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12 Attorneys for Plaintiffs STACI CHESTER, *et al.*

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

16 STACI CHESTER, an individual;
17 DANIEL FRIEDMAN, an individual;
18 individually and on behalf of all others
similarly situated,

19 Plaintiffs,

20 vs.

21 THE TJX COMPANIES, INC., a
22 Delaware corporation; T.J. MAXX OF
23 CA, LLC, a Delaware limited liability
24 company; and DOES 1 through 100,
25 inclusive,

26 Defendant.
27
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) **CASE NO.: 5:15-cv-01437**
)
) **CLASS ACTION COMPLAINT**
)
) **1. UNFAIR BUSINESS PRACTICES;**
) **2. FRAUDULENT BUSINESS**
) **PRACTICES;**
) **3. UNLAWFUL BUSINESS**
) **PRACTICES;**
) **4. FALSE ADVERTISING; and,**
) **5. VIOLATION OF CALIFORNIA**
) **CONSUMER LEGAL REMEDIES**
) **ACT**

1 Come now Plaintiffs STACI CHESTER (“CHESTER”) and DANIEL
2 FRIEDMAN (“FRIEDMAN”) (collectively referred to as “Plaintiffs”),
3 individually and on behalf of all others similarly situated (collectively referred to
4 as “Class Members”), and for causes of action against Defendants and each of
5 them, based upon personal knowledge, information and belief, and investigation of
6 their 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 T.J. MAXX
15 OF CA, LLC (“MAXX”), a Delaware limited liability company with its
16 principal place of business in Framingham, Massachusetts. (TJX and
17 MAXX 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 Plaintiff CHESTER resides in Riverside County, California, and the
26 transactions which form the basis of CHESTER’s claims against Defendants
27 occurred in the city of Palm Desert, 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 MAXX is a limited
4 liability company authorized and licensed by the California Secretary of
5 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 110 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. Both Plaintiffs CHESTER and FRIEDMAN are typical
21 American consumers who, like all reasonable consumers, are motivated by
22 the promise of a good deal. MAXX, a wholly owned subsidiary of TJX, is a
23 large national retailer that makes enormous profits by promising consumers
24 a good deal. Defendants own and operate a chain of so called “off-price”
25 department stores in California known as TJ Maxx stores. Plaintiffs
26 occasionally shop at TJ Maxx because of Defendants’ promise that they can
27 get name brand products for up to 60% off department store prices.
28 Defendants support that promise with price tags on each item that feature

1 Defendants' selling price alongside a much higher supposedly comparative
2 price. The comparative price assures consumers like Plaintiffs that they are
3 receiving an exceptionally good deal and saving a specific dollar amount
4 equal to the difference between the two prices. Defendants' price tags
5 deceptively instruct customers to "compare" the sale prices of their products
6 to these higher comparative prices. The comparative prices, however, are
7 false. They are not true, bona fide comparative prices. Plaintiffs, having
8 been duped by Defendants' deceptive pricing practices like all other TJ
9 Maxx customers, bring this action against Defendants for false, deceptive
10 and misleading advertising on behalf of themselves and all other consumers
11 who have purchased items at TJ Maxx stores in California throughout the
12 period from July 17, 2011, to the present (the "Class Period").

13 **PARTIES**

14 7. Plaintiff CHESTER is, and at all times relevant hereto has been, an
15 individual and a resident of Riverside County, California. On at least 2
16 occasions throughout the Class Period, CHESTER purchased products from
17 Defendants' Palm Desert, California, TJ Maxx store which were falsely,
18 deceptively, and/or misleadingly labeled with false, deceptive, and/or
19 misleading, comparative prices. The marked "Compare At" prices for the
20 products which CHESTER purchased from Defendants were not actual
21 prices that other retailers were selling those products for. CHESTER
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 CHESTER has
26 lost money and/or property, and has been damaged as a result.

27 8. Plaintiff FRIEDMAN is, and at all times relevant hereto has been, an
28 individual and a resident of Los Angeles County, California. On at over 10

1 occasions throughout the Class Period, FRIEDMAN purchased products
2 from Defendants' Westlake Village, California, TJ Maxx store which were
3 falsely, deceptively, and/or misleadingly labeled with false, deceptive,
4 and/or misleading, comparative prices. The marked "Compare At" prices
5 for the products which FRIEDMAN purchased from Defendants were not
6 actual prices that other retailers were selling those products for.

7 FRIEDMAN purchased products from Defendants throughout the Class
8 Period in reliance on Defendants' false, deceptive and misleading
9 advertising, marketing and pricing schemes, which he would not otherwise
10 have purchased absent Defendants' deceptive advertising and pricing
11 scheme, and FRIEDMAN has lost money and/or property, and has been
12 damaged as a result.

13 9. Plaintiffs are informed and believe, and on that basis allege, that Defendant
14 TJX is a Delaware corporation, organized under the laws of the state of
15 Delaware, which conducts substantial business on a regular and continuous
16 basis in the state of California. TJX's principal place of business is in
17 Framingham, Massachusetts.

18 10. Plaintiffs are informed and believe, and on that basis allege, that Defendant
19 MAXX is a Delaware limited liability company, organized under the laws of
20 the state of Delaware, which conducts substantial business on a regular and
21 continuous basis in the state of California. MAXX's principal place of
22 business is in Framingham, Massachusetts.

23 11. The true names and capacities of the Defendants named herein as DOES 1
24 through 100, inclusive, whether individual, corporate, associate or otherwise,
25 are unknown to Plaintiffs who therefore sue such Defendants under fictitious
26 names. Plaintiffs are informed and believe, and on that basis allege, that
27 these Defendants, DOES 1 through 100, are in some manner or capacity, and
28 to some degree, legally responsible and liable for the damages of which

1 Plaintiffs complain. Plaintiffs will seek leave of Court to amend this
2 Complaint to set forth the true names and capacities of all fictitiously-named
3 Defendants within a reasonable time after they become known.

4 **FACTUAL ALLEGATIONS**

5 12. During the Class Period, CHESTER bought a handbag and other items from
6 the TJ Maxx store in Palm Desert, California.

7 13. During the Class Period, FRIEDMAN bought apparel and household items
8 from the TJ Maxx store in Westlake Village, California.

9 14. Plaintiffs were each lured into Defendants' stores with the promise of
10 significant savings on name brand merchandise such as, without limitation,
11 apparel, handbags, shoes, and bed, bath and home items.

12 15. Each item offered for sale at TJ Maxx is displayed with a comparative price
13 tag which provides 2 prices: the TJ Maxx sale price and another significantly
14 higher price described simply as the "Compare At" price.

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

22 17. This type of comparison pricing, where the retailer contrasts its selling price
23 for a product with a generally much higher reference price, has become
24 increasingly common in the retail marketplace.

25 18. Retailers, like Defendants, present these reference prices (commonly
26 referred to as "advertised reference prices" or "ARPs") to consumers with
27 short tag-line phrases such as "former price," "regular price," "list price,"
28

- 1 “MSRP,” or “compare at.” These marketing phrases are commonly referred
2 to as “semantic cues.”
- 3 19. The semantic cues used by retailers can be either informative or deceptive,
4 depending on the specificity of the language and the truthfulness or accuracy
5 of the ARP.
- 6 20. In the case of specifically worded semantic cues such as “former price” or
7 “regular price,” the ARP can be informative if, and only if, the ARP
8 provided by the retailer is a true, accurate, bona fide former or regular price
9 which the retailer has charged for the item.
- 10 21. On the other hand, vague terms or phrases which are susceptible to more
11 than one reasonable interpretation, such as “compare at,” are almost always
12 misleading and deceptive.
- 13 22. If a semantic cue (a word or phrase attached to an ARP) is clear and
14 susceptible to only one reasonable interpretation, then the use of that word or
15 phrase in connection with an ARP may not be legally prohibited so long as
16 the ARP is a true, bona fide price.
- 17 23. If, on the other hand, a semantic cue is unclear or open to multiple
18 interpretations, as is the case when an ARP is preceded by the undefined and
19 unqualified phrase “compare at,” then the use of that word or phrase in
20 connection with an ARP is deceptive and is thus prohibited by, among other
21 things, the Federal Trade Commission (“FTC”) regulations, 16 C.F.R.
22 §233.1, *et seq.* (commonly referred to as the “FTC Pricing Guides”).
- 23 24. Plaintiffs were each confronted with ARPs on the items they purchased from
24 Defendants, accompanied by the simple, undefined, unqualified phrase,
25 “Compare At.” Plaintiffs reasonably believed, like all reasonable
26 consumers, that the “Compare At” price represented the price that they
27 would expect to pay for those same items at other retailers in their general
28 area. In other words, Plaintiffs reasonably believed that the “Compare At”

1 prices referred to the then prevailing retail prices for those same items - that
2 if they left TJ Maxx and shopped around for those same items, tje y would
3 likely find them elsewhere at the higher “Compare At” prices provided by
4 Defendants.

5 25. Defendants, however, had a different definition of what they meant by
6 “Compare At” - a definition undisclosed to consumers and not consistent
7 with the common meaning of the phrase “compare at.”

8 26. Had Plaintiffs been savvy enough, and stopped their shopping to get to a
9 computer, log onto Defendants’ website, navigate to the bottom of the web
10 page, find the “compare at pricing” link in the fine print on the left side of
11 the bottom of the page along with a half-dozen other links (including, among
12 others, site map, privacy, and terms of use), and click on the “compare at
13 pricing” hyperlink, Plaintiff would have found Defendant’s definition of
14 “Compare at” as follows:

15
16 **What do we mean by "compare at"?**

17 **The "compare at" price is our buying staff's estimate of the regular, retail price at**
18 **which a comparable item in finer catalogs, specialty or department stores may**
19 **have been sold. We buy products from thousands of vendors worldwide, so the**
20 **item may not be offered by other retailers at the "compare at" price at any**
21 **particular time or location. We encourage you to do your own comparison**
22 **shopping as another way to see what great value we offer. We stand for bringing**
23 **you and your family exceptional value every day – it's the foundation of our**
24 **business.**

25
26 27. Nowhere on Defendants’ price tags, or in Defendants’ price advertising, is it
27 made clear to consumers, including Plaintiffs, that the advertised “Compare
28

1 At” price is merely Defendants’ buying staff’s “estimate” of what a
2 “comparable” item “may have” sold at.

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

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

10 30. Consumers should not have to sleuth their way into Defendants’ website just
11 to find Defendants’ misleading, unreasonable, and non-intuitive
12 interpretation of what it means by the phrase “Compare At.”

13 31. Even if a consumer were to find Defendants’ interpretation of the phrase
14 “Compare At” on their website before purchasing a product from TJ Maxx,
15 it is still not clear from Defendants’ definition exactly what their “Compare
16 At” price actually represents.

17 32. Defendants’ “Compare At” price could be the regular, retail price of the
18 same item at other department stores. Or, it could be the regular, retail price
19 of a “comparable” item. Or neither. It could simply be an “estimate” of
20 what a comparable item might sell at. Or, it could be none of the above. It
21 may be that the particular item, or even a comparable item, was never
22 offered for sale at the “Compare At” price by any other retailer, at any time,
23 or in any location. And consumers, even if they were to find Defendants’
24 definition, would still be left to guess what a “comparable” item might be.

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

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

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

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

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

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

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

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

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

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GENERAL FACTUAL ALLEGATIONS

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47. Defendants own and operate approximately 110 TJ Maxx stores throughout the state of California.

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

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

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

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

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

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

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

12 54. Plaintiffs are informed and believe, and on that basis allege, that the prices
13 which Defendants advertise, and have advertised, as “Compare At” prices
14 are not based on fact, are fictitious, and/or are misleading.

15 55. Plaintiffs are informed and believe, and on that basis allege, that when
16 Defendants advertised prices as “Compare At” prices on the price tags of
17 items sold in their California TJ Maxx stores, Defendants were not
18 reasonably certain that the higher price they advertised did not appreciably
19 exceed the price at which substantial sales of the items were being made in
20 the area.

21 56. Where the advertiser’s comparison price is purportedly based on prices
22 being charged for similar or “comparable” products, “for other merchandise
23 of like grade and quality - in other words, comparable or competing
24 merchandise - to that being advertised,” the FTC Pricing Guides require that
25 the advertiser make “clear to the consumer that a comparison is being made
26 with other merchandise and the other merchandise is, in fact, of essentially
27 similar quality and obtainable in the area.” In such a case:

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

1 57. According to Defendants' definition, the prices advertised by Defendants as
2 the "Compare At" prices for some or all of the items sold at Defendants'
3 California TJ Maxx stores was a price that Defendants allege to be the price
4 of comparable items.

5 58. Defendants did not make clear to consumers that the "Compare At" price
6 was supposed to be the original price of products of similar quality and/or
7 style.

8 59. Plaintiffs are informed and believe, and on that basis allege, that when
9 Defendants' "Compare At" price allegedly referred to the price of
10 comparable items, Defendants were not reasonably certain that the
11 "Compare At" price did not exceed the price at which similar merchandise
12 was offered by representative retail outlets in the area.

13 60. 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, the items that Defendants offered for sale were not of like
16 grade and/or quality to other retailers' items supposedly being compared to.

17 61. Where the advertiser's comparison price is purportedly based on a
18 manufacturer's suggested retail price ("MSRP"), the FTC Pricing Guides
19 provide as follows:

20 "Many members of the purchasing public believe that a
21 manufacturer's list price, or suggested retail price, is the price at
22 which an article is generally sold. Therefore, if a reduction from this
23 price is advertised, many people will believe that they are being
24 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."

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

26 "[t]he widespread failure to observe manufacturer's suggested or list
27 prices, and the advent of retail discounting on a wide scale, have
28 seriously undermined the dependability of list prices as indicators of
the exact prices at which articles are in fact generally sold at retail. . . .

1 Today, only in the rare case are all sales of an article at the
2 manufacturer's suggested retail or list price."

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

4 "[w]ill not be deemed fictitious if it is the price at which substantial
5 (that is, not isolated or insignificant) sales are made in the advertiser's
6 trade area (the area in which he does business). Conversely, if the list
7 price is significantly in excess of the highest price at which substantial
8 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.
... [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."

9 64. Plaintiffs are informed and believe, and on that basis allege, that the
10 "Compare At" prices which Defendants allege to be, and have been, MSRPs
11 for their products were not prices at which substantial sales of those products
12 were made in the relevant trade area(s), but were significantly in excess of
13 the highest prices at which substantial sales of those products were made in
14 the relevant trade areas(s).

15 65. Plaintiffs are informed and believe, and on that basis allege, that Defendants
16 did not ascertain whether the "Compare At" prices which Defendants allege
17 to be MSRPs were in fact the prices regularly charged by principal outlets in
18 the relevant area(s).

19 66. Defendants' depiction of prices, as described herein, falsely represented to
20 consumers that the "Compare At" price was the price at which the product
21 typically sold in the marketplace, from which Defendants offered a discount.

22 67. Plaintiffs are informed and believe, and on that basis allege, that even if and
23 when a "Compare At" price for a product may have represented an actual
24 "recent documented selling price" of the same product, Defendants chose the
25 highest price at which the product was selling in the marketplace, and
26 presented that price to consumers as the "Compare At" price.
27
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1 68. Plaintiffs are informed and believe, and on that basis allege, that Defendants’
2 untrue and misleading representations accompanied virtually every product
3 sold in their California stores each and every day throughout the Class
4 Period, and that Defendants are still making such untrue and misleading
5 comparative price claims for many, if not all, of the products in their
6 California TJ Maxx stores.

7 69. Defendants have routinely and systematically made untrue and misleading
8 comparative advertising claims about the prices which other merchants
9 charge for the identical products offered by Defendants.

10 70. Plaintiffs are informed and believe, and on that basis allege, that often
11 Defendants have not determined or verified the prices other merchants
12 charge for the identical products they sell. Rather, Defendants have used
13 various misleading methods to make up their own prices which they claim
14 other merchants charge for those products, and then claim that their own
15 prices are significantly lower than those “Compare At” prices.

16 71. Plaintiffs are informed and believe, and on that basis allege, that Defendants
17 have advertised comparative prices which do not exist.

18 72. Plaintiffs are informed and believe, and on that basis allege, that Defendants
19 have made up prices supposedly charged by other merchants.

20 73. Defendants knew or should have known that their representations
21 concerning their “Compare At” prices, or other merchants’ prices for
22 identical products, were untrue and/or misleading.

23 74. Defendants’ representations were likely to mislead reasonable consumers
24 into believing that Defendants’ prices were significantly lower than the
25 prices offered by other merchants for the identical products, and that
26 consumers would enjoy significant savings by purchasing those products
27 from Defendants instead of from other merchants.
28

- 1 75. Defendants' false and/or misleading comparative pricing representations
2 made it more likely that consumers would purchase particular products from
3 Defendants. For some products, Defendants' misleading claims of a huge
4 discount were likely to persuade consumers who were not inclined to
5 purchase the product at all to buy it from Defendants solely because they
6 were misled into believing that they were getting an unusually good deal.
- 7 76. Defendants' misrepresentations about their pricing were likely to mislead
8 consumers into believing that Defendants' prices would always be
9 significantly lower than the prices offered by other merchants for the
10 identical products.
- 11 77. Defendants misrepresented the existence, nature and amount of price
12 discounts by purporting to offer specific dollar discounts from expressly
13 referenced comparative prices, which were misrepresented as "Compare At"
14 prices. These purported discounts were false, however, because the
15 referenced comparative prices were fabricated and did not represent true
16 comparative prices for identical products sold by other merchants.
17 Furthermore, the advertised "Compare At" prices were not the prevailing
18 market retail prices for the products sold by Defendants.
- 19 78. Plaintiffs are informed and believe, and on that basis allege, that the alleged
20 comparative prices affixed to each item at Defendants' California TJ Maxx
21 stores at all relevant times throughout the Class Period were false prices and
22 not true prices that other merchants had sold any such item for at any time
23 during the time that any such item was marked with the alleged "Compare
24 At" price.
- 25 79. Defendants have engaged in a company-wide, pervasive and continuous
26 campaign of falsely claiming that each of their products sold at a far higher
27 price by other merchants in order to induce Plaintiffs and all Class Members
28

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

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

1 comparative prices. Specifically, Defendants have violated, and continue to
2 violate, the UCL, the FAL, the CLRA, and the Federal Trade Commission
3 Act (“FTCA”), which prohibits “unfair or deceptive acts or practices in or
4 affecting commerce” (15 U.S.C. §45(a)(1)), and specifically prohibits false
5 advertisements (15 U.S.C. §52(a)).

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

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

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

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

24 95. Plaintiffs are informed and believe, and on that basis allege, that Defendant
25 failed to verify that their “Compare At” prices for their products did not
26 exceed the prices at which substantial sales of the products were being made
27 in the marketplace.
28

- 1 96. The result of Defendants’ ignorance of the accuracy of their “Compare At”
2 prices, and their failure to verify that accuracy, was that consumers were
3 misled into believing that they were receiving substantial savings on the
4 purchase of Defendants’ products when compared to prices charged for
5 those same products at other retailers. Plaintiffs are informed and believe,
6 and on that basis allege, that consumers were on occasion misled into paying
7 more for Defendants’ products than they would have paid for identical
8 products sold by other merchants.
- 9 97. Defendants’ decision to advertise a price which did not actually exist was
10 likely to deceive consumers by representing that the marketplace had
11 assigned a retail price to that product, and that Defendants’ discount off that
12 retail price made Defendants’ price attractive. Defendants’ representation of
13 the “Compare At” price as an actual price being charged for that product was
14 unlawful, unfair, and/or fraudulent.
- 15 98. Defendants knew or should have known that creating either a fictitious or
16 inflated “Compare At” price to create either a fictitious or inflated discount
17 or savings, was unlawful.
- 18 99. The use of the phrase “Compare At” by Defendants on the price tags of the
19 products sold in their California TJ Maxx stores constituted the
20 dissemination of untrue, deceptive and/or misleading statements to
21 consumers about the prices of the products so listed as compared with the
22 prices offered by other merchants for the same products. Defendants knew,
23 or by the exercise of reasonable care should have known, that those
24 statements were untrue, deceptive, and/or misleading. Each such statement
25 constitutes, and has constituted, a separate violation of California Business
26 & Professions Code §17500. Each such statement also violates, and has
27 violated, California Civil Code §1750(a)(13).
- 28

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

5 **PLAINTIFFS’ PURCHASES**

6 101. Plaintiffs purchased numerous products throughout the Class Period from
7 Defendant’s TJ Maxx stores in Palm Desert and Westlake Village,
8 California, in reliance on Defendants’ false advertising and false price
9 comparisons, which they would not otherwise have purchased but for
10 Defendants’ false, deceptive and/or misleading advertising, and false,
11 deceptive and/or misleading price comparison scheme as described herein.

12 **Plaintiff CHESTER’s Purchases:**

13 102. For example, and without limitation, in or about June 2015, CHESTER
14 purchased 2 Jessica Simpson handbags from Defendants’ Palm Desert,
15 California, TJ Maxx store for \$24.99 each, for a total payment, including
16 sales tax, of \$53.98. Each handbag purchased by CHESTER was advertised
17 with a price tag which contained an untrue, deceptive, and/or misleading
18 “Compare At” price representation, as discussed herein – i.e., a higher, yet
19 false, deceptive, and/or misleading “Compare At” reference price – which
20 stated “Compare At \$48.00 +UP.” Each handbag also had attached to it a
21 purportedly original price tag which listed a purported original, or “MSRP,”
22 price of “\$68.00.”

23 103. CHESTER is informed and believes, and on that basis alleges, that the
24 comparative prices of “\$48.00” and “\$68.00” were not true, bona fide
25 reference prices as discussed herein – i.e., that they did not represent then
26 prevailing retail prices in the marketplace for those handbags.

27
28

1 104. When CHESTER shopped at Defendants' Palm Desert, California, store, she
2 was exposed to, saw, believed, and relied on Defendants' "Compare At"
3 price advertising.

4 105. When CHESTER shopped at Defendants' Palm Desert, California, store, she
5 was unaware of Defendants' definition or interpretation of the "Compare
6 At" price found on Defendants' website. Defendants failed to disclose their
7 definition or interpretation to CHESTER or any other Class Member.

8 106. The comparison prices on the items purchased by CHESTER at Defendants'
9 Palm Desert, California, TJ Maxx store, and the corresponding price
10 reductions and/or savings, were false, misleading and/or deceptive.

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

24 **Plaintiff FRIEDMAN's Purchases:**

25 108. On October 18, 2014, FRIEDMAN purchased, among other things,
26 numerous items of men's clothing from Defendants' Westlake Village,
27 California, TJ Maxx store for prices ranging from \$5.99 to \$49.99. Each
28 item purchased by FRIEDMAN was advertised with a price tag which

1 contained an untrue, deceptive, and/or misleading “Compare At” price
2 representation, as discussed herein – i.e., a higher, yet false, deceptive,
3 and/or misleading “Compare At” reference price. For example, and without
4 limitation, one item of clothing that FRIEDMAN purchased had a price tag
5 which listed a selling price of “\$5.99,” and which also stated “Compare At
6 \$10.00.”

7 109. FRIEDMAN is informed and believes, and on that basis alleges, that the
8 comparative price of “\$10.00” was not a true, bona fide reference price as
9 discussed herein – i.e., that it did not represent the then prevailing retail
10 price in the marketplace for the item advertised.

11 110. By way of additional example, and without limitation, on July 3, 2015,
12 FRIEDMAN purchased 13 items from Defendants’ Westlake Village,
13 California, TJ Maxx store with prices ranging from \$2.99 to \$10.00. Each
14 item purchased by FRIEDMAN on July 3, 2015, was advertised with a price
15 tag which contained an untrue, deceptive, and/or misleading “Compare At”
16 price representation, as discussed herein – i.e., a higher, yet false, deceptive,
17 and/or misleading “Compare At” reference price. For example, and without
18 limitation, one item of clothing that FRIEDMAN purchased had a price tag
19 which listed a selling price of “\$6.99,” and which also stated “Compare At
20 \$14.00.”

21 111. FRIEDMAN is informed and believes, and on that basis alleges, that the
22 comparative price of “\$14.00” was not a true, bona fide reference price as
23 discussed herein – i.e., that it did not represent the then prevailing retail
24 price in the marketplace for the item advertised.

25 112. When FRIEDMAN shopped at Defendants’ Westlake Village, California,
26 store, he was exposed to, saw, believed, and relied on Defendants’
27 “Compare At” price advertising.
28

- 1 113. When FRIEDMAN shopped at Defendants' Westlake Village, California,
2 store, he was unaware of Defendants' definition or interpretation of the
3 "Compare At" price found on Defendants' website. Defendants failed to
4 disclose their definition or interpretation to FRIEDMAN or any other Class
5 Member.
- 6 114. The comparison prices on the items purchased by FRIEDMAN at
7 Defendants' Westlake Village, California, TJ Maxx store, and the
8 corresponding price reductions and/or savings, were false, misleading and/or
9 deceptive.
- 10 115. FRIEDMAN is informed and believes, and on that basis alleges, that the
11 prevailing retail prices for the items that he purchased from Defendants were
12 materially lower than the "Compare At" prices advertised by Defendants.
13 FRIEDMAN reasonably believed that the "Compare At" prices associated
14 with the items that he purchased from Defendants were the then prevailing
15 retail prices for the items at other full-price retailers. He reasonably believed
16 that the "Compare At" prices were the prices he would pay for those items at
17 other retailers in his general area. FRIEDMAN did not interpret the
18 "Compare At" prices provided by Defendants to be the prices of
19 "comparable" items, for any of the items that he purchased. FRIEDMAN
20 would not have purchased any such product from Defendants in the absence
21 of Defendants' false, misleading and/or deceptive advertising, and/or
22 misrepresentations as described more fully herein
- 23 116. In addition to FRIEDMAN's purchases described herein, FRIEDMAN made
24 numerous other purchases of products from Defendant's Westlake Village,
25 California, TJ Maxx store throughout the Class Period. With respect to each
26 such purchase, including the purchases described herein, FRIEDMAN
27 purchased those products from Defendants after viewing and relying on
28 Defendants' advertising which included the false, deceptive, and/or

1 misleading comparison prices discussed herein placed on the price tags of
2 the items which he purchased. FRIEDMAN is informed and believes, and
3 on that basis alleges, that the comparison prices, and the corresponding price
4 reductions and/or savings, were false, misleading and/or deceptive.

5 FRIEDMAN is further informed and believes, and on that basis alleges, that
6 the prevailing retail prices for the items that he purchased from Defendants
7 were materially lower than the “Compare At” prices advertised by
8 Defendants. FRIEDMAN reasonably believed that the “Compare At” prices
9 associated with the items that he purchased from Defendants were the then
10 prevailing retail prices for the items at other full-price retailers. He
11 reasonably believed that the “Compare At” prices were the prices he would
12 pay for those items at other retailers in his general area. FRIEDMAN did
13 not interpret the “Compare At” prices provided by Defendants to be the
14 prices of “comparable” or “similar” items, for any of the items that he
15 purchased. FRIEDMAN would not have purchased any such product from
16 Defendants in the absence of Defendants’ false, misleading and/or deceptive
17 advertising, and/or misrepresentations as described more fully herein.

18 **CLASS ACTION ALLEGATIONS**

19 117. Plaintiffs brings this action on behalf of themselves and on behalf of all
20 other persons similarly situated (the “Class” or “Class Members”), namely:

21 All persons who, while in the State of California, and between July
22 17, 2011, and the present (the “Class Period”), purchased from TJ
23 MAXX one or more items at any TJ MAXX store in the State of
24 California with a price tag that contained a “Compare At” price which
25 was higher than the price listed as the TJ MAXX sale price on the
26 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 any judge
who presides over this action, as well as all past and present
employees, officers and directors of any Defendant.

27 118. Plaintiffs reserve the right to expand, limit, modify, or amend this class
28 definition, including the addition of one or more subclasses, in connection

1 with their motion for class certification, or at any other time, based upon,
2 among other things, changing circumstances and/or new facts obtained
3 during discovery.

4 119. Each member of the proposed Class herein has been exposed to Defendants'
5 false and/or misleading pricing and advertising scheme.

6 120. Plaintiffs are and have been members of the proposed Class described
7 herein.

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

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

19 123. The common questions of law and/or fact include, but are not limited to:
20 a. Whether a reasonable consumer would interpret the phrase "Compare
21 At" as Defendants interprets it;
22 b. Whether the phrase "Compare At" is susceptible to more than one
23 reasonable interpretation;
24 c. Whether the phrase "Compare At" is misleading and/or deceptive;
25 d. Whether, during the Class Period, Defendants used false and/or
26 misleading "Compare At" prices on the price tags of items sold in
27 their California TJ Maxx stores, and whether Defendants falsely
28 advertised comparative price discounts for their merchandise;

- 1 e. Whether, during the Class Period, the “Compare At” prices advertised
- 2 by Defendants were in fact the prevailing market prices for the
- 3 respective identical items sold by other retailers in the marketplace at
- 4 the time of the dissemination and/or publication of the advertised
- 5 “Compare At” prices;
- 6 f. Whether Defendants’ price-comparison advertising scheme was false,
- 7 deceptive or misleading within the meaning of the UCL, FAL, and/or
- 8 CLRA;
- 9 g. Whether Defendants made false, deceptive or misleading statements
- 10 in their advertisements;
- 11 h. Whether Defendants’ comparative price advertising as described
- 12 herein was likely to deceive a reasonable consumer and/or members
- 13 of the public;
- 14 i. Whether Defendants’ comparative pricing on their “Compare At”
- 15 price tags would be material to a reasonable consumer’s purchasing
- 16 decisions;
- 17 j. How to calculate the prevailing market prices for products sold in
- 18 Defendants’ California TJ Maxx stores;
- 19 k. Whether Defendants engaged in unfair, unlawful and/or fraudulent
- 20 business practices under California law;
- 21 l. Whether Defendants misrepresented and/or failed to disclose material
- 22 facts about their product pricing and discounts;
- 23 m. Whether Defendants have made false or misleading statements of fact
- 24 concerning the reasons for, existence of, or amounts of price
- 25 reductions;
- 26 n. Whether Defendants’ conduct, as alleged herein, was intentional and
- 27 knowing;
- 28

- 1 o. Whether Class Members are entitled to damages and/or restitution;
2 and, if so, what amount of revenues and/or profits Defendants
3 received, and what amount of money is and/or was lost by Class
4 Members as a result of the conduct alleged herein; and,
5 p. Whether Defendants continue to use false, misleading and/or illegal
6 price comparisons such that an injunction is necessary.
- 7 124. Plaintiffs' claims and those of all other Class Members arise out of a
8 common course of conduct by Defendants.
- 9 125. All Class Members, including Plaintiffs, were exposed to Defendants'
10 misrepresentations or omissions of material fact claiming that their
11 "Compare At" prices were accurate bona fide comparison prices. Due to the
12 scope and extent of Defendants' consistent false, deceptive and/or
13 misleading price advertising scheme, disseminated in a massive, years-long
14 campaign to California consumers via false, deceptive and/or misleading
15 "Compare At" prices placed on the price tags of the products sold in their
16 California TJ Maxx stores, it can be reasonably inferred that such
17 misrepresentations or omissions of material fact were uniformly made to all
18 Class Members. In addition, it can be reasonably presumed that all Class
19 Members, including Plaintiffs, affirmatively acted in response to the
20 representations contained in Defendants' false comparative price advertising
21 scheme when purchasing merchandise at each and any of Defendants' TJ
22 Maxx stores in California.
- 23 126. The common questions of law and/or fact in this case are susceptible to
24 common proof.
- 25 127. Resolution of the common questions of law and/or fact in this case will
26 resolve issues that are central to the claims of each Plaintiff and all other
27 Class Members.
- 28

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

1 136. Disposition of Plaintiffs' claims in a class action will benefit all parties and
2 the Court.

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

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

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

17 140. A class action is superior to other available means for the fair and efficient
18 adjudication of Plaintiffs' and Class Members' claims. Because of the
19 relatively modest size of individual Class Members' claims, few, if any,
20 Class Members could afford to seek legal redress of the wrongs complained
21 of herein on an individual basis. Absent the class action, Class Members
22 and the general public would not likely recover, or would not likely have the
23 chance to recover, damages or restitution, and Defendants will be permitted
24 to retain the proceeds of their misdeeds and continue their unlawful conduct.

25 141. The prosecution of separate actions by individual members of the proposed
26 Class herein would create a risk of inconsistent and/or varying adjudications
27 with respect to individual members of the proposed Class which would or
28 may establish incompatible standards of conduct for Defendants, and which

1 would also create a risk of adjudications with respect to individual members
2 of the proposed Class herein which would, as a practical matter, be
3 dispositive of the interests of other members of the proposed Class not
4 parties to the particular individual adjudications, and/or would or may
5 substantially impede or impair the ability of those other members to protect
6 their interests.

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

16 143. Plaintiffs are informed and believe, and on that basis allege, that Defendants
17 have one or more databases through which a significant majority of Class
18 Members may be identified and ascertained, and that they maintain contact
19 information, including email and home mailing addresses, through which
20 notice of this action could be disseminated in accordance with due process
21 requirements.

22 144. The definition of the proposed Class herein objectively depicts who the
23 members of the proposed Class are, making it administratively feasible to
24 determine whether a particular person is a Class Member. Because the
25 alleged misrepresentations in this case (i.e., the false, deceptive, and/or
26 misleading comparative prices) appear on the price tags of each product
27 purchased, there is no concern that the Class may include individuals who
28 were not exposed to Defendants' misrepresentations.

FIRST CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES

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

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

145. Plaintiffs re-allege and incorporate by reference, as though fully set forth herein, paragraphs 1 through 144 of this Complaint.

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

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

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

149. These acts and practices were unfair because they caused Plaintiffs, and were likely to cause reasonable consumers, to falsely believe that Defendants are, and have throughout the Class Period been, offering value, discounts or bargains from the prevailing market price, value or worth of the products sold that did not, in fact, exist. As a result, purchasers, including Plaintiffs, reasonably perceived that they were receiving products that regularly sold in the retail marketplace at substantially higher prices (and were, therefore, worth more) than what they paid. This perception has

1 induced reasonable purchasers, including Plaintiffs, to buy such products,
2 which they otherwise would not have purchased.

3 150. Plaintiffs and all other Class Members were likely to be deceived by
4 Defendants' use of the phrase "Compare At" on the price tags of
5 merchandise at TJ Maxx stores in California.

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

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

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

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

3 **SECOND CAUSE OF ACTION**

4 **FRAUDULENT BUSINESS PRACTICES**

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

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

8 154. Plaintiffs re-allege and incorporate by reference, as though fully set forth
9 herein, paragraphs 1 through 153 of this Complaint.

10 155. A business act or practice is “fraudulent” under the UCL if it is likely to
11 deceive members of the consuming public.

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

25 157. Defendants’ acts and practices as described herein have deceived Plaintiffs
26 and were highly likely to deceive reasonable members of the consuming
27 public. Specifically, in deciding to purchase merchandise at Defendants’ TJ
28 Maxx stores, each Plaintiff relied on Defendants’ misleading and deceptive

1 representations regarding their supposed “Compare At” prices. The
2 comparative “Compare At” prices placed by Defendants on the price tags of
3 merchandise at TJ Maxx stores in California played a substantial role in each
4 Plaintiff’s decision to purchase those products, and Plaintiffs would not have
5 purchased those items in the absence of Defendants’ misrepresentations.
6 Accordingly, each Plaintiff has suffered monetary loss as a direct result of
7 Defendants’ unlawful practices described herein.

8 158. As a result of the conduct described above, Defendants have been unjustly
9 enriched at the expense of Plaintiffs and all other Class Members.

10 Specifically, Defendants have been unjustly enriched by obtaining revenues
11 and profits that they would not otherwise have obtained absent their false,
12 misleading and/or deceptive conduct.

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

21 **THIRD CAUSE OF ACTION**

22 **UNLAWFUL BUSINESS PRACTICES**

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

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

26 160. Plaintiffs re-allege and incorporate by reference, as though fully set forth
27 herein, paragraphs 1 through 159 of this Complaint.
28

- 1 161. A business act or practice is “unlawful” under the UCL if it violates any
2 other law or regulation.
- 3 162. The FTCA prohibits “unfair or deceptive acts or practices in or affecting
4 commerce” (15 U.S.C. §45(a)(1)) and specifically prohibits false
5 advertisements. 15 U.S.C. §52(a)).
- 6 163. Cal. Civ. Code §1770(a)(13), prohibits a business from “[m]aking false or
7 misleading statements of fact concerning reasons for, existence of, or
8 amounts of price reductions.”
- 9 164. Defendants’ use of and reference to materially false “Compare At” prices on
10 the price tags of merchandise sold to consumers in California TJ Maxx
11 stores violated and continues to violate the FTCA, 15 U.S.C. §45(a)(1) and
12 15 U.S.C. §52(a), as well as FTC Price Guides. It also violated and
13 continues to violate Cal. Bus. & Prof. Code §§17200 and 17501, and Cal.
14 Civ. Code §1770(a)(13), by advertising false comparative prices that were,
15 in fact, not the prevailing market prices at other retailers in the marketplace
16 at the time of the publication.
- 17 165. As a result of the conduct described above, Defendants have been unjustly
18 enriched at the expense of Plaintiffs and other Class Members. Specifically,
19 Defendants have been unjustly enriched by obtaining revenues and profits
20 that they would not otherwise have obtained absent their false, misleading
21 and deceptive conduct.
- 22 166. Through their unfair acts and practices, Defendants have improperly
23 obtained money from Plaintiffs and all other Class Members. As such,
24 Plaintiffs request that this Court cause Defendants to restore this money to
25 Plaintiffs and all Class Members, and to enjoin Defendants from continuing
26 to violate the UCL, and/or from violating the UCL in the future. Otherwise,
27 Plaintiffs, the Class and members of the general public may be irreparably
28

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

3 **FOURTH CAUSE OF ACTION**

4 **FALSE ADVERTISING**

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

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

8 167. Plaintiffs re-allege and incorporate by reference, as though fully set forth
9 herein, paragraphs 1 through 166 of this Complaint.

10 168. The FAL prohibits unfair, deceptive, untrue, or misleading advertising,
11 including, but not limited to, false statements as to worth, value and former
12 price.

13 169. The FAL makes it unlawful for a business to disseminate any statement
14 which is untrue or misleading, and which is known, or which by the exercise
15 of reasonable care should be known, to be untrue or misleading.

16 170. Defendants' practice of disseminating allegedly comparative "Compare At"
17 prices associated with apparel and other merchandise, which were materially
18 greater than the true prevailing prices of those products, and/or not true
19 comparative prices for those products, as alleged more fully herein, was an
20 unfair, deceptive and misleading advertising practice because it gave the
21 false impression that the products sold by Defendants regularly sold in the
22 retail marketplace at substantially higher prices (and were, therefore, worth
23 more) than they actually were. In fact, the apparel and other merchandise
24 sold by Defendants at TJ Maxx stores in California did not have a prevailing
25 market price close to the "Compare At" prices advertised.

26 171. Defendants' practice of disseminating reference prices they allege to be
27 prices of comparable or similar products, without disclosing to consumers
28 that their "Compare At" prices were meant to be prices of comparable or

1 similar products, was misleading to Plaintiffs and all other Class Members.
2 Defendants knew, or by the exercise of reasonable care should have known,
3 that reasonable consumers, such as Plaintiffs, would not interpret the
4 statement “Compare At” to be a reference to a comparable or similar
5 product.

6 172. On each day throughout the Class Period, Defendants, with the intent to
7 induce members of the public to purchase products offered at California TJ
8 Maxx stores, made or caused to be made each of the untrue and/or
9 misleading statements, claims, and/or representations described herein.

10 173. On each day throughout the Class Period, Defendants, with the intent to
11 induce members of the public to purchase products offered at California TJ
12 Maxx stores, made or caused to be made untrue and/or misleading claims to
13 consumers throughout California including, but not limited to, the following
14 claims with respect to products offered for sale at California TJ Maxx stores:

- 15 a. That when other merchants offered an identical product for sale,
16 Defendants had previously ascertained and/or determined the price at
17 which those merchants typically offered that identical product for sale.
- 18 b. That the “Compare At” price for a product was the price at which
19 other merchants typically offered that identical product for sale.
- 20 c. That Defendants’ sale price for a product was lower than the price at
21 which other merchants typically offered that identical product for sale.
- 22 d. That Defendants’ sale price for a product was a discount from the
23 price at which other merchants typically offered that identical product
24 for sale.
- 25 e. That Defendants had previously sold that product at the “Compare At”
26 price advertised for that product.

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

- 1 a. The existence and/or amounts of the price reductions represented by
2 the difference between the “Compare At” price and Defendants’ sale
3 price; and,
- 4 b. The existence and/or amount of the savings to a consumer purchasing
5 a particular product from Defendants instead of another merchant
6 represented by the difference between the “Compare At” price and
7 Defendants’ sale price.
- 8 180. Plaintiffs and each Class Member are “consumers” within the meaning of
9 Civil Code §1761(d).
- 10 181. Defendants’ sale of merchandise at its TJ Maxx stores in California to
11 Plaintiffs and other Class Members are “transactions” within the meaning of
12 Civil Code §1761(e).
- 13 182. The merchandise purchased by Plaintiffs and other Class Members at
14 Defendants’ TJ Maxx stores in California throughout the Class Period are
15 “goods” within the meaning of Civil Code §1761(a).
- 16 183. Defendants have engaged in unfair methods of competition, and/or unfair
17 and/or deceptive acts or practices against Plaintiffs and other Class
18 Members, in violation of the CLRA, by making false and/or misleading
19 statements of fact concerning the reasons for, the existence of, and/or the
20 amount(s) of price reductions for products sold to Plaintiffs and other Class
21 Members at California TJ Maxx stores throughout the Class Period.
22 Defendants provided a false and/or misleading “Compare At” price on the
23 price tags of the items sold in California TJ Maxx stores, and compared that
24 false and/or misleading comparative price to the price at which Defendants
25 sold the items, to give the illusion to consumers that they were receiving a
26 discount, or achieving a saving or bargain when compared to the purchase of
27 those same items at other retailers in the consumer’s area. The promised
28 discounts, savings, and/or bargains, however, were false.

1 184. The price reductions alleged by Defendants to be the difference between the
2 “Compare At” prices and Defendants’ sale prices did not exist, and were
3 false and/or misleading.

4 185. Defendants’ acts and/or practices described herein are in violation of Civil
5 Code §1770(a)(13).

6 186. As a result of Defendants’ acts and/or practices described herein, Plaintiffs
7 and other Class Members have been damaged in that Defendants’ unlawful,
8 false and/or misleading acts and/or practices described herein played a
9 substantial and material role in each Plaintiff’s and other Class Members’
10 decisions to purchase products at Defendants’ TJ Maxx stores in California.
11 Absent these acts and/or practices, Plaintiffs and other Class Members
12 would not have purchased the products that they did from Defendants.

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

21
22 **PRAYER FOR RELIEF**

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

25 **CLASS CERTIFICATION**

26 1. An order certifying that this action may be maintained as a class action, that
27 Plaintiffs be appointed Class Representatives, and Plaintiffs’ counsel be
28 appointed Class Counsel.

1 **VIOLATION OF BUSINESS & PROFESSIONS CODE §§17200 et seq., and**
2 **17500 et seq.:**

- 3 2. A judgment awarding Plaintiffs and all Class Members restitution and/or
- 4 other equitable relief, including, without limitation, restitutionary
- 5 disgorgement of all profits and unjust enrichment that Defendants obtained
- 6 from Plaintiffs and the Class as a result of the unlawful, unfair and/or
- 7 fraudulent business practices described herein.
- 8 3. An order enjoining Defendants from continuing to violate the UCL and/or
- 9 FAL as described herein, and/or an order enjoining Defendants from
- 10 violating the UCL and/or FAL in the future.
- 11 4. A judgment awarding Plaintiffs their costs of suit, including reasonable
- 12 attorneys’ fees pursuant to Code of Civil Procedure §1021.5 and as
- 13 otherwise permitted by statute or law, and pre- and post-judgment interest;
- 14 and,
- 15 5. For such other and further relief as the Court may deem proper.

16 **VIOLATION OF CIVIL CODE §1770:**

- 17 6. An order enjoining Defendants from continuing to violate the CLRA as
- 18 described herein, and/or an order enjoining Defendants from violating the
- 19 CLRA in the future;
- 20 7. A judgment awarding Plaintiffs their costs of suit, including reasonable
- 21 attorneys’ fees pursuant to Civil Code §1780(d) and as otherwise permitted
- 22 by statute, and pre- and post-judgment interest; and,
- 23 8. For such other and further relief as the Court may deem proper.

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DEMAND FOR JURY TRIAL

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

Dated: July 17, 2015

By:



CHRISTOPHER J. MOROSOFF,
LAW OFFICE OF CHRISTOPHER J. MOROSOFF
Attorneys for Plaintiffs STACI CHESTER and
DANIEL FRIEDMAN