2 employees, officers and directors of any Defendant.

3 120. Plaintiffs reserve the right to expand, limit, modify, or amend this class
4 definition, including the addition of one or more subclasses, in connection
5 with their motion for class certification, or at any other time, based upon,
6 among other things, changing circumstances and/or new facts obtained
7 during discovery.

8 121. Each member of the proposed Class herein has been exposed to Defendants'
9 false and/or misleading pricing and advertising scheme.

10 122. Plaintiffs are and have been members of the proposed Class described
11 herein.

12 123. The number of persons in the proposed Class herein is so numerous that
13 joinder of all such persons would be impracticable. While the exact number
14 and identities of all such persons are unknown to Plaintiffs at this time and
15 can only be obtained through appropriate discovery, Plaintiffs are informed
16 and believe, and on that basis allege, that the proposed Class herein includes
17 over 100,000 persons.

18 124. Common questions of law and/or fact exist in this case with respect to the
19 proposed Class which predominate over any questions affecting only
20 individual members of the Class, which do not vary between members
21 thereof, and which drive the resolution of the claims of each Plaintiff and all
22 other Class Members.

23 125. The common questions of law and/or fact include, but are not limited to:
24 a. Whether a reasonable consumer would interpret the phrase "Compare
25 At" as Defendants interprets it;
26 b. Whether the phrase "Compare At" is susceptible to more than one
27 reasonable interpretation;
28 c. Whether the phrase "Compare At" is misleading and/or deceptive;

- 1 d. Whether, during the Class Period, Defendants used false and/or
2 misleading “Compare At” prices on the price tags of items sold in
3 their California HomeGoods stores, and whether Defendants falsely
4 advertised comparative price discounts for their merchandise;
- 5 e. Whether, during the Class Period, the “Compare At” prices advertised
6 by Defendants were in fact the prevailing market prices for the
7 respective identical items sold by other retailers in the marketplace at
8 the time of the dissemination and/or publication of the advertised
9 “Compare At” prices;
- 10 f. Whether Defendants’ price-comparison advertising scheme was false,
11 deceptive or misleading within the meaning of the UCL, FAL, and/or
12 CLRA;
- 13 g. Whether Defendants made false, deceptive or misleading statements
14 in their advertisements;
- 15 h. Whether Defendants’ comparative price advertising as described
16 herein was likely to deceive a reasonable consumer and/or members
17 of the public;
- 18 i. Whether Defendants’ comparative pricing on their “Compare At”
19 price tags would be material to a reasonable consumer’s purchasing
20 decisions;
- 21 j. How to calculate the prevailing market prices for products sold in
22 Defendants’ California HomeGoods stores;
- 23 k. Whether Defendants engaged in unfair, unlawful and/or fraudulent
24 business practices under California law;
- 25 l. Whether Defendants misrepresented and/or failed to disclose material
26 facts about their product pricing and discounts;
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- 1 m. Whether Defendants have made false or misleading statements of fact
- 2 concerning the reasons for, existence of, or amounts of price
- 3 reductions;
- 4 n. Whether Defendants' conduct, as alleged herein, was intentional and
- 5 knowing;
- 6 o. Whether Class Members are entitled to damages and/or restitution;
- 7 and, if so, what amount of revenues and/or profits Defendants
- 8 received, and what amount of money is and/or was lost by Class
- 9 Members as a result of the conduct alleged herein; and,
- 10 p. Whether Defendants continue to use false, misleading and/or illegal
- 11 price comparisons such that an injunction is necessary.

12 126. Plaintiffs' claims and those of all other Class Members arise out of a
13 common course of conduct by Defendants.

14 127. All Class Members, including Plaintiffs, were exposed to Defendants'
15 misrepresentations or omissions of material fact claiming that their
16 "Compare At" prices were accurate bona fide comparison prices. Due to the
17 scope and extent of Defendants' consistent false, deceptive and/or
18 misleading price advertising scheme, disseminated in a massive, years-long
19 campaign to California consumers via false, deceptive and/or misleading
20 "Compare At" prices placed on the price tags of the products sold in their
21 California HomeGoods stores, it can be reasonably inferred that such
22 misrepresentations or omissions of material fact were uniformly made to all
23 Class Members. In addition, it can be reasonably presumed that all Class
24 Members, including Plaintiffs, affirmatively acted in response to the
25 representations contained in Defendants' false comparative price advertising
26 scheme when purchasing merchandise at each and any of Defendants'
27 HomeGoods stores in California.

28

- 1 128. The common questions of law and/or fact in this case are susceptible to
2 common proof.
- 3 129. Resolution of the common questions of law and/or fact in this case will
4 resolve issues that are central to the claims of each Plaintiff and all other
5 Class Members.
- 6 130. The claims of each Plaintiff and all Class Members involve the same untrue,
7 deceptive, and/or misleading representations by Defendants conveyed to
8 each Class Member by way of representations on the price tags of each
9 product sold to each Class Member.
- 10 131. Each Class Members' claim, including those of Plaintiffs, alleges that
11 Defendants' price tags convey an untrue, deceptive, and/or misleading
12 representation that the price at which Defendants offered a product was
13 lower compared to a fictitious, deceptive, or misleading "Compare At" price.
- 14 132. Common proof in this case will produce a common answer as to whether
15 Defendants' price-comparison advertising resulted in false, deceptive, or
16 misleading price comparisons.
- 17 133. Common proof will resolve the common questions essential to resolution of
18 the Class claims in this case in one stroke for all Class Members.
- 19 134. The claims of the named Plaintiffs in this case are typical of, and not
20 antagonistic to, those of the other Class Members which they seek to
21 represent. Plaintiffs and the Class they seek to represent have all been
22 exposed to and deceived (or were likely to be deceived) by Defendants' false
23 comparative price advertising scheme, as alleged herein.
- 24 135. The crux of Plaintiffs' claims - that Defendants' price tags on each item in
25 each of their California stores convey false, deceptive, and/or misleading
26 comparative prices as described more fully herein - is common to all Class
27 Members.
- 28

1 136. Plaintiffs' claims, and those of all Class Members, are based on conduct
2 which is not unique to either Plaintiff.

3 137. Plaintiffs and all Class Members have been injured by the same common
4 course of conduct by Defendants, and have suffered the same or similar
5 injury, as alleged herein.

6 138. Disposition of Plaintiffs' claims in a class action will benefit all parties and
7 the Court.

8 139. A class action in this case is superior to any other available method for the
9 fair and efficient adjudication of the claims presented herein.

10 140. If individual Class Members were each required to bring his or her own
11 individual claims, any potential recovery by any such Class Member would
12 be dwarfed by the cost of litigating on an individual basis.

13 141. In this case, Plaintiffs seek to recover relatively small sums for themselves
14 and all other Class Members. Accordingly, the disparity between the cost of
15 litigating individual claims and the individual recoveries sought make
16 individual claims highly unlikely, if not impossible. Litigation costs would
17 render individual prosecution of Class Members' claims prohibitive. In
18 cases such as this, where the individual recoveries sought by each Class
19 Member are relatively small and eclipsed by the cost of litigating an
20 individual claim, a class action is the only method by which Class Members
21 may hope to resolve their claims.

22 142. A class action is superior to other available means for the fair and efficient
23 adjudication of Plaintiffs' and Class Members' claims. Because of the
24 relatively modest size of individual Class Members' claims, few, if any,
25 Class Members could afford to seek legal redress of the wrongs complained
26 of herein on an individual basis. Absent the class action, Class Members
27 and the general public would not likely recover, or would not likely have the
28

1 chance to recover, damages or restitution, and Defendants will be permitted
2 to retain the proceeds of their misdeeds and continue their unlawful conduct.

3 143. The prosecution of separate actions by individual members of the proposed
4 Class herein would create a risk of inconsistent and/or varying adjudications
5 with respect to individual members of the proposed Class which would or
6 may establish incompatible standards of conduct for Defendants, and which
7 would also create a risk of adjudications with respect to individual members
8 of the proposed Class herein which would, as a practical matter, be
9 dispositive of the interests of other members of the proposed Class not
10 parties to the particular individual adjudications, and/or would or may
11 substantially impede or impair the ability of those other members to protect
12 their interests.

13 144. Plaintiffs are each adequate representatives of the Class because they are
14 each members of the Class and their interests do not conflict with the
15 interests of the Class Members they seek to represent. Plaintiffs will fairly
16 and adequately represent and protect the interest of the Class because their
17 interests are not antagonistic to the Class. Neither Plaintiff has any conflict
18 of interest with any other Class Member. Plaintiffs have retained counsel
19 who are competent and experienced in the prosecution of consumer fraud
20 and class action litigation. Plaintiffs and their counsel will prosecute this
21 action vigorously on behalf of the Class.

22 145. Plaintiffs are informed and believe, and on that basis allege, that Defendants
23 have one or more databases through which a significant majority of Class
24 Members may be identified and ascertained, and that they maintain contact
25 information, including email and home mailing addresses, through which
26 notice of this action could be disseminated in accordance with due process
27 requirements.

28

1 146. The definition of the proposed Class herein objectively depicts who the
2 members of the proposed Class are, making it administratively feasible to
3 determine whether a particular person is a Class Member. Because the
4 alleged misrepresentations in this case (i.e., the false, deceptive, and/or
5 misleading comparative prices) appear on the price tags of each product
6 purchased, there is no concern that the Class may include individuals who
7 were not exposed to Defendants' misrepresentations.

8 **FIRST CAUSE OF ACTION**

9 **UNFAIR BUSINESS PRACTICES**

10 (California Business & Professions Code §17200 *et seq.*)

11 (By Plaintiffs on behalf of themselves and all others similarly situated, and the
12 general public)

13 147. Plaintiffs re-allege and incorporate by reference, as though fully set forth
14 herein, paragraphs 1 through 146 of this Complaint.

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

18 149. Advertising or promotional practices are unlawful under the UCL if
19 members of the public are likely to be deceived by them.

20 150. Defendants have violated the “unfair” prong of the UCL by representing
21 false comparative prices and corresponding price discounts and/or savings
22 for merchandise where Defendants, in fact, inflated, estimated, or fabricated
23 the purported “Compare At” prices for such products, and failed to disclose
24 to consumers that such “Compare At” prices were inflated, estimated, or
25 fabricated, such that the promised discount and/or saving was false,
26 misleading and/or deceptive.

27 151. These acts and practices were unfair because they caused Plaintiffs, and
28 were likely to cause reasonable consumers, to falsely believe that

1 Defendants are, and have throughout the Class Period been, offering value,
2 discounts or bargains from the prevailing market price, value or worth of the
3 products sold that did not, in fact, exist. As a result, purchasers, including
4 Plaintiffs, reasonably perceived that they were receiving products that
5 regularly sold in the retail marketplace at substantially higher prices (and
6 were, therefore, worth more) than what they paid. This perception has
7 induced reasonable purchasers, including Plaintiffs, to buy such products,
8 which they otherwise would not have purchased.

9 152. Plaintiffs and all other Class Members were likely to be deceived by
10 Defendants' use of the phrase "Compare At" on the price tags of
11 merchandise at HomeGoods stores in California.

12 153. In deciding to purchase merchandise at Defendants' HomeGoods stores,
13 Plaintiffs each relied on Defendants' misleading and deceptive
14 representations regarding supposed "Compare At" prices. The comparative
15 "Compare At" prices placed by Defendants on the price tags of merchandise
16 at HomeGoods stores in California played a substantial role in each
17 Plaintiff's decisions to purchase the products they purchased from
18 Defendants, and Plaintiffs would not have purchased those items in the
19 absence of Defendants' misrepresentations. Accordingly, Plaintiffs have
20 each suffered monetary loss as a direct result of Defendants' unlawful
21 practices described herein.

22 154. The gravity of the harm to Class Members resulting from these unfair acts
23 and practices outweighed any conceivable reasons, justifications and/or
24 motives of Defendants for engaging in such deceptive acts and practices. By
25 committing the acts and practices alleged above, Defendants engaged in
26 unfair business practices within the meaning of California Business &
27 Professions Code §17200, *et seq.*

28

1 155. Through their unfair acts and practices, Defendants have improperly
2 obtained money from each Plaintiff and all other Class Members. As such,
3 Plaintiffs request that this Court cause Defendants to restore this money to
4 Plaintiffs and all Class Members, and to enjoin Defendants from continuing
5 to violate the UCL as discussed herein and/or from violating the UCL in the
6 future. Otherwise, Plaintiffs, the Class and members of the general public
7 may be irreparably harmed and/or denied an effective and complete remedy
8 if such an order is not granted.

9 **SECOND CAUSE OF ACTION**

10 **FRAUDULENT BUSINESS PRACTICES**

11 (California Business & Professions Code §17200 *et seq.*)

12 (By Plaintiffs on behalf of themselves and all others similarly situated, and the
13 general public)

14 156. Plaintiffs re-allege and incorporate by reference, as though fully set forth
15 herein, paragraphs 1 through 155 of this Complaint.

16 157. A business act or practice is “fraudulent” under the UCL if it is likely to
17 deceive members of the consuming public.

18 158. Defendants’ false comparative prices, including, but not limited to, their
19 “Compare At” prices placed on the price tags of the products sold in
20 California HomeGoods stores, were “fraudulent” within the meaning of the
21 UCL because they deceived Plaintiffs, and were likely to deceive reasonable
22 consumers and Class Members, into believing that Defendants were offering
23 value, discounts or bargains from the prevailing market price, value or worth
24 of the products sold that did not, in fact, exist. As a result, purchasers,
25 including Plaintiffs, reasonably perceived that they were receiving products
26 that regularly sold in the retail marketplace at substantially higher prices
27 (and were, therefore, worth more) than what they paid. This perception
28 induced reasonable purchasers, including Plaintiffs, to buy such products

1 from Defendants' HomeGoods stores in California, which they otherwise
2 would not have purchased.

3 159. Defendants' acts and practices as described herein have deceived Plaintiffs
4 and were highly likely to deceive reasonable members of the consuming
5 public. Specifically, in deciding to purchase merchandise at Defendants'
6 HomeGoods stores, each Plaintiff relied on Defendants' misleading and
7 deceptive representations regarding their supposed "Compare At" prices.
8 The comparative "Compare At" prices placed by Defendants on the price
9 tags of merchandise at HomeGoods stores in California played a substantial
10 role in each Plaintiff's decision to purchase those products, and Plaintiffs
11 would not have purchased those items in the absence of Defendants'
12 misrepresentations. Accordingly, each Plaintiff has suffered monetary loss
13 as a direct result of Defendants' unlawful practices described herein.

14 160. As a result of the conduct described above, Defendants have been unjustly
15 enriched at the expense of Plaintiffs and all other Class Members.
16 Specifically, Defendants have been unjustly enriched by obtaining revenues
17 and profits that they would not otherwise have obtained absent their false,
18 misleading and/or deceptive conduct.

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

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THIRD CAUSE OF ACTION

UNLAWFUL BUSINESS PRACTICES

(California Business & Professions Code §17200 *et seq.*)

(By Plaintiffs on behalf of themselves and all others similarly situated, and the
general public)

162. Plaintiffs re-allege and incorporate by reference, as though fully set forth herein, paragraphs 1 through 161 of this Complaint.

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

164. The FTCA prohibits “unfair or deceptive acts or practices in or affecting commerce” (15 U.S.C. §45(a)(1)) and specifically prohibits false advertisements. 15 U.S.C. §52(a)).

165. Cal. Civ. Code §1770(a)(13), prohibits a business from “[m]aking false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.”

166. Defendants’ use of and reference to materially false “Compare At” prices on the price tags of merchandise sold to consumers in California HomeGoods stores violated and continues to violate the FTCA, 15 U.S.C. §45(a)(1) and 15 U.S.C. §52(a), as well as FTC Price Guides. It also violated and continues to violate Cal. Bus. & Prof. Code §§17200 and 17501, and Cal. Civ. Code §1770(a)(13), by advertising false comparative prices that were, in fact, not the prevailing market prices at other retailers in the marketplace at the time of the publication.

167. As a result of the conduct described above, Defendants have been unjustly enriched at the expense of Plaintiffs and other Class Members. Specifically, Defendants have been unjustly enriched by obtaining revenues and profits that they would not otherwise have obtained absent their false, misleading and deceptive conduct.

1 168. Through their unfair acts and practices, Defendants have improperly
2 obtained money from Plaintiffs and all other Class Members. As such,
3 Plaintiffs request that this Court cause Defendants to restore this money to
4 Plaintiffs and all Class Members, and to enjoin Defendants from continuing
5 to violate the UCL, and/or from violating the UCL in the future. Otherwise,
6 Plaintiffs, the Class and members of the general public may be irreparably
7 harmed and/or denied an effective and complete remedy if such an order is
8 not granted.

9 **FOURTH CAUSE OF ACTION**

10 **FALSE ADVERTISING**

11 (California Business & Professions Code §17500 *et seq.*)

12 (By Plaintiffs on behalf of themselves and all others similarly situated, and the
13 general public)

14 169. Plaintiffs re-allege and incorporate by reference, as though fully set forth
15 herein, paragraphs 1 through 168 of this Complaint.

16 170. The FAL prohibits unfair, deceptive, untrue, or misleading advertising,
17 including, but not limited to, false statements as to worth, value and former
18 price.

19 171. The FAL makes it unlawful for a business to disseminate any statement
20 which is untrue or misleading, and which is known, or which by the exercise
21 of reasonable care should be known, to be untrue or misleading.

22 172. Defendants' practice of disseminating allegedly comparative "Compare At"
23 prices associated with apparel and other merchandise, which were materially
24 greater than the true prevailing prices of those products, and/or not true
25 comparative prices for those products, as alleged more fully herein, was an
26 unfair, deceptive and misleading advertising practice because it gave the
27 false impression that the products sold by Defendants regularly sold in the
28 retail marketplace at substantially higher prices (and were, therefore, worth

1 more) than they actually were. In fact, the apparel and other merchandise
2 sold by Defendants at HomeGoods stores in California did not have a
3 prevailing market price close to the “Compare At” prices advertised.

4 173. Defendants’ practice of disseminating reference prices they allege to be
5 prices of comparable or similar products, without adequately disclosing to
6 consumers that their “Compare At” prices were meant to be prices of
7 comparable or similar products, was misleading to Plaintiffs and all other
8 Class Members. Defendants knew, or by the exercise of reasonable care
9 should have known, that reasonable consumers, such as Plaintiffs, would not
10 interpret the statement “Compare At” to be a reference to a comparable or
11 similar product, and/or to an estimated value.

12 174. On each day throughout the Class Period, Defendants, with the intent to
13 induce members of the public to purchase products offered at California
14 HomeGoods stores, made or caused to be made each of the untrue and/or
15 misleading statements, claims, and/or representations described herein.

16 175. On each day throughout the Class Period, Defendants, with the intent to
17 induce members of the public to purchase products offered at California
18 HomeGoods stores, made or caused to be made untrue and/or misleading
19 claims to consumers throughout California including, but not limited to, the
20 following claims with respect to products offered for sale at California
21 HomeGoods stores:

- 22 a. That when other merchants offered an identical product for sale,
23 Defendants had previously ascertained and/or determined the price at
24 which those merchants typically offered that identical product for sale.
- 25 b. That the “Compare At” price for a product was the price at which
26 other merchants typically offered that identical product for sale.
- 27 c. That Defendants’ sale price for a product was lower than the price at
28 which other merchants typically offered that identical product for sale.

- 1 d. That Defendants’ sale price for a product was a discount from the
2 price at which other merchants typically offered that identical product
3 for sale.
- 4 e. That Defendants had previously sold that product at the “Compare At”
5 price advertised for that product.
- 6 f. That the advertised “retail” price, “suggested retail” price, or
7 “MSRP,” for a product was the price at which other merchants
8 typically offered that identical product for sale.
- 9 176. Defendants knew, or by the exercise of reasonable care should have known,
10 that these claims were untrue and/or misleading.
- 11 177. In addition to the allegations made above, each of Defendants’ statements,
12 claims, and/or representations described herein were untrue and/or
13 misleading because, among other things:
- 14 a. Defendants set “Compare At” prices without ascertaining and/or
15 determining the prices at which other merchants typically sold the
16 identical products;
- 17 b. Defendants’ “Compare At” prices were fictitious, having been based
18 on something other than the prices at which other merchants typically
19 sold those identical products;
- 20 c. Defendants’ “Compare At” prices were calculated by using the
21 highest sales price at which another merchant was offering, or had
22 offered, the identical product for sale, instead of the price at which
23 other merchants typically offered that product for sale to consumers;
- 24 d. A reasonable consumer would not interpret the phrase “Compare At”
25 the way Defendant interprets it; and/or
- 26 e. Defendants’ “Compare At” prices were higher than the lowest price at
27 which a consumer would commonly be able to purchase the identical
28 product at a retail establishment in the consumer’s area, and:

- 1 i. Defendants knew that the “Compare At” price was higher than
- 2 the lowest price at which a consumer would commonly be able
- 3 to purchase the identical product at a retail establishment in the
- 4 consumer’s area; or
- 5 ii. Defendants did not know whether merchants were typically
- 6 offering the product for sale at the “Compare At” price.

7 178. When Defendants made or caused to be made the untrue and/or misleading
8 claims, statements, and/or misrepresentations described herein to consumers
9 in California, Defendants failed to adequately disclose the facts pleaded
10 herein.

11 179. Through their unfair acts and practices, Defendants have improperly
12 obtained money from Plaintiffs and all other Class Members. As such,
13 Plaintiffs request that this Court cause Defendants to restore this money to
14 Plaintiffs and all Class Members, and to enjoin Defendants from continuing
15 to violate the FAL, and/or from violating the FAL in the future. Otherwise,
16 Plaintiffs, the Class and members of the general public may be irreparably
17 harmed and/or denied an effective and complete remedy if such an order is
18 not granted.

19 **FIFTH CAUSE OF ACTION**

20 **VIOLATION OF CALIFORNIA CONSUMER LEGAL REMEDIES ACT**

21 (California Civil Code §1750 *et seq.*)

22 (By Plaintiffs on behalf of themselves and all others similarly situated, and the
23 general public)

24 180. Plaintiffs re-allege and incorporate by reference, as though fully set forth
25 herein, paragraphs 1 through 179 of this Complaint.

26 181. On each day throughout the Class Period, Defendants, with the intent to
27 induce members of the public to purchase products offered at their
28 California HomeGoods stores, made or caused to be made false and/or

1 misleading claims to consumers throughout California including, but not
2 limited to, the following claims with respect to products offered for sale at
3 their California HomeGoods stores:

- 4 a. The existence and/or amounts of the price reductions represented by
5 the difference between the “Compare At” price and Defendants’ sale
6 price; and,
7 b. The existence and/or amount of the savings to a consumer purchasing
8 a particular product from Defendants instead of another merchant
9 represented by the difference between the “Compare At” price and
10 Defendants’ sale price.

11 182. Plaintiffs and each Class Member are “consumers” within the meaning of
12 Civil Code §1761(d).

13 183. Defendants’ sale of merchandise at its HomeGoods stores in California to
14 Plaintiffs and other Class Members are “transactions” within the meaning of
15 Civil Code §1761(e).

16 184. The merchandise purchased by Plaintiffs and other Class Members at
17 Defendants’ HomeGoods stores in California throughout the Class Period
18 are “goods” within the meaning of Civil Code §1761(a).

19 185. Defendants have engaged in unfair methods of competition, and/or unfair
20 and/or deceptive acts or practices against Plaintiffs and other Class
21 Members, in violation of the CLRA, by making false and/or misleading
22 statements of fact concerning the reasons for, the existence of, and/or the
23 amount(s) of price reductions for products sold to Plaintiffs and other Class
24 Members at California HomeGoods stores throughout the Class Period.
25 Defendants provided false and/or misleading “Compare At” prices on the
26 price tags of the items sold in California HomeGoods stores, and compared
27 those false and/or misleading comparative prices to the prices at which
28 Defendants sold the items, to give the illusion to consumers that they were

1 receiving a discount, or achieving a saving or bargain when compared to the
2 purchase of those same items at other retailers in the consumer's area. The
3 promised discounts, savings, and/or bargains, however, were false.

4 186. The price reductions alleged by Defendants to be the difference between the
5 "Compare At" prices and Defendants' sale prices did not exist, and were
6 false and/or misleading.

7 187. Defendants' acts and/or practices described herein are in violation of Civil
8 Code §1770(a)(13).

9 188. As a result of Defendants' acts and/or practices described herein, Plaintiffs
10 and other Class Members have been damaged in that Defendants' unlawful,
11 false and/or misleading acts and/or practices described herein played a
12 substantial and material role in each Plaintiff's and other Class Members'
13 decisions to purchase products at Defendants' HomeGoods stores in
14 California. Absent these acts and/or practices, Plaintiffs and other Class
15 Members would not have purchased the products that they did from
16 Defendants.

17 189. Pursuant to California Civil Code §1780(a)(2), Plaintiffs, on behalf of
18 themselves and all other Class Members, request that this Court enjoin
19 Defendants from continuing to engage in the unlawful and deceptive
20 methods, acts and/or practices alleged herein. Unless Defendants are
21 permanently enjoined from continuing to engage in such violations of the
22 CLRA, California consumers will continue to be damaged by Defendants'
23 acts and/or practices in the same way as those acts and/or practices have
24 damaged Plaintiffs and other Class Members.

25
26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of all Class
28 Members, prays for judgment against Defendants as follows:

1 **CLASS CERTIFICATION**

2 1. An order certifying that this action may be maintained as a class action, that
3 Plaintiffs be appointed Class Representatives, and Plaintiffs' counsel be
4 appointed Class Counsel.

5 **VIOLATION OF BUSINESS & PROFESSIONS CODE §§17200 et seq., and**
6 **17500 et seq.:**

7 2. A judgment awarding Plaintiffs and all Class Members restitution and/or
8 other equitable relief, including, without limitation, restitutionary
9 disgorgement of all profits and unjust enrichment that Defendants obtained
10 from Plaintiffs and the Class as a result of the unlawful, unfair and/or
11 fraudulent business practices described herein.

12 3. An order enjoining Defendants from continuing to violate the UCL and/or
13 FAL as described herein, and/or an order enjoining Defendants from
14 violating the UCL and/or FAL in the future.

15 4. A judgment awarding Plaintiffs their costs of suit, including reasonable
16 attorneys' fees pursuant to Code of Civil Procedure §1021.5 and as
17 otherwise permitted by statute or law, and pre- and post-judgment interest;
18 and,

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

20 **VIOLATION OF CIVIL CODE §1770:**

21 6. An order enjoining Defendants from continuing to violate the CLRA as
22 described herein, and/or an order enjoining Defendants from violating the
23 CLRA in the future;

24 7. A judgment awarding Plaintiffs their costs of suit, including reasonable
25 attorneys' fees pursuant to Civil Code §1780(d) and as otherwise permitted
26 by statute, and pre- and post-judgment interest; and,

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

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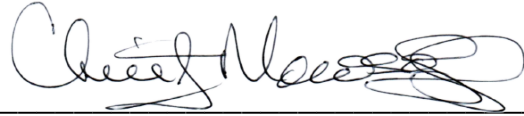
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DEMAND FOR JURY TRIAL

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

Dated: July 23, 2015

By:



CHRISTOPHER J. MOROSOFF,
LAW OFFICE OF CHRISTOPHER J. MOROSOFF
Attorneys for Plaintiffs THERESA METOYER and
ROBIN BERKOFF