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Superior Court of California
County of San Francisco

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CLERK OF THE COURT
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN FRANCISCO

10 DONOVAN FARWELL, individually and on)
11 behalf of all others similarly situated,)

12 Plaintiffs,

14 vs.

15 LEVI STRAUSS & CO.,

17 Defendants.

Case No.

CGC-14-541316

CLASS ACTION COMPLAINT

1. Violation of the "Unfair" Prong of the UCL
2. Violation of the "Fraudulent" Prong of the UCL
3. Violation of the "Unlawful" Prong of the UCL
4. Violation of the California False Advertising Law, California Business & Professions Code Sections 17500, *et seq.*
5. Violation of the Consumers Legal Remedies Act, California Civil Code Sections 1750, *et seq.*: Injunctive Relief

CLASS ACTION COMPLAINT

21 Plaintiff, DONOVAN FARWELL ("Plaintiff"), on behalf of himself and all others similarly
22 situated, alleges the following based upon personal knowledge as to allegations regarding Plaintiff
23 and on information and belief as to other allegations:

INTRODUCTION

26 1. This is a civil class action seeking monetary damages, restitution, injunctive and
27 declaratory relief from Defendant, Levi Strauss & Co., ("Levi's") arising from its deceptive and
28

misleading labeling and marketing of merchandise it sells at its company-owned Levi's Outlet stores ("Levi's Outlet").

2. During the Class Period (defined below), Levi's misrepresented the existence, nature and amount of price discounts on products manufactured exclusively for Levi's Outlet ("Levi's Outlet Products") by purporting to offer steep discounts off of fabricated, inflated and false former prices.

3. Specifically, Levi's represented—on the price tags of its Levi's Outlet Products—Manufacturer's Suggested Retail Prices ("MSRPs") that were extremely overstated and did not represent a bona fide price at which Levi's formerly sold Levi's Outlet Products. Nor were the advertised MSRPs prevailing market retail prices within three months immediately preceding the publication of the advertised former prices, as required by California law.

4. Having touted a false MSRP, Levi's then offered, on the same sales labels, to sell Levi's Outlet Products for a price termed "ORP," also known as "Our Retail Price," which supposedly represented a deep discount off of the false MSRP.

5. But the MSRPs used by Levi's, that represented to consumers the purported former price of Levi's Outlet Products, were a sham. In fact, Levi's manufactures certain goods for *exclusive sale* at its Levi's Outlets, which means that such items were never sold—or even intended to be sold—at the "MSRP" price listed on their labels. Levi's Outlet Products were never offered for sale in Levi's non-outlet stores in California, or any other state, or in non-outlet retailers carrying Levi's products.

6. The MSRPs listed on Levi's Outlet MSRPs did not represent a former price at all—much less a former price in the preceding three months. They are fictional creations designed to enable Levi's phantom markdowns. The entire label – indeed the entire "outlet store" motif – is designed to falsely convince consumers that they are buying high quality Levi's products at a

1 reduced price. In fact, they are buying lower quality goods that were never offered or sold as genuine
2 quality Levi's clothing.

3 7. The Federal Trade Commission ("FTC") explicitly describes the fictitious pricing
4 scheme employed at Levi's Outlet stores as deceptive:

5 (a) Many members of the purchasing public believe that a manufacturer's list
6 price, or suggested retail price, is the price at which an article is generally
7 sold. Therefore, if a reduction from this price is advertised, many people will
8 believe that they are being offered a genuine bargain. To the extent that list or
9 suggested retail prices do not in fact correspond to prices at which a
10 substantial number of sales of the article in question are made, the
11 advertisement of a reduction may mislead the consumer. A former price is not
12 necessarily fictitious merely because no sales at the advertised price were
13 made. The advertiser should be especially careful, however, in such a case,
14 that the price is one at which the product was openly and actively offered for
15 sale, for a reasonably substantial period of time, in the recent, regular course
16 of her business, honestly and in good faith – and, of course, not for the
17 purpose of establishing a fictitious higher price on which a deceptive
18 comparison might be based.

19 (i) It bears repeating that the manufacturer, distributor or retailer must in every
20 case act honestly and in good faith in advertising a list price, and not with the
21 intention of establishing a basis, or creating an instrumentality, for a deceptive
22 comparison in any local or other trade area. For instance, a manufacturer may
23 not affix price tickets containing inflated prices as an accommodation to
24 particular retailers who intend to use such prices as the basis for advertising
25 fictitious price reductions.

26 16 C.F.R. § 233.3.

27 8. Similarly, California statutory and regulatory law expressly prohibits false pricing
28 schemes. *Business & Professions Code* § 17501, entitled "*Value determinations; Former price
advertisements*," states:

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

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

(emphasis added).

1 9. The Levi's Outlet pricing scheme was prominently displayed on all products
2 available for sale at Levi's Outlet stores in California. To illustrate, the merchandise price tag that
3 Plaintiff relied on is pictured below:



14 10. Upon information and belief, thousands of California consumers were victims of
15 Levi's deceptive, misleading and unlawful false pricing scheme and thousands more will be
16 deceived if the practices continue.

18 11. Levi's fraudulently concealed from, and intentionally failed to disclose to, Plaintiff
19 and others similarly situated, the truth about its MSRP prices and advertised price discounts from
20 those supposedly former prices.

21 12. Levi's false representations of MSRPs and false representations of purported savings,
22 discounts and bargains are objectively material to a reasonable consumer.

23 13. Plaintiff relied upon such false representations of MSRP prices and discounts when
24 purchasing apparel from a Levi's Outlet store in California. Plaintiff would not have made such
25 purchase, or would not have paid the amount he did, but for Levi's false representations of the
26 former price or MSRP of the items he purchased, as compared with the supposedly discounted
27 "OUR PRICE" at which Levi's offered the items for sale.
28

14. Plaintiff, in short, believed the truth of the price tags attached to the products he purchased at Levi's Outlet, which expressly told him that he was getting a terrific bargain on his purchase. In fact, he was not getting a bargain at all.

15. Through its false and deceptive marketing, advertising and pricing scheme, Levi's violated (and continues to violate) California law prohibiting advertising goods for sale as discounted from former prices which are false, and prohibiting misleading statements about the existence and amount of price reductions. Specifically, Levi's violated (and continues to violate) California's *Business & Professions Code* §§ 17200, *et seq.* (the "UCL"), California's *Business and Professions Code* §§ 17500, *et seq.* (the "FAL"), the California Consumers' Legal Remedies Act, *Civil Code* §§1750, *et seq.* (the "CLRA"), and the Federal Trade Commission Act ("FTCA"), which prohibits "unfair or deceptive acts or practices in or affecting commerce" and specifically prohibits false advertisements. 15 U.S.C. §§ 52(a) and 15 U.S.C. § 45(a)(1).

16. Plaintiff, individually and on behalf of all others similarly situated, seeks restitution and other equitable remedies, including an injunction under the UCL, FAL and CLRA.

PARTIES

17. Plaintiff, Donovan Farwell is an individual who is a citizen of the City of Los Angeles, County of Los Angeles, State of California. In reliance on Defendant's false and deceptive advertising, marketing and pricing schemes, Mr. Farwell purchased one pair of Slim Fit 511 Jeans, Size 36-30, from the Levi's Outlet located in Camarillo, California on August 3, 2014, and as detailed herein, was damaged as a result thereof.

18. Defendant Levi Strauss & Co., is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business at 155 Battery Street, San Francisco, CA 94111.

19. Defendant operates 20 Levi's Outlet stores in California.

JURISDICTION AND VENUE

20. Jurisdiction over this proceeding in California state court is pursuant to Article VI, section 10 of the California Constitution, which grants the state Superior Court “original jurisdiction in all causes except those given by statute to other trial courts.” The statutes under which this action is brought do not specify any other basis for jurisdiction.

21. The California Superior Court has jurisdiction over Levi’s because it is a California citizen and it has sufficient minimum contacts and nerve center(s) within California, and/or entities that have otherwise intentionally availed themselves of the California market so as to render the exercise of jurisdiction over it by the California court consistent with traditional notions of fair play and substantial justice. Furthermore, all Defendants have purposefully availed themselves of the benefits and protections of the laws within the State of California and within San Francisco County, having sufficient contacts such that the exercise of jurisdiction would be consistent with traditional notions of fair play and substantial justice. Plaintiff and all putative class members are also located in San Francisco County, State of California.

22. Venue is appropriate in San Francisco County as Levi’s has its primary business headquarters and its principal place of business located at 155 Battery Street, San Francisco, CA 94111.

FACTUAL ALLEGATIONS

23. Traditionally, retail outlet stores were located in remote areas and typically maintained an inventory of defective and excess merchandise. Customers often flocked to these outlets in hopes of finding steep discounts and bargains. See <http://www.forbes.com/sites/investopedia/2012/12/29/7-tips-for-outlet-mall-shopping/> (last visited August 11, 2014).

1 24. However, in an effort to increase profits, major retailers such as Levi have, without
2 notice to consumers, begun using company-owned “outlet” stores to sell made-for-outlet goods that
3 are never intended to be sold at non-outlet stores.

4 25. In California, such “outlet” stores are located in purpose-built malls touted as
5 “outlets,” or “premium outlets.” For example, Plaintiff Farwell purchased his Levi’s Outlet Products
6 at the Premium Outlets in Camarillo. The very term “outlet” conveys to reasonable consumers that
7 products are comprised of merchandise formerly offered for sale at full-price retail locations. The
8 location of Levi’s Outlets in “outlet” malls deceives reasonable consumers into believing they are
9 receiving true “outlet” merchandise, when they are not.

11 26. Instead, retailers like Levi’s Outlet create the illusion of traditional outlet discounts
12 and bargains by offering the made-for-outlet goods at prices reduced from fabricated, arbitrary, and
13 false prices. In short, outlet stores such as Levi’s Outlet are using false and fraudulent price
14 comparison tactics. *See* [http://www.buzzfeed.com/sapna/customers-finally-aware-that-most-outlet-](http://www.buzzfeed.com/sapna/customers-finally-aware-that-most-outlet-merchandise-is-now)
15 [merchandise-is-now](http://www.buzzfeed.com/sapna/customers-finally-aware-that-most-outlet-merchandise-is-now) (last visited August 11, 2014).

17 27. The intentional use of false and fraudulent price comparison tactics is increasingly
18 deceiving consumers in the market. To illustrate, on January 30, 2014, four Members of Congress
19 demanded an FTC investigation of misleading marketing practices by outlet stores across the United
20 States. The four Members of Congress described a pricing scheme similar to the one implemented at
21 Levi’s Outlet stores and stated, “[i]t is a common practice at outlet stores to advertise a retail price
22 alongside the outlet store price—even on made-for-outlet merchandise that does not sell at regular
23 retail locations. Since the item was never sold in the regular retail store or at the retail price, the
24 retail price is impossible to substantiate. We believe this practice may be a violation of the FTC’s
25 Guides Against Deceptive Pricing (16 CFR 233).” *See*
26 [http://www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-stores-may-be-](http://www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-stores-may-be-misleading-consumers)
27 [misleading-consumers](http://www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-stores-may-be-misleading-consumers) (last visited August 11, 2014).

1 28. This is precisely the practice used by Levi's.

2 **Plaintiff's Purchase**

3 29. On August 3, 2014, Plaintiff entered the Levi's Outlet located in Camarillo,
4 California. He observed that merchandise was advertised with price tags that represented a MSRP
5 price directly on top of a significantly reduced "ORP" or OUR RETAIL PRICE. Enticed by the idea
6 of paying significantly less than the MSRP charged outside of Levi's Outlets, Plaintiff was induced
7 to purchase one pair of Slim Fit 511 Jeans, Size 36-30 with a MSRP of \$98.00 and an OUR PRICE
8 of \$49.99.
9

10 30. By purchasing the jeans for the OUR PRICE of \$49.99 instead of the MSRP price of
11 \$98.00, Plaintiff was led to believe that he saved almost 50% on his purchase. In reality, Levi's
12 never intended, nor did they ever, sell the jeans at the represented MSRP price. Thus, Plaintiff was
13 deceived by the false price comparison into making a full retail purchase with no discount.

14 31. Plaintiff's and class members' reliance on Defendant's false price comparison
15 advertising was reasonable. In fact, empirical marketing studies provide an incentive for retailers to
16 engage in this false and fraudulent behavior:
17

18 [c]omparative price advertising offers consumers a basis for comparing the relative
19 value of the product offering by suggesting a monetary worth of the product and any
20 potential savings...[A] comparative price advertisement can be construed as
deceptive if it makes any representation,... or involves any practice that may
materially mislead a reasonable consumer.

21 *Comparative Price Advertising: Informative or Deceptive?*, Dhruv Grewal and Larry D. Compeau,
22 *Journal of Public Policy & Marketing* , Vol. 11, No. 1, at 52 (Spring 1992). In short:
23

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

27 *Id.* at 55, 56.
28

32. Despite the MSRP/OUR PRICE Scheme used at Levi's Outlets, Plaintiff would purchase Levi's Outlet Products in the future from Levi's Outlet stores and/or other retail establishments, if product labels accurately reflect "former" prices and discounts. Currently, however, Plaintiff and California consumers have no realistic way to know which—if any—of Levi's label price comparisons are not false or deceptive. If the Court were to issue an injunction ordering Levi to comply with California's comparative price advertising laws, and prohibiting Levi's use of the deceptive practices discussed herein, Plaintiff would likely shop for Levi's Outlet Products again in the near future at Levi's Outlets.

CLASS ALLEGATIONS

33. Plaintiff incorporates and realleges by reference each and every allegation contained in the preceding paragraphs as if set forth herein in full.

34. Plaintiff brings this action on behalf of herself and the members of the proposed Class. The proposed Class consists of:

All individuals residing in the State of California who, within the applicable statute of limitations preceding the filing of this action, purchased apparel from a Levi's Outlet store.

35. Excluded from the Class are Levi's, its parents, subsidiaries, affiliates, officers and directors, any entity in which Levi's has a controlling interest, all customers who make a timely election to be excluded, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

36. The members of the Class are so numerous that joinder is impractical. The Class consists of thousands of members, the precise number which is within the knowledge of and can be ascertained only by resort to Levi's records.

1 37. There are numerous questions of law and fact common to the Class which
2 predominate over any questions affecting only individual members of the Class. Among the
3 questions of law and fact common to the Class are:

- 4 (a) Whether, during the Class Period, Levi's used false price representations and falsely
5 advertised price discounts on its merchandise sold at Levi's Outlet stores;
- 6 (b) Whether, during the Class Period, the MSRP prices advertised by Levi's were the
7 prevailing market prices for the respective merchandise sold at Levi's Outlet stores
8 during the three month periods preceding the dissemination and/or publication of the
9 advertised former prices;
- 10 (c) Whether Levi's use of false or deceptive price advertising constituted false
11 advertising under California Law;
- 12 (d) Whether Levi's engaged in unfair, unlawful and/or fraudulent business practices
13 under California law;
- 14 (e) Whether Levi's misrepresented and/or failed to disclose material facts about its
15 product pricing and discounts.
- 16 (f) Whether Levi's has made false or misleading statements of fact concerning the
17 reasons for, existence of, or amounts of price reductions;
- 18 (g) Whether Levi's conduct, as alleged herein, was intentional and knowing;
- 19 (h) Whether Class members are entitled to damages and/or restitution, and in what
20 amount;
- 21 (i) Whether Levi's is likely to continue using false, misleading or illegal price
22 comparisons such that an injunction is necessary; and
- 23 (j) Whether Plaintiff and Class members are entitled to an award of reasonable attorneys'
24 fees, pre-judgment interest and costs of suit.

1 38. Plaintiff's claims are typical of the claims of the members of the Class and, like all
2 members of the Class, purchased goods from a Levi's Outlet that falsely conveyed a MSRP price
3 and a fictitious discount. Accordingly, Plaintiff has no interests antagonistic to the interests of any
4 other member of the Class.

5 39. Plaintiff is a representative who will fully and adequately assert and protect the
6 interests of the Class, and has retained counsel who is experienced in prosecuting class actions.
7 Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the
8 interests of the Class.
9

10 40. A class action is superior to all other available methods for the fair and efficient
11 adjudication of this lawsuit, because individual litigation of the claims of all members of the Class is
12 economically unfeasible and procedurally impracticable. While the aggregate damages sustained by
13 the Class are in the millions of dollars, the individual damages incurred by each member of the Class
14 resulting from Levi's wrongful conduct are too small to warrant the expense of individual lawsuits.
15 The likelihood of individual Class members prosecuting their own separate claims is remote, and,
16 even if every member of the Class could afford individual litigation, the court system would be
17 unduly burdened by individual litigation of such cases.
18

19 41. The prosecution of separate actions by members of the Class would create a risk of
20 establishing inconsistent rulings and/or incompatible standards of conduct for Levi's. For example,
21 one court might enjoin Levi from performing the challenged acts, whereas another might not.
22 Additionally, individual actions may be dispositive of the interests of the Class, although certain
23 class members are not parties to such actions.
24

25 42. The conduct of Levi's is generally applicable to the Class as a whole and Plaintiff
26 seeks, *inter alia*, equitable remedies with respect to the Class as a whole. As such, the systematic
27 policies and practices of Levi's make declaratory relief with respect to the Levi's California class as
28 a whole appropriate.

COUNT I
(Violation of the “Unfair” Prong of the UCL)

43. Plaintiff incorporates and realleges by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

44. 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. *Business & Professions Code* § 17200.

45. A business act or practice is “unfair” under the UCL if the reasons, justifications and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.

46. Levi’s has violated the “unfair” prong of the UCL by representing a false MSRP price and corresponding OUR PRICE for goods exclusively manufactured for sale at Levi’s Outlet stores. As a result, the inflated MSRP and corresponding OUR PRICE was nothing more than a false, misleading and deceptive illusion of a discount.

47. These acts and practices are unfair because they caused Plaintiff, and are likely to cause consumers, to falsely believe that Levi’s Outlet is offering value, discounts or bargains from the prevailing market worth of the products sold that did not, in fact, exist. As a result, purchasers, including Plaintiff, reasonable perceived that they were receiving products that regularly sold in the non-outlet retail marketplace at substantially higher prices (and were, therefore, worth more) than what they paid. This perception has induced reasonable purchasers, including Plaintiff, to buy such products, which they otherwise would not have purchased.

48. The gravity of the harm to members of the Class resulting from these unfair acts and practices outweighed any conceivable reasons, justifications and/or motives of Levi’s for engaging in such deceptive acts and practices. By committing the acts and practices alleged above, Levi’s engages in unfair business practices within the meaning of California Business & Professions Code §§ 17200, *et seq.*

49. Through its unfair acts and practices, Levi's has improperly obtained money from Plaintiff and the Class. As such, Plaintiff requests that this court cause Levi to restore this money to Plaintiff and all Class members, and to enjoin Levi from continuing to violate the UCL as discussed herein and/or from violating the UCL in the future. Otherwise, Plaintiff and the Class may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

COUNT II
(Violation of the “Fraudulent” Prong of the UCL)

50. Plaintiff incorporates and realleges by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

51. 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. & Pro. Code § 17200.

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

53. Levi's Outlet labels and advertising materials concerning false former prices were fraudulent within the meaning of the UCL because they deceived Plaintiff, and were likely to deceive members of the class, into believing that Levi's was offering value, discounts or bargains at Levi's Outlet stores from the prevailing market value or worth of the products sold that did not, in fact, exist.

54. Levi's deceived consumers into believing that it was offering value, discounts or bargains at Levi's Outlet stores from the prevailing market value or worth of the products sold that did not, in fact, exist.

55. As a result, purchasers, including Plaintiff, reasonably perceived that they were receiving products that regularly sold in the non-outlet retail marketplace at substantially higher prices (and were, therefore, worth more) than what they paid. This perception induced reasonable

1 purchasers, including Plaintiff, to buy such products from Levi's Outlet stores, which they otherwise
2 would not have purchased.

3 56. Levi's acts and practices as described herein have deceived Plaintiff and were highly
4 likely to deceive members of the consuming public. Specifically, in deciding to purchase
5 merchandise from a Levi's Outlet store, Plaintiff relied on Levi's misleading and deceptive
6 representations regarding its MSRP and OUR PRICE. Each of these factors played a substantial role
7 in Plaintiff's decision to purchase those products, and Plaintiff would not have purchased those items
8 in the absence of Levi's misrepresentations. Accordingly, Plaintiff suffered monetary loss as a direct
9 result of Levi's pricing practices described herein.
10

11 57. As a result of the conduct described above, Levi's has been unjustly enriched at the
12 expense of Plaintiff and members of the proposed Class. Specifically, Levi's has been unjustly
13 enriched by obtaining revenues and profits that it would not otherwise have obtained absent its false,
14 misleading and deceptive conduct.
15

16 58. Through its unfair acts and practices, Levi's has improperly obtained money from
17 Plaintiff and the Class. As such, Plaintiff requests that this court cause Levi's to restore this money
18 to Plaintiff and all Class members, and to enjoin Levi's from continuing to violate the UCL as
19 discussed herein and/or from violating the UCL in the future. Otherwise, Plaintiff and the Class may
20 be irreparably harmed and/or denied an effective and complete remedy if such an order is not
21 granted.
22

23 **COUNT III**
(Violation of the "Unlawful" Prong of the UCL)

24 59. Plaintiff incorporates and realleges by reference each and every allegation contained
25 in the preceding paragraphs as if fully set forth herein.
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27
28

1 60. The UCL defines unfair business competition to include any “unlawful, unfair or
2 fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising.
3 *Business & Professions Code* § 17200.

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

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

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

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

16 63. *Civil Code* § 1770, subsection (a)(9), prohibits a business from “[a]dvertising goods
17 or services with intent not to sell them as advertised,” and subsection (a)(13) prohibits a business
18 from “[m]aking false or misleading statements of fact concerning reasons for, existence of, or
19 amounts of price reductions.”

20
21 64. Levi’s also violated and continues to violate *Business & Professions Code* § 17501,
22 and *Civil Code* § 1770, sections (a)(9) and (a)(13) by advertising false discounts from purported
23 former prices that were, in fact, not the prevailing market prices within three months next preceding
24 the publication and dissemination of advertisements containing the false former prices.

25 65. The FTCA prohibits “unfair or deceptive acts or practices in or affecting commerce”
26 and specifically prohibits false advertisements. (15 U.S.C. § 45(a)(1) and 15 U.S.C. § 52(a)). The
27
28

1 FTC has established Guidelines which prohibit false pricing schemes, similar to Levi's MSRP/OUR
2 PRICE Scheme in material respects, as deceptive practices that would violate the FTCA:

- 3 (a) Many members of the purchasing public believe that a manufacturer's list
4 price, or suggested retail price, is the price at which an article is generally
5 sold. Therefore, if a reduction from this price is advertised, many people will
6 believe that they are being offered a genuine bargain. To the extent that list or
7 suggested retail prices do not in fact correspond to prices at which a
8 substantial number of sales of the article in question are made, the
9 advertisement of a reduction may mislead the consumer. A former price is not
10 necessarily fictitious merely because no sales at the advertised price were
11 made. The advertiser should be especially careful, however, in such a case,
12 that the price is one at which the product was openly and actively offered for
13 sale, for a reasonably substantial period of time, in the recent, regular course
14 of her business, honestly and in good faith – and, of course, not for the
15 purpose of establishing a fictitious higher price on which a deceptive
16 comparison might be based.
- 17 (i) It bears repeating that the manufacturer, distributor or retailer must in every
18 case act honestly and in good faith in advertising a list price, and not with the
19 intention of establishing a basis, or creating an instrumentality, for a deceptive
20 comparison in any local or other trade area. For instance, a manufacturer may
21 not affix price tickets containing inflated prices as an accommodation to
22 particular retailers who intend to use such prices as the basis for advertising
23 fictitious price reductions.

16 C.F.R. § 233.3.

16 66. Levi's use of and reference to a materially false MSRP price in connection with its
17 marketing and advertisements concerning the merchandise sold at Levi's Outlet stores violated and
18 continues to violate the FTCA, 15 U.S.C. § 45(a)(1) and 15 U.S.C. § 52(a), as well as FTC
19 Guidelines published at 16 C.F.R. § 233.

21 67. As a result of the conduct described above, Levi's has been unjustly enriched at the
22 expense of Plaintiff and members of the proposed Class. Specifically, Levi's has been unjustly
23 enriched by obtaining revenues and profits that it would not otherwise have obtained absent its false,
24 misleading and deceptive conduct.

26 68. Through its unlawful acts and practices, Levi's has improperly obtained money from
27 Plaintiff and the Class. As such, Plaintiff requests that this court cause Levi's to restore this money
28 to Plaintiff and all Class members, and to enjoin Levi's from continuing to violate the UCL as

1 discussed herein and/or from violating the UCL in the future. Otherwise, Plaintiff and the Class may
2 be irreparably harmed and/or denied an effective and complete remedy if such an order is not
3 granted.

4 **COUNT IV**
5 **(Violation of the California False Advertising Law,**
6 **California Business & Professions Code Sections 17500, *et seq.*)**

6 69. Plaintiff incorporates and realleges by reference each and every allegation contained
7 in the preceding paragraphs as if fully set forth herein.

8 70. California's *Business and Professions Code* §§ 17500, *et seq.* prohibits unfair,
9 deceptive, untrue, or misleading advertising, including, but not limited to, false statements as to
10 worth, value and former price.

11 71. Levi's practice of advertising MSRP prices on exclusive, made for Levi's Outlet
12 merchandise, which were materially greater than the actual prices of those products was an unfair,
13 deceptive and misleading advertising practice because it gave the false impression that the products
14 sold at Levi's Outlet stores were regularly sold in the non-outlet retail marketplace at substantially
15 higher prices (and were, therefore, worth more) than they actually were. In fact, the exclusive, made
16 for Levi's Outlet merchandise did not have a prevailing market price anywhere close to the MSRP
17 price advertised because the merchandise was always sold under the OUR PRICE or discounted
18 further from the OUR PRICE when placed on sale at the Levi's Outlets.

19 72. Through its unfair acts and practices, Levi's has improperly obtained money from
20 Plaintiff and the Class. As such, Plaintiff requests that this court cause Levi to restore this money to
21 Plaintiff and all Class members, and to enjoin Levi's from continuing to violate the FAL as
22 discussed herein and/or from violating the FAL in the future. Otherwise, Plaintiff and the Class may
23 be irreparably harmed and/or denied an effective and complete remedy if such an order is not
24 granted.
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COUNT V
**(Violation of the Consumers Legal Remedies Act,
California Civil Code Sections 1750, et seq.: Injunctive Relief)**

73. Plaintiff incorporates and realleges by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

74. This cause of action is brought pursuant to the CLRA.

75. Plaintiff and each member of the proposed class are “consumers” within the meaning of California Civil Code § 1761(d).

76. Levi’s selling of goods manufactured exclusively for sale at Levi’s Outlets to Plaintiff and the Class were “transactions” within the meaning of California *Civil Code* § 1761(e). The products purchased by Plaintiff and the Class are “goods” within the meaning of *Civil Code* §1761(a).

77. As described herein, Levi’s violated the CLRA by falsely representing the nature, existence and amount of price discounts by fabricating inflated labeled MSRP prices. Such a pricing scheme is in violation of *Civ. Code* § 1770, subsection (a)(9) (“[a]dvertising goods or services with intent not to sell them as advertised”) and subsection (a)(13) (“[m]aking false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions”).

78. Plaintiff relied on Levi’s false representations in deciding to purchase goods at Levi’s Outlet. Plaintiff would not have purchased such items absent Levi’s unlawful conduct.

79. Plaintiff requests this Court enjoin Levi from continuing to violate the CLRA as discussed herein and/or from violating the UCL in the future. Otherwise, Plaintiff, the Class and members of the general public may be irreparably harmed and/or denied effective and complete remedy if such an order is not granted.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the members of the Class demand a jury trial on all claims so triable and judgment against Defendant, Levi Strauss & Co., as follows:

1 A. An order certifying that this action may be maintained as a class action, that Plaintiff
2 be appointed Class Representative and Plaintiff's counsel be appointed Class Counsel;

3 B. Pursuant to Plaintiff's first four causes of action, a judgment awarding Plaintiff and
4 all members of the Class restitution and/or other equitable relief, including, without limitation,
5 restitutionary disgorgement of all profits and unjust enrichment that Levi's obtained from Plaintiff
6 and the Class as a result of its unlawful, unfair and fraudulent business practices described herein;

7 C. An order enjoining Defendant from continuing to violate the UCL, False Advertising
8 Law and CLRA as described herein.
9

10 D. A judgment awarding Plaintiff his costs of suit; including reasonable attorneys' fees
11 pursuant to California Civil Code § 1780(d), Code of Civil Procedure § 1021.5 and as otherwise
12 permitted by statute; and pre and post-judgment interest; and

13 E. Such other and further relief as may be deemed necessary or appropriate.
14

15 DATED: August 22, 2014

LAW OFFICES OF WAYNE S. KREGER, P.A.

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18 By: 

Wayne S. Kreger
Attorneys for Plaintiffs

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21 **JURY TRIAL DEMANDED**

22 PLAINTIFFS demand a jury trial on all triable issues.
23

24 DATED: August 22, 2014

LAW OFFICES OF WAYNE S. KREGER, P.A.

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26
27 By: 

Wayne S. Kreger
Attorneys for Plaintiffs
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