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

16	ROBIN BERKOFF, an individual;	)	CASE NO.: 5:15-cv-01475
17	individually and on behalf of all others)	
18	similarly situated,	)	CLASS ACTION COMPLAINT
19)	
19	Plaintiff,	)	1. UNFAIR BUSINESS PRACTICES;
20		)	2. FRAUDULENT BUSINESS
21	vs.	)	PRACTICES;
21		)	3. UNLAWFUL BUSINESS
22	THE TJX COMPANIES, INC., a	)	PRACTICES;
23	Delaware corporation; MARSHALLS	)	4. FALSE ADVERTISING; and,
23	OF CA, LLC, a Delaware limited	)	5. VIOLATION OF CALIFORNIA
24	liability company; and DOES 1 through	)	CONSUMER LEGAL REMEDIES
24	100, inclusive,	)	ACT
25)	
26	Defendant.)	
27)	
27)	

1 Comes now Plaintiff ROBIN BERKOFF (“BERKOFF” or “Plaintiff”),
2 individually and on behalf of all others similarly situated (collectively referred to
3 as “Class Members”), and for causes of action against Defendants and each of
4 them, based upon personal knowledge, information and belief, and investigation of
5 her counsel, alleges as follows:

6 **JURISDICTION AND VENUE**

- 7 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332(d)
8 (the Class Action Fairness Act of 2005 (“CAFA”)) because the amount in
9 controversy exceeds the value of \$5,000,000, exclusive of interest and costs,
10 because the class consists of 100 or more putative Class Members, and
11 because at least one putative Class Member is diverse from both Defendants
12 THE TJX COMPANIES, INC. (“TJX”), a Delaware corporation with its
13 principal place of business in Framingham, Massachusetts, and
14 MARSHALLS OF CA, LLC (“MARSHALLS”), a Delaware limited
15 liability company with its principal place of business in Framingham,
16 Massachusetts. (TJX and MARSHALLS are collectively referred to herein
17 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 Plaintiff resides in Riverside County, California, and the transactions which
26 form the basis of Plaintiff’s claims against Defendants occurred in the cities
27 of Palm Desert and La Quinta, in Riverside County, California.
- 28

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 MARSHALLS is a
4 limited liability company 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 137 retail stores within the State
9 of 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.

16 INTRODUCTION

17 6. This is a case about deceptive advertising – about one of the nation’s largest
18 retailers using deceptive comparative prices to trick its customers into
19 mistakenly believing they are saving specific and substantial amounts on
20 name brand items. Plaintiff BERKOFF is a typical American consumer
21 who, like all reasonable consumers, is motivated by the promise of a good
22 deal. MARSHALLS, a wholly owned subsidiary of TJX, is a large national
23 retailer that makes enormous profits by promising consumers a good deal.
24 Defendants own and operate a chain of so called “off-price” department
25 stores in California known as Marshalls stores. Plaintiff occasionally shops
26 at Marshalls because of Defendants’ promise that she can get name brand
27 products for 50 to 60% off department store prices. Defendants support that
28 promise with price tags on each item that feature Defendants’ selling price

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

13 **PARTIES**

- 14 7. Plaintiff BERKOFF is, and at all times relevant hereto has been, an
15 individual and a resident of Riverside County, California. On over 5
16 occasions throughout the Class Period, BERKOFF purchased products from
17 Defendants' Palm Desert and La Quinta, California, Marshalls stores which
18 were falsely, deceptively, and/or misleadingly labeled with false, deceptive,
19 and/or misleading, comparative prices. The marked "Compare At" prices
20 for the products which BERKOFF purchased from Defendants were not
21 actual prices that other retailers were selling those products for. BERKOFF
22 purchased products from Defendants throughout the Class Period in reliance
23 on Defendants' false, deceptive and misleading advertising, marketing and
24 pricing schemes, which she would not otherwise have purchased absent
25 Defendants' deceptive advertising and pricing scheme, and BERKOFF has
26 lost money and/or property, and has been damaged as a result.
- 27 8. Plaintiff is informed and believes, and on that basis alleges, that Defendant
28 TJX is a Delaware corporation, organized under the laws of the state of

1 Delaware, which conducts substantial business on a regular and continuous
2 basis in the state of California. TJX's principal place of business is in
3 Framingham, Massachusetts.

4 9. Plaintiff is informed and believes, and on that basis alleges, that Defendant
5 MARSHALLS is a Delaware limited liability company, organized under the
6 laws of the state of Delaware, which conducts substantial business on a
7 regular and continuous basis in the state of California. MARSHALLS's
8 principal place of business is in Framingham, Massachusetts.

9 10. The true names and capacities of the Defendants named herein as DOES 1
10 through 100, inclusive, whether individual, corporate, associate or otherwise,
11 are unknown to Plaintiff who therefore sues such Defendants under fictitious
12 names. Plaintiff is informed and believes, and on that basis alleges, that
13 these Defendants, DOES 1 through 100, are in some manner or capacity, and
14 to some degree, legally responsible and liable for the damages of which
15 Plaintiff complains. Plaintiff will seek leave of Court to amend this
16 Complaint to set forth the true names and capacities of all fictitiously-named
17 Defendants within a reasonable time after they become known.

18 **FACTUAL ALLEGATIONS**

19 11. During the Class Period, BERKOFF bought tee shirts and other items from
20 the Marshalls stores in Palm Desert and La Quinta, California.

21 12. Plaintiff was lured into Defendants' stores with the promise of significant
22 savings on name brand merchandise such as, without limitation, apparel,
23 handbags, shoes, and bed, bath and home items.

24 13. Each item offered for sale at Marshalls is displayed with a comparative price
25 tag which provides 2 prices: the Marshalls sale price and another
26 significantly higher price described simply as the "Compare At" price.

27 14. Consumers are not told exactly what the phrase "Compare At" means, or
28 given any information about the comparative price other than the dollar

1 amount and the phrase, “Compare At.” Nor are they told where Defendants
2 came up with the “Compare At” price. They are simply presented with the 2
3 prices (the Marshalls sale price, and the higher “Compare At” reference
4 price), left to guess what the “Compare At” price is, and are led to believe
5 that they are actually saving the difference between the 2 prices.

6 15. This type of comparison pricing, where the retailer contrasts its selling price
7 for a product with a generally much higher reference price, has become
8 increasingly common in the retail marketplace.

9 16. Retailers, like Defendants, present these reference prices (commonly
10 referred to as “advertised reference prices” or “ARPs”) to consumers with
11 short tag-line phrases such as “former price,” “regular price,” “list price,”
12 “MSRP,” or “compare at.” These marketing phrases are commonly referred
13 to as “semantic cues.”

14 17. The semantic cues used by retailers can be either informative or deceptive,
15 depending on the specificity of the language and the truthfulness or accuracy
16 of the ARP.

17 18. In the case of specifically worded semantic cues such as “former price” or
18 “regular price,” the ARP can be informative if, and only if, the ARP
19 provided by the retailer is a true, accurate, bona fide former or regular price
20 which the retailer has charged for the item.

21 19. On the other hand, vague terms or phrases which are susceptible to more
22 than one reasonable interpretation, such as “compare at,” are almost always
23 misleading and deceptive.

24 20. If a semantic cue (a word or phrase attached to an ARP) is clear and
25 susceptible to only one reasonable interpretation, then the use of that word or
26 phrase in connection with an ARP may not be legally prohibited so long as
27 the ARP is a true, bona fide price.
28

- 1 21. If, on the other hand, a semantic cue is unclear or open to multiple
2 interpretations, as is the case when an ARP is preceded by the undefined and
3 unqualified phrase “compare at,” then the use of that word or phrase in
4 connection with an ARP is deceptive and is thus prohibited by, among other
5 things, the Federal Trade Commission (“FTC”) regulations, 16 C.F.R.
6 §233.1, *et seq.* (commonly referred to as the “FTC Pricing Guides”).
- 7 22. Plaintiff was confronted with ARPs on the items she purchased from
8 Defendants, accompanied by the simple, undefined, unqualified phrase,
9 “Compare At.” Plaintiff reasonably believed, like all reasonable consumers,
10 that the “Compare At” price represented the price that she would expect to
11 pay for those same items at other retailers in her general area. In other
12 words, Plaintiff reasonably believed that the “Compare At” prices referred to
13 the then prevailing retail prices for those same items - that if she left
14 Marshalls and shopped around for those same items, she would likely find
15 them elsewhere at the higher “Compare At” prices provided by Defendants.
- 16 23. Defendants, however, had a different definition of what they meant by
17 “Compare At” - a definition undisclosed to consumers and not consistent
18 with the common meaning of the phrase “compare at.”
- 19 24. Had Plaintiff been savvy enough, and stopped her shopping to get to a
20 computer, log onto Defendants’ website, navigate to the bottom of the web
21 page, find the “compare at pricing” link in the fine print on the bottom of the
22 page along with over a dozen other links (including, among others, site map,
23 privacy, and terms of use), and click on the “compare at pricing” hyperlink,
24 Plaintiff would have found Defendant’s definition of “Compare at” as
25 follows:

26
27 **What do we mean by "compare at"?**

28 **The "compare at" price is our buying staff's estimate of the regular, retail price at**

1 which a comparable item in finer catalogs, specialty or department stores may
2 have been sold. We buy products from thousands of vendors worldwide, so the
3 item may not be offered by other retailers at the "compare at" price at any
4 particular time or location. We encourage you to do your own comparison
5 shopping as another way to see what great value we offer. We stand for bringing
6 you and your family exceptional value every day – it's the foundation of our
7 business.

- 8
- 9 25. Nowhere on Defendants' price tags, or in Defendants' price advertising, is it
10 made clear to consumers, including Plaintiff, that the advertised "Compare
11 At" price is merely Defendants' buying staff's "estimate" of what a
12 "comparable" item "may have" sold at.
- 13 26. Nowhere on Defendants' price tags, or in Defendants' price advertising, is it
14 made clear to consumers, including Plaintiff, that the advertised "Compare
15 At" price may not even be a price at which any other retailer ever offered the
16 particular item at any time or location.
- 17 27. Nowhere on Defendants' price tags, or in Defendants' price advertising, are
18 consumers warned or told that they should do their own comparison
19 shopping before relying on Defendants' "Compare At" prices.
- 20 28. Consumers should not have to sleuth their way into Defendants' website just
21 to find Defendants' misleading, unreasonable, and non-intuitive
22 interpretation of what they mean by the phrase "Compare At."
- 23 29. Even if a consumer were to find Defendants' interpretation of the phrase
24 "Compare At" on their website before purchasing a product from Marshalls,
25 it is still not clear from Defendants' definition exactly what their "Compare
26 At" price actually represents.
- 27 30. Defendants' "Compare At" price could be the regular, retail price of the
28 same item at other department stores. Or, it could be the regular, retail price

1 of a “comparable” item. Or neither. It could simply be an “estimate” of
2 what a comparable item might sell at. Or, it could be none of the above. It
3 may be that the particular item, or even a comparable item, was never
4 offered for sale at the “Compare At” price by any other retailer, at any time,
5 or in any location. And consumers, even if they were to find Defendants’
6 definition, would still be left to guess what a “comparable” item might be.

7 31. The Better Business Bureau (“BBB”) Code of Advertising suggests that if a
8 retailer means to compare its selling price to a higher reference price of
9 supposed identical merchandise, the retailer should use clear language in its
10 advertising such as “selling elsewhere at.”

11 32. If the reference price provided by Defendants is meant to be the price of a
12 “comparable item,” then the semantic cue (or phrase) attached to that
13 reference price by Defendants should inform the consumer that the reference
14 price is supposedly the “regular, retail price” of a “comparable item.”

15 33. The BBB Code of Advertising suggests that if a retailer means to compare
16 its selling price to a higher reference price of comparable merchandise, the
17 retailer should use clear language in its advertising such as “comparative
18 value,” “compares with merchandise selling at,” or “equal to merchandise
19 selling for.”

20 34. Because Defendants’ “Compare At” prices are based on Defendants’
21 “estimate,” they admittedly may not be the “regular” or “retail” price of
22 either the same item or a comparable item.

23 35. So, what is the “Compare At” price?

24 36. Confronted with the simple phrase, “Compare At,” a reasonable consumer
25 would believe that the higher reference price represents the price at which
26 the same item currently sells for in the marketplace – the then-prevailing
27 retail or market price.

28

- 1 37. After reading Defendants' interpretation of the phrase "Compare At," a
2 reasonable consumer would not know what the reference price represents. It
3 could be the actual original price of the same item; the actual original price
4 of a comparable item; the regular, retail price of the same item; the regular,
5 retail price of a "comparable" item (whatever that is); simply what
6 Defendant "estimates" to be the original price of the same item; what
7 Defendant "estimates" to be the price of a comparable item; or it may not be
8 a price that any retailer ever sold the item, or a similar item, for at any time
9 or in any location.
- 10 38. Where, as here, the retailer and the consumer do not share the same meaning
11 of the semantic cue ("compare at"), and thus the phrase is open to more than
12 one interpretation, the use of that phrase is misleading and deceptive.
- 13 39. Where, as here, the retailer ascribes a secret, undisclosed meaning to the
14 semantic cue that differs from that which reasonable consumers, such as
15 Plaintiff, would ascribe to it, the use of that phrase is misleading and
16 deceptive.
- 17 40. It is a deceptive marketing act and/or practice for Defendants to define their
18 reference prices as either estimates of regular, retail prices, or possibly not
19 even a price that any other retailer anywhere ever sold the item, or a
20 comparable item, for, but fail to adequately disclose that definition to
21 consumers. There is no reason, other than deception, to use a term like
22 "Compare At" and then provide multiple definitions of that term buried in a
23 website without disclosing that definition to consumers.
- 24 41. Reasonable consumers, like Plaintiff, would believe that Defendants'
25 "Compare At" prices referred to the retail prices that consumers would pay
26 at other full-price retailers for the advertised merchandise.
- 27 42. Unbeknownst to Plaintiff and other consumers, Defendants' "Compare At"
28 prices do not refer to retail prices at other full-price retailers for the

1 advertised products. Rather, they misleadingly and deceptively may refer to
2 one of many multiple possible prices provided by Defendant's definition.

3 43. Plaintiff did not, and reasonable consumers would not, interpret the semantic
4 phrase "Compare At" the way Defendants interpret it.

5 44. Therefore, Defendants' use of the semantic phrase "compare at" in
6 connection with their ARPs for their products was, and is, false, misleading,
7 and/or deceptive.

8 **GENERAL FACTUAL ALLEGATIONS**

9 45. Defendants own and operate approximately 137 Marshalls stores throughout
10 the state of California.

11 46. Throughout the Class Period Defendants routinely and systematically made
12 the untrue, deceptive, and misleading comparative advertising claims
13 described herein about the prices of their products.

14 47. Defendants compared the prices of their products with higher ARPs which
15 consumers were led to believe were the prices supposedly charged by other
16 merchants for the same products. Defendants labeled those higher
17 comparative prices as the "Compare At" prices for those products.

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

26 49. In advertising the "Compare At" price for a product, Defendants did not, and
27 do not, actually present the prevailing market price for that product, i.e. the
28 price at which other merchants were selling the identical product. Rather,

1 Defendants used, and continue to use, vague, misleading, and/or subjective
2 measures to inflate the comparative prices, and thus artificially increased the
3 discounts they claimed to be offering consumers.

4 50. The FTC Guides Against Deceptive Pricing (“Pricing Guides”), 16 C.F.R.
5 §233.2, provide rules for merchants such as Defendants that claim “to offer
6 goods at prices lower than those being charged by others for the same
7 merchandise in the advertiser’s trade area.”

8 51. The FTC Pricing Guides require that when a merchant such as Defendants
9 uses advertising that compares its prices to higher comparative prices for the
10 same merchandise, “the advertised higher price must be based on fact, and
11 not be fictitious or misleading.” The FTC Pricing Guides further provide:

12 “Whenever an advertiser represents that he is selling below the prices
13 being charged in his area for a particular article, he should be
14 reasonably certain that the higher price he advertises does not
15 appreciably exceed the price at which substantial sales of the article
are being made in the area - that is, a sufficient number of sales so that
a consumer would consider a reduction from the price to represent a
genuine bargain or saving.”

16 52. Plaintiff is informed and believes, and on that basis alleges, 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 53. Plaintiff is informed and believes, and on that basis alleges, that when
20 Defendants advertised prices as “Compare At” prices on the price tags of
21 items sold in their California Marshalls 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 54. 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

1 the advertiser make “clear to the consumer that a comparison is being made
2 with other merchandise and the other merchandise is, in fact, of essentially
3 similar quality and obtainable in the area.” In such a case:

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

9 55. According to Defendants’ definition, the prices advertised by Defendants as
10 the “Compare At” prices for some or all of the items sold at Defendants’
11 California Marshalls stores was a price that Defendants allege to be the price
12 of comparable items.

13 56. Defendants did not make clear to consumers that the “Compare At” price
14 was supposed to be the original price of products of similar quality and/or
15 style.

16 57. Plaintiff is informed and believes, and on that basis alleges, that when
17 Defendants’ “Compare At” price allegedly referred to the price of
18 comparable items, Defendants were not reasonably certain that the
19 “Compare At” price did not exceed the price at which similar merchandise
20 was offered by representative retail outlets in the area.

21 58. Plaintiff is informed and believes, and on that basis alleges, that when
22 Defendants’ “Compare At” price allegedly referred to the price of
23 comparable items, the items that Defendants offered for sale were not of like
24 grade and/or quality to other retailers’ items supposedly being compared to.

25 59. Where the advertiser’s comparison price is purportedly based on a
26 manufacturer’s suggested retail price (“MSRP”), the FTC Pricing Guides
27 provide as follows:

28 “Many members of the purchasing public believe that a
manufacturer’s list price, or suggested retail price, is the price at
which an article is generally sold. Therefore, if a reduction from this
price is advertised, many people will believe that they are being
offered a genuine bargain. To the extent that list or suggested retail

1 prices do not in fact correspond to prices at which a substantial
2 number of sales of the article in question are made, the advertisement
of a reduction may mislead the consumer.”

3 60. With respect to advertised MSRPs, the FTC Pricing Guides provide:

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

8 61. 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
the consumer being misled by an advertised reduction from this price.
14 . . . [B]efore advertising a manufacturer’s list price as a basis for
comparison with his own lower price, the retailer should ascertain
whether the list price is in fact the price regularly charged by principal
outlets in his area.”

15 62. Plaintiff is informed and believes, and on that basis alleges, that the

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

21 63. Plaintiff is informed and believes, and on that basis alleges, that Defendants

22 did not ascertain whether the “Compare At” prices which Defendants allege
23 to be MSRPs were in fact the prices regularly charged by principal outlets in
24 the relevant area(s).

25 64. Defendants’ depiction of prices, as described herein, falsely represented to

26 consumers that the “Compare At” price was the price at which the product
27 typically sold in the marketplace, from which Defendants offered a discount.
28

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

- 1 72. Defendants' representations were likely to mislead reasonable consumers
2 into believing that Defendants' prices were significantly lower than the
3 prices offered by other merchants for the identical products, and that
4 consumers would enjoy significant savings by purchasing those products
5 from Defendants instead of from other merchants.
- 6 73. Defendants' false and/or misleading comparative pricing representations
7 made it more likely that consumers would purchase particular products from
8 Defendants. For some products, Defendants' misleading claims of a huge
9 discount were likely to persuade consumers who were not inclined to
10 purchase the product at all to buy it from Defendants solely because they
11 were misled into believing that they were getting an unusually good deal.
- 12 74. Defendants' misrepresentations about their pricing were likely to mislead
13 consumers into believing that Defendants' prices would always be
14 significantly lower than the prices offered by other merchants for the
15 identical products.
- 16 75. Defendants misrepresented the existence, nature and amount of price
17 discounts by purporting to offer specific dollar discounts from expressly
18 referenced comparative prices, which were misrepresented as "Compare At"
19 prices. These purported discounts were false, however, because the
20 referenced comparative prices were fabricated and did not represent true
21 comparative prices for identical products sold by other merchants.
22 Furthermore, the advertised "Compare At" prices were not the prevailing
23 market retail prices for the products sold by Defendants.
- 24 76. Plaintiff is informed and believes, and on that basis alleges, that the alleged
25 comparative prices affixed to each item at Defendants' California Marshalls
26 stores at all relevant times throughout the Class Period were false prices and
27 not true prices that other merchants had sold any such item for at any time
28

1 during the time that any such item was marked with the alleged “Compare
2 At” price.

3 77. Defendants have engaged in a company-wide, pervasive and continuous
4 campaign of falsely claiming that each of their products sold at a far higher
5 price by other merchants in order to induce Plaintiff and all Class Members
6 to purchase merchandise at purportedly marked-down sale prices. Because
7 such practices are misleading, yet effective, California law prohibits them.

8 78. Plaintiff is informed and believes, and on that basis alleges, that Defendants’
9 false comparative price advertising scheme, disseminated to California
10 consumers via representations on price tags, as well as in-store advertising,
11 print advertising, and/or internet advertising, has been rampant throughout
12 California as part of a massive, years-long, pervasive campaign and has been
13 consistent across all of Defendants’ merchandise at each of its Marshalls
14 stores throughout California. For example, Defendants’ pricing scheme has
15 throughout the Class Period been prominently displayed directly on the price
16 tag of each item sold, with express references to alleged comparative prices
17 that have never existed and/or do not, and/or did not then, currently
18 constitute the prevailing market retail prices for such merchandise.

19 79. Plaintiff and all other Class Members were each exposed to Defendants’
20 false, untrue, deceptive and/or misleading comparative price advertising as
21 described herein.

22 80. Plaintiff is informed and believes, and on that basis alleges, that tens of
23 thousands, if not hundreds of thousands, of California consumers have been
24 victims of Defendants’ deceptive, misleading and unlawful pricing scheme.

25 81. Defendants know and have known, should reasonably know, or should have
26 known, that their comparative price advertising scheme is, and has been,
27 false, deceptive, misleading, fraudulent, unfair and/or unlawful.
28

1 82. Defendants have fraudulently concealed from, and intentionally failed to
2 disclose to, Plaintiff and all other Class Members the truth about their
3 alleged comparative prices.

4 83. At all times relevant herein, Defendants have been under a duty to Plaintiff
5 and all other Class Members to adequately disclose the truth about their
6 alleged “Compare At” prices.

7 84. The facts that Defendants misrepresented and/or failed to disclose are
8 material facts that a reasonable person would have considered material; i.e.,
9 facts that would contribute to a reasonable person’s decision to purchase
10 merchandise offered for sale by Defendants. Defendants’ false
11 representations of discounts from false, misleading or deceptive comparative
12 prices, and false representations of purported savings, discounts and/or
13 bargains, are objectively material to the reasonable consumer, and therefore
14 reliance upon such representations may be presumed as a matter of law.

15 85. Plaintiff relied upon Defendants’ false, deceptive and/or misleading
16 representations of comparative prices and false representations of purported
17 savings, discounts and bargains when purchasing merchandise from
18 Defendant’s Marshalls stores in California.

19 86. Plaintiff and all other Class Members reasonably and justifiably acted and
20 relied to their detriment on Defendants’ false, deceptive and/or misleading
21 comparative price advertising, and/or Defendants’ failure to disclose, and
22 concealment of, the truth about their false comparative price advertising
23 scheme, in purchasing merchandise at Defendants Marshalls stores
24 throughout California.

25 87. Defendants intentionally concealed and failed to disclose the truth about
26 their misrepresentations and false comparative price advertising scheme for
27 the purpose of inducing Plaintiff and other Class Members to purchase
28

1 apparel and other merchandise at each of their Marshalls stores throughout
2 California.

3 88. Through their false and deceptive marketing, advertising and pricing
4 scheme, Defendants have violated, and continue to violate, California law
5 which prohibits advertising goods for sale at a discount when compared to
6 false prices at which other merchants purportedly sell the goods, and
7 prohibits misleading statements about the existence and amount of
8 comparative prices. Specifically, Defendants have violated, and continue to
9 violate, the UCL, the FAL, the CLRA, and the Federal Trade Commission
10 Act (“FTCA”), which prohibits “unfair or deceptive acts or practices in or
11 affecting commerce” (15 U.S.C. §45(a)(1)), and specifically prohibits false
12 advertisements (15 U.S.C. §52(a)).

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

20 90. Throughout the Class Period, Defendants’ “Compare At” prices contained
21 material misstatements, and/or omitted material information, about their
22 comparative prices that were likely to mislead reasonable consumers.

23 91. A reasonable consumer would interpret Defendants’ “Compare At” price as
24 the price at which a substantial number of vendors are selling the identical
25 product.

26 92. Plaintiff is informed and believes, and on that basis alleges, that Defendants
27 were often ignorant of the price at which other merchants were selling the
28 identical products to consumers, and that Defendants did not know whether

- 1 the “Compare At” price they advertised accurately reflected the price at
2 which the product was typically offered in the marketplace.
- 3 93. Plaintiff is informed and believes, and on that basis alleges, that Defendants
4 failed to verify that their “Compare At” prices for their products did not
5 exceed the prices at which substantial sales of the products were being made
6 in the marketplace.
- 7 94. The result of Defendants’ ignorance of the accuracy of their “Compare At”
8 prices, and their failure to verify that accuracy, was that consumers were
9 misled into believing that they were receiving substantial savings on the
10 purchase of Defendants’ products when compared to prices charged for
11 those same products at other retailers. Plaintiff is informed and believes,
12 and on that basis alleges, that consumers were on occasion misled into
13 paying more for Defendants’ products than they would have paid for
14 identical products sold by other merchants.
- 15 95. Defendants’ decision to advertise a price which did not actually exist was
16 likely to deceive consumers by representing that the marketplace had
17 assigned a retail price to that product, and that Defendants’ discount off that
18 retail price made Defendants’ price attractive. Defendants’ representation of
19 the “Compare At” price as an actual price being charged for that product was
20 unlawful, unfair, and/or fraudulent.
- 21 96. Defendants knew or should have known that creating either a fictitious or
22 inflated “Compare At” price to create either a fictitious or inflated discount
23 or savings, was unlawful.
- 24 97. The use of the phrase “Compare At” by Defendants on the price tags of the
25 products sold in their California Marshalls stores constituted the
26 dissemination of untrue, deceptive and/or misleading statements to
27 consumers about the prices of the products so listed as compared with the
28 prices offered by other merchants for the same products. Defendants knew,

1 or by the exercise of reasonable care should have known, that those
2 statements were untrue, deceptive, and/or misleading. Each such statement
3 constitutes, and has constituted, a separate violation of California Business
4 & Professions Code §17500. Each such statement also violates, and has
5 violated, California Civil Code §1750(a)(13).

6 98. Plaintiff, individually and on behalf of all others similarly situated, seeks
7 restitution and injunctive relief under the UCL, FAL and CLRA to stop
8 Defendants' pervasive and rampant false and misleading advertising and
9 marketing campaign.

10 **PLAINTIFF' PURCHASES**

11 99. Plaintiff purchased numerous products throughout the Class Period from
12 Defendant's Marshalls stores in Palm Desert and La Quinta, California, in
13 reliance on Defendants' false advertising and false price comparisons, which
14 she would not otherwise have purchased but for Defendants' false, deceptive
15 and/or misleading advertising, and false, deceptive and/or misleading price
16 comparison scheme as described herein.

17 100. For example, and without limitation, on May 28, 2015, BERKOFF
18 purchased a "Missy" tee shirt from Defendants' La Quinta, California,
19 Marshalls store for \$12.99, for a total payment, including sales tax, of
20 \$14.03. The shirt purchased by BERKOFF was advertised with a price tag
21 which contained an untrue, deceptive, and/or misleading "Compare At"
22 price representation, as discussed herein – i.e., a higher, yet false, deceptive,
23 and/or misleading "Compare At" reference price.

24 101. BERKOFF is informed and believes, and on that basis alleges, that the
25 comparative price listed on the price tag of the "Missy" shirt was not a true,
26 bona fide reference price as discussed herein – i.e., that it did not represent
27 the then prevailing retail price in the marketplace for that item.
28

- 1 102. As another example, and without limitation, on June 25, 2015, BERKOFF
2 purchased another shirt from Defendants’ Palm Desert, California, Marshalls
3 store for \$12.99, for a total payment, including sales tax, of \$14.03. The
4 shirt purchased by BERKOFF at Defendants’ Palm Desert Marshalls store
5 was also advertised with a price tag which contained an untrue, deceptive,
6 and/or misleading “Compare At” price representation, as discussed herein –
7 i.e., a higher, yet false, deceptive, and/or misleading “Compare At”
8 reference price.
- 9 103. BERKOFF is informed and believes, and on that basis alleges, that the
10 comparative price listed on the price tag of the shirt she purchased at
11 Defendants’ Palm Desert Marshalls store was not a true, bona fide reference
12 price as discussed herein – i.e., that it did not represent the then prevailing
13 retail price in the marketplace for that item.
- 14 104. When BERKOFF shopped at Defendants’ La Quinta and Palm Desert,
15 California, stores, she was exposed to, saw, believed, and relied on
16 Defendants’ “Compare At” price advertising.
- 17 105. When BERKOFF shopped at Defendants’ La Quinta and Palm Desert,
18 California, stores, she was unaware of Defendants’ definition or
19 interpretation of the “Compare At” price found on Defendants’ website.
20 Defendants failed to adequately disclose their definition or interpretation to
21 BERKOFF or any other Class Member.
- 22 106. The comparison prices on the items purchased by BERKOFF at Defendants’
23 La Quinta and Palm Desert, California, Marshalls stores, and the
24 corresponding price reductions and/or savings, were false, misleading and/or
25 deceptive.
- 26 107. BERKOFF is informed and believes, and on that basis alleges, that the
27 prevailing retail prices for the items that she purchased from Defendants
28 were materially lower than the “Compare At” prices advertised by

1 Defendants. BERKOFF reasonably believed that the “Compare At” prices
2 associated with the items that she purchased from Defendants were the then
3 prevailing retail prices for the items at other full-price retailers. She
4 reasonably believed that the “Compare At” prices were the prices she would
5 pay for those items at other retailers in her general area. BERKOFF did not
6 interpret the “Compare At” prices provided by Defendants to be the prices of
7 “comparable” items, for any of the items that she purchased. BERKOFF
8 would not have purchased any such product from Defendants in the absence
9 of Defendants’ false, misleading and/or deceptive advertising, and/or
10 misrepresentations as described more fully herein.

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

1 interpret the “Compare At” prices provided by Defendants to be the prices of
2 “comparable” or “similar” items, for any of the items that she purchased.
3 Plaintiff would not have purchased any such product from Defendants in the
4 absence of Defendants’ false, misleading and/or deceptive advertising,
5 and/or misrepresentations as described more fully herein.

6 **CLASS ACTION ALLEGATIONS**

7 109. Plaintiff brings this action on behalf of herself and on behalf of all other
8 persons similarly situated (the “Class” or “Class Members”), namely:

9 All persons who, while in the State of California, and between July
10 17, 2011, and the present (the “Class Period”), purchased from
11 MARSHALLS one or more items at any MARSHALLS store in the
12 State of California with a price tag that contained a “Compare At”
13 price which was higher than the price listed as the MARSHALLS sale
14 price on the price tag, and who have not received a refund or credit for
15 their purchase(s). Excluded from the Class are Defendants, as well as
16 Defendants’ officers, employees, agents or affiliates, and any judge
17 who presides over this action, as well as all past and present
18 employees, officers and directors of any Defendant.

15 110. Plaintiff reserves the right to expand, limit, modify, or amend this class
16 definition, including the addition of one or more subclasses, in connection
17 with her motion for class certification, or at any other time, based upon,
18 among other things, changing circumstances and/or new facts obtained
19 during discovery.

20 111. Each member of the proposed Class herein has been exposed to Defendants’
21 false and/or misleading pricing and advertising scheme.

22 112. Plaintiff is and has been a member of the proposed Class described herein.

23 113. The number of persons in the proposed Class herein is so numerous that
24 joinder of all such persons would be impracticable. While the exact number
25 and identities of all such persons are unknown to Plaintiff at this time and
26 can only be obtained through appropriate discovery, Plaintiff is informed
27 and believes, and on that basis alleges, that the proposed Class herein
28 includes over 100,000 persons.

- 1 114. Common questions of law and/or fact exist in this case with respect to the
2 proposed Class which predominate over any questions affecting only
3 individual members of the Class, which do not vary between members
4 thereof, and which drive the resolution of the claims of Plaintiff and all other
5 Class Members.
- 6 115. The common questions of law and/or fact include, but are not limited to:
- 7 a. Whether a reasonable consumer would interpret the phrase “Compare
8 At” as Defendants interpret it;
 - 9 b. Whether the phrase “Compare At” is susceptible to more than one
10 reasonable interpretation;
 - 11 c. Whether the phrase “Compare At” is misleading and/or deceptive;
 - 12 d. Whether, during the Class Period, Defendants used false and/or
13 misleading “Compare At” prices on the price tags of items sold in
14 their California Marshalls stores, and whether Defendants falsely
15 advertised comparative price discounts for their merchandise;
 - 16 e. Whether, during the Class Period, the “Compare At” prices advertised
17 by Defendants were in fact the prevailing market prices for the
18 respective identical items sold by other retailers in the marketplace at
19 the time of the dissemination and/or publication of the advertised
20 “Compare At” prices;
 - 21 f. Whether Defendants’ price-comparison advertising scheme was false,
22 deceptive or misleading within the meaning of the UCL, FAL, and/or
23 CLRA;
 - 24 g. Whether Defendants made false, deceptive or misleading statements
25 in their advertisements;
 - 26 h. Whether Defendants’ comparative price advertising as described
27 herein was likely to deceive a reasonable consumer and/or members
28 of the public;

- 1 i. Whether Defendants' comparative pricing on their "Compare At"
- 2 price tags would be material to a reasonable consumer's purchasing
- 3 decisions;
- 4 j. How to calculate the prevailing market prices for products sold in
- 5 Defendants' California Marshalls stores;
- 6 k. Whether Defendants engaged in unfair, unlawful and/or fraudulent
- 7 business practices under California law;
- 8 l. Whether Defendants misrepresented and/or failed to disclose material
- 9 facts about their product pricing and discounts;
- 10 m. Whether Defendants have made false or misleading statements of fact
- 11 concerning the reasons for, existence of, or amounts of price
- 12 reductions;
- 13 n. Whether Defendants' conduct, as alleged herein, was intentional and
- 14 knowing;
- 15 o. Whether Class Members are entitled to damages and/or restitution;
- 16 and, if so, what amount of revenues and/or profits Defendants
- 17 received, and what amount of money is and/or was lost by Class
- 18 Members as a result of the conduct alleged herein; and,
- 19 p. Whether Defendants continue to use false, misleading and/or unlawful
- 20 price comparisons such that an injunction is necessary.
- 21 116. Plaintiff's claims and those of all other Class Members arise out of a
- 22 common course of conduct by Defendants.
- 23 117. All Class Members, including Plaintiff, were exposed to Defendants'
- 24 misrepresentations or omissions of material fact claiming that their
- 25 "Compare At" prices were accurate bona fide comparison prices. Due to the
- 26 scope and extent of Defendants' consistent false, deceptive and/or
- 27 misleading price advertising scheme, disseminated in a massive, years-long
- 28 campaign to California consumers via false, deceptive and/or misleading

1 “Compare At” prices placed on the price tags of the products sold in their
2 California Marshalls stores, it can be reasonably inferred that such
3 misrepresentations or omissions of material fact were uniformly made to all
4 Class Members. In addition, it can be reasonably presumed that all Class
5 Members, including Plaintiff, affirmatively acted in response to the
6 representations contained in Defendants’ false comparative price advertising
7 scheme when purchasing merchandise at each and any of Defendants’
8 Marshalls stores in California.

9 118. The common questions of law and/or fact in this case are susceptible to
10 common proof.

11 119. Resolution of the common questions of law and/or fact in this case will
12 resolve issues that are central to the claims of Plaintiff and all other Class
13 Members.

14 120. The claims of Plaintiff and all Class Members involve the same untrue,
15 deceptive, and/or misleading representations by Defendants conveyed to
16 each Class Member by way of representations on the price tags of each
17 product sold to each Class Member.

18 121. Each Class Members’ claim, including those of Plaintiff, alleges that
19 Defendants’ price tags convey an untrue, deceptive, and/or misleading
20 representation that the price at which Defendants offered a product was
21 lower compared to a fictitious, deceptive, or misleading “Compare At” price.

22 122. Common proof in this case will produce a common answer as to whether
23 Defendants’ price-comparison advertising resulted in false, deceptive, or
24 misleading price comparisons.

25 123. Common proof will resolve the common questions essential to resolution of
26 the Class claims in this case in one stroke for all Class Members.

27 124. The claims of the named Plaintiff in this case are typical of, and not
28 antagonistic to, those of the other Class Members which she seeks to

1 represent. Plaintiff and the Class she seeks to represent have all been
2 exposed to and deceived (or were likely to be deceived) by Defendants' false
3 comparative price advertising scheme, as alleged herein.

4 125. The crux of Plaintiff's claims - that Defendants' price tags on each item in
5 each of their California stores convey false, deceptive, and/or misleading
6 comparative prices as described more fully herein - is common to all Class
7 Members.

8 126. Plaintiff's claims, and those of all Class Members, are based on conduct
9 which is not unique to Plaintiff.

10 127. Plaintiff and all Class Members have been injured by the same common
11 course of conduct by Defendants, and have suffered the same or similar
12 injury, as alleged herein.

13 128. Disposition of Plaintiff's claims in a class action will benefit all parties and
14 the Court.

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

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

20 131. In this case, Plaintiff seeks to recover relatively small sums for herself and
21 all other Class Members. Accordingly, the disparity between the cost of
22 litigating individual claims and the individual recoveries sought make
23 individual claims highly unlikely, if not impossible. Litigation costs would
24 render individual prosecution of Class Members' claims prohibitive. In
25 cases such as this, where the individual recoveries sought by each Class
26 Member are relatively small and eclipsed by the cost of litigating an
27 individual claim, a class action is the only method by which Class Members
28 may hope to resolve their claims.

1 132. A class action is superior to other available means for the fair and efficient
2 adjudication of Plaintiff's and Class Members' claims. Because of the
3 relatively modest size of individual Class Members' claims, few, if any,
4 Class Members could afford to seek legal redress of the wrongs complained
5 of herein on an individual basis. Absent the class action, Class Members
6 and the general public would not likely recover, or would not likely have the
7 chance to recover, damages or restitution, and Defendants will be permitted
8 to retain the proceeds of their misdeeds and continue their unlawful conduct.

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

19 134. Plaintiff is an adequate representative of the Class because she is a member
20 of the Class and her interests do not conflict with the interests of the Class
21 Members she seeks to represent. Plaintiff will fairly and adequately
22 represent and protect the interest of the Class because her interests are not
23 antagonistic to the Class. Plaintiff has no conflict of interest with any other
24 Class Member. Plaintiff has retained counsel who are competent and
25 experienced in the prosecution of consumer fraud and class action litigation.
26 Plaintiff and her counsel will prosecute this action vigorously on behalf of
27 the Class.
28

1 135. Plaintiff is informed and believes, and on that basis alleges, that Defendants
2 have one or more databases through which a significant majority of Class
3 Members may be identified and ascertained, and that they maintain contact
4 information, including email and home mailing addresses, through which
5 notice of this action could be disseminated in accordance with due process
6 requirements.

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

14 **FIRST CAUSE OF ACTION**

15 **UNFAIR BUSINESS PRACTICES**

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

17 (By Plaintiff on behalf of herself and all others similarly situated, and the general
18 public)

19 137. Plaintiff re-alleges and incorporates by reference, as though fully set forth
20 herein, paragraphs 1 through 136 of this Complaint.

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

24 139. Advertising or promotional practices are unlawful under the UCL if
25 members of the public are likely to be deceived by them.

26 140. Defendants have violated the “unfair” prong of the UCL by representing
27 false comparative prices and corresponding price discounts and/or savings
28 for merchandise where Defendants, in fact, inflated, estimated, or fabricated

1 the purported “Compare At” prices for such products, and failed to disclose
2 to consumers that such “Compare At” prices were inflated, estimated, or
3 fabricated, such that the promised discount and/or saving was false,
4 misleading and/or deceptive.

5 141. These acts and practices were unfair because they caused Plaintiff, and were
6 likely to cause reasonable consumers, to falsely believe that Defendants are,
7 and have throughout the Class Period been, offering value, discounts or
8 bargains from the prevailing market price, value or worth of the products
9 sold that did not, in fact, exist. As a result, purchasers, including Plaintiff,
10 reasonably perceived that they were receiving products that regularly sold in
11 the retail marketplace at substantially higher prices (and were, therefore,
12 worth more) than what they paid. This perception has induced reasonable
13 purchasers, including Plaintiff, to buy such products, which they otherwise
14 would not have purchased.

15 142. Plaintiff and all other Class Members were likely to be deceived by
16 Defendants’ use of the phrase “Compare At” on the price tags of
17 merchandise at Marshalls stores in California.

18 143. In deciding to purchase merchandise at Defendants’ Marshalls stores,
19 Plaintiff relied on Defendants’ misleading and deceptive representations
20 regarding supposed “Compare At” prices. The comparative “Compare At”
21 prices placed by Defendants on the price tags of merchandise at Marshalls
22 stores in California played a substantial role in Plaintiff’s decisions to
23 purchase the products she purchased from Defendants, and Plaintiff would
24 not have purchased those items in the absence of Defendants’
25 misrepresentations. Accordingly, Plaintiff has suffered monetary loss as a
26 direct result of Defendants’ unlawful practices described herein.

27 144. The gravity of the harm to Class Members resulting from these unfair acts
28 and practices outweighed any conceivable reasons, justifications and/or

1 motives of Defendants for engaging in such deceptive acts and practices. By
2 committing the acts and practices alleged above, Defendants engaged in
3 unfair business practices within the meaning of California Business &
4 Professions Code §17200, *et seq.*

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

13 **SECOND CAUSE OF ACTION**

14 **FRAUDULENT BUSINESS PRACTICES**

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

16 (By Plaintiff on behalf of herself and all others similarly situated, and the general
17 public)

18 146. Plaintiff re-alleges and incorporates by reference, as though fully set forth
19 herein, paragraphs 1 through 145 of this Complaint.

20 147. A business act or practice is “fraudulent” under the UCL if it is likely to
21 deceive members of the consuming public.

22 148. Defendants’ false comparative prices, including, but not limited to, their
23 “Compare At” prices placed on the price tags of the products sold in
24 California Marshalls stores, were “fraudulent” within the meaning of the
25 UCL because they deceived Plaintiff, and were likely to deceive reasonable
26 consumers and Class Members, into believing that Defendants were offering
27 value, discounts or bargains from the prevailing market price, value or worth
28 of the products sold that did not, in fact, exist. As a result, purchasers,

1 including Plaintiff, reasonably perceived that they were receiving products
2 that regularly sold in the retail marketplace at substantially higher prices
3 (and were, therefore, worth more) than what they paid. This perception
4 induced reasonable purchasers, including Plaintiff, to buy such products
5 from Defendants' Marshalls stores in California, which they otherwise
6 would not have purchased.

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

18 150. As a result of the conduct described above, Defendants have been unjustly
19 enriched at the expense of Plaintiff and all other Class Members.
20 Specifically, Defendants have been unjustly enriched by obtaining revenues
21 and profits that they would not otherwise have obtained absent their false,
22 misleading and/or deceptive conduct.

23 151. Through their fraudulent acts and practices, Defendants have improperly
24 obtained money from Plaintiff and all other Class Members. As such,
25 Plaintiff requests that this Court cause Defendants to restore this money to
26 Plaintiff and all Class Members, and to enjoin Defendants from continuing
27 to violate the UCL as discussed herein and/or from violating the UCL in the
28 future. Otherwise, Plaintiff, the Class and members of the general public

1 may be irreparably harmed and/or denied an effective and complete remedy
2 if such an order is not granted.

3 **THIRD CAUSE OF ACTION**

4 **UNLAWFUL BUSINESS PRACTICES**

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

6 (By Plaintiff on behalf of herself and all others similarly situated, and the general
7 public)

8 152. Plaintiff re-alleges and incorporates by reference, as though fully set forth
9 herein, paragraphs 1 through 151 of this Complaint.

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

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

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

18 156. Defendants’ use of and reference to materially false “Compare At” prices on
19 the price tags of merchandise sold to consumers in California Marshalls
20 stores violated and continues to violate the FTCA, 15 U.S.C. §45(a)(1) and
21 15 U.S.C. §52(a), as well as FTC Price Guides. It also violated and
22 continues to violate Cal. Bus. & Prof. Code §§17200 and 17501, and Cal.
23 Civ. Code §1770(a)(13), by advertising false comparative prices that were,
24 in fact, not the prevailing market prices at other retailers in the marketplace
25 at the time of the publication.

26 157. As a result of the conduct described above, Defendants have been unjustly
27 enriched at the expense of Plaintiff and other Class Members. Specifically,
28 Defendants have been unjustly enriched by obtaining revenues and profits

1 that they would not otherwise have obtained absent their false, misleading
2 and deceptive conduct.

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

11 **FOURTH CAUSE OF ACTION**

12 **FALSE ADVERTISING**

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

14 (By Plaintiff on behalf of herself and all others similarly situated, and the general
15 public)

16 159. Plaintiff re-alleges and incorporates by reference, as though fully set forth
17 herein, paragraphs 1 through 158 of this Complaint.

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

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

24 162. Defendants' practice of disseminating allegedly comparative "Compare At"
25 prices associated with apparel and other merchandise, which were materially
26 greater than the true prevailing prices of those products, and/or not true
27 comparative prices for those products, as alleged more fully herein, was an
28 unfair, deceptive and misleading advertising practice because it gave the

1 false impression that the products sold by Defendants regularly sold in the
2 retail marketplace at substantially higher prices (and were, therefore, worth
3 more) than they actually were. In fact, the apparel and other merchandise
4 sold by Defendants at Marshalls stores in California did not have a
5 prevailing market price close to the “Compare At” prices advertised.

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

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

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

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

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

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

10 168. When Defendants made or caused to be made the untrue and/or misleading
11 claims, statements, and/or misrepresentations described herein to consumers
12 in California, Defendants failed to adequately disclose the facts pleaded
13 herein.

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

22 **FIFTH CAUSE OF ACTION**

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

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

25 (By Plaintiff on behalf of herself and all others similarly situated, and the general
26 public)

27 170. Plaintiff re-alleges and incorporates by reference, as though fully set forth
28 herein, paragraphs 1 through 169 of this Complaint.

- 1 171. On each day throughout the Class Period, Defendants, with the intent to
2 induce members of the public to purchase products offered at their
3 California Marshalls stores, made or caused to be made false and/or
4 misleading claims to consumers throughout California including, but not
5 limited to, the following claims with respect to products offered for sale at
6 their California Marshalls stores:
- 7 a. The existence and/or amounts of the price reductions represented by
8 the difference between the “Compare At” price and Defendants’ sale
9 price; and,
 - 10 b. The existence and/or amount of the savings to a consumer purchasing
11 a particular product from Defendants instead of another merchant
12 represented by the difference between the “Compare At” price and
13 Defendants’ sale price.
- 14 172. Plaintiff and each Class Member are “consumers” within the meaning of
15 Civil Code §1761(d).
- 16 173. Defendants’ sale of merchandise at its Marshalls stores in California to
17 Plaintiff and other Class Members are “transactions” within the meaning of
18 Civil Code §1761(e).
- 19 174. The merchandise purchased by Plaintiff and other Class Members at
20 Defendants’ Marshalls stores in California throughout the Class Period are
21 “goods” within the meaning of Civil Code §1761(a).
- 22 175. Defendants have engaged in unfair methods of competition, and/or unfair
23 and/or deceptive acts or practices against Plaintiff and other Class Members,
24 in violation of the CLRA, by making false and/or misleading statements of
25 fact concerning the reasons for, the existence of, and/or the amount(s) of
26 price reductions for products sold to Plaintiff and other Class Members at
27 California Marshalls stores throughout the Class Period. Defendants
28 provided a false and/or misleading “Compare At” price on the price tags of

1 the items sold in California Marshalls stores, and compared that false and/or
2 misleading comparative price to the price at which Defendants sold the
3 items, to give the illusion to consumers that they were receiving a discount,
4 or achieving a saving or bargain when compared to the purchase of those
5 same items at other retailers in the consumer's area. The promised
6 discounts, savings, and/or bargains, however, were false.

7 176. The price reductions alleged by Defendants to be the difference between the
8 "Compare At" prices and Defendants' sale prices did not exist, and were
9 false and/or misleading.

10 177. Defendants' acts and/or practices described herein are in violation of Civil
11 Code §1770(a)(13).

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

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

27 ///

28 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, on behalf of herself and on behalf of all Class
3 Members, prays for judgment against Defendants as follows:

4 **CLASS CERTIFICATION**

5 1. An order certifying that this action may be maintained as a class action, that
6 Plaintiff be appointed Class Representatives, and Plaintiff's counsel be
7 appointed Class Counsel.

8 **VIOLATION OF BUSINESS & PROFESSIONS CODE §§17200 et seq., and**
9 **17500 et seq.:**

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

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

18 4. A judgment awarding Plaintiff her costs of suit, including reasonable
19 attorneys' fees pursuant to Code of Civil Procedure §1021.5 and as
20 otherwise permitted by statute or law, and pre- and post-judgment interest;
21 and,

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

23 **VIOLATION OF CIVIL CODE §1770:**

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

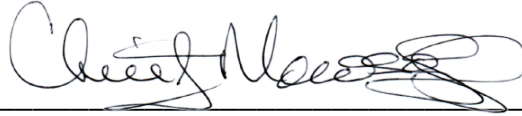
- 1 7. A judgment awarding Plaintiff her costs of suit, including reasonable
2 attorneys' fees pursuant to Civil Code §1780(d) and as otherwise permitted
3 by statute, and pre- and post-judgment interest; and,
4 8. For such other and further relief as the Court may deem proper.
5

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff hereby demand a trial by jury for all claims so triable.
8

9
10 Dated: July 23, 2015

By:

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13 CHRISTOPHER J. MOROSOFF,
14 LAW OFFICE OF CHRISTOPHER J. MOROSOFF
15 Attorneys for Plaintiff ROBIN BERKOFF
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