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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KEVIN BRANCA, individually and on)
behalf of all others similarly situated,)

Plaintiff,)

vs.)

NORDSTROM, INC.,)

Defendant.)

Case No. 3:14-cv-02062-MMA

**FIRST AMENDED CLASS
ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL**

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.*

1 **CLASS ACTION COMPLAINT**

2 Plaintiff, KEVIN BRANCA (“Plaintiff”), on behalf of himself and all others
3 similarly situated, alleges the following based upon personal knowledge as to
4 allegations regarding Plaintiff and on information and belief as to other allegations:
5

6 **INTRODUCTION**

7
8 1. This is a civil class action seeking monetary damages, restitution,
9 injunctive and declaratory relief from Defendant, Nordstrom, Inc. (“Nordstrom”),
10 arising from its deceptive and misleading labeling and marketing of merchandise it
11 sells at its company-owned Nordstrom Rack stores.
12

13 2. During the Class Period (defined below), Nordstrom misrepresented the
14 existence, nature, and amount of price discounts on products: (a) manufactured
15 exclusively for Nordstrom Rack and sold at Nordstrom Rack; and (b) manufactured by
16 other brands and sold at Nordstrom Rack (collectively “Nordstrom Rack Products”)
17 by purporting to offer discounts off of fabricated former prices. The term “Nordstrom
18 Rack Products” expressly excludes products sold at Nordstrom Rack stores that were
19 actually previously offered for sale at Nordstrom main line retail stores.
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22 3. Specifically, Nordstrom represented—on the price tags of its Nordstrom
23 Rack Products—“Compare At” prices that were overstated and did not represent a
24 bona fide price at which Nordstrom formerly sold Nordstrom Rack Products. Nor
25 were the advertised “Compare At” prices prevailing market retail prices within three
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1 months immediately preceding the publication of the advertised former prices, as
2 required by California law.

3 4. Having touted false “Compare At” prices, Nordstrom then offered, on the
4 same sales tags, to sell Nordstrom Rack Products for prices that supposedly
5 represented a deep percentage discount off of the false “Compare At” prices.
6

7 5. But the “Compare At” prices used by Nordstrom were a sham. In fact,
8 Nordstrom sells certain goods manufactured by third-party designers for *exclusive sale*
9 at its Nordstrom Rack stores and other outlet stores, which means that such items were
10 never sold—or even intended to be sold—at the “Compare At” prices advertised on
11 the price tags. Nordstrom Rack Products were never offered for sale in Nordstrom’s
12 main line retail stores in California, or in any other state. Nordstrom Rack’s website,
13 however, falsely suggests that the Nordstrom Rack Products are equivalent to the
14 products sold at Nordstrom’s main line retail stores: “Why Shop the Rack? Because
15 we have the most current trends and the brands you love for 30-70% off original
16 prices—each and every day.” The truth is that the Nordstrom Rack Products are not
17 discounted off “original prices.” The Nordstrom Rack Products are *never* offered for
18 sale at the Nordstrom main line retail stores and are typically of lesser quality.
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23 6. The “Compare At” prices listed on Nordstrom Rack Products’ tags did
24 not represent a former price at all—much less a former price in the preceding three
25 months. They are fictional amounts intentionally selected so that Nordstrom Rack
26 could advertise phantom markdowns. The entire price tag – indeed the entire “outlet
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1 store” motif – is designed to falsely convince consumers that they are buying main
2 line retail designer brand products at reduced prices. In fact, consumers are buying
3 lower quality goods that were never offered or sold as genuine quality designer brand
4 clothing and accessories.

6 7. The Federal Trade Commission (“FTC”) explicitly describes the
7 fictitious pricing scheme employed at Nordstrom Rack stores as deceptive:

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

18 16 C.F.R. § 233.1.

20 8. Similarly, California statutory and regulatory law expressly prohibits
21 false pricing schemes. *Business & Professions Code* § 17501, entitled “*Value*
22 *determinations; Former price advertisements,*” states:

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

28 *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*

1 *of the advertisement* or unless the date when the alleged former price did
2 prevail is clearly, exactly and conspicuously stated in the advertisement.
3 (emphasis added).

4 9. The Nordstrom Rack pricing scheme was prominently displayed on all
5 products available for sale at Nordstrom Rack stores in California. To illustrate, a
6 merchandise price tag for an item sold at Nordstrom Rack is pictured below:



16 10. Upon information and belief, thousands of California consumers were
17 victims of Nordstrom’s deceptive, misleading, and unlawful false pricing scheme and
18 thousands more will be deceived if the practices continue.

19
20 11. Nordstrom fraudulently concealed from, and intentionally failed to
21 disclose to, Plaintiff, and others similarly situated, the truth about its “Compare At”
22 prices and advertised price discounts from those supposedly former prices.

23
24 12. Nordstrom’s false representations of original prices and false
25 representations of purported savings, discounts, and bargains are objectively material
26 to a reasonable consumer.
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1 13. Plaintiff relied upon such false representations of “Compare At” prices
2 and discounts when purchasing apparel from a Nordstrom Rack store in California.
3 Plaintiff would not have made such purchase, or would not have paid the amount he
4 did, but for Nordstrom’s false representations of the former price of the items he
5 purchased, as compared to the supposedly discounted “Compare At” price and
6 corresponding “savings” at which Nordstrom Rack offered the items for sale.
7

8
9 14. Plaintiff, in short, believed the truth of the price tags attached to the
10 products he purchased at Nordstrom Rack, which expressly advertised that he was
11 getting a significant discount on his purchase. In fact, he was not getting a bargain at
12 all.
13

14 15. Through its false and deceptive marketing, advertising, and pricing
15 scheme, Nordstrom violated (and continues to violate) California law prohibiting
16 advertising goods for sale as discounted from former prices which are false, and
17 prohibiting misleading statements about the existence and amount of price reductions.
18 Specifically, Nordstrom violated (and continues to violate) California’s *Business &*
19 *Professions Code* §§ 17200, *et seq.* (the “UCL”), California’s *Business and*
20 *Professions Code* §§ 17500, *et seq.* (the “FAL”), the California Consumers’ Legal
21 Remedies Act, *Civil Code* §§1750, *et seq.* (the “CLRA”), and the Federal Trade
22 Commission Act (“FTCA”), which prohibits “unfair or deceptive acts or practices in
23 or affecting commerce” and specifically prohibits false advertisements. 15 U.S.C. §§
24 52(a) and 15 U.S.C. § 45(a)(1).
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1 16. Plaintiff, individually and on behalf of all others similarly situated, seeks
2 restitution and other equitable remedies, including an injunction under the UCL, FAL
3 and CLRA.
4

5 **PARTIES**

6 17. Plaintiff, Kevin Branca, is an individual who is a citizen of the city of
7 San Marcos, in the county of San Diego, California. In reliance on Nordstrom's false
8 and deceptive advertising, marketing, and pricing schemes, Mr. Branca purchased
9 three items from Nordstrom Rack located in San Marcos, California, on July 12, 2013,
10 and as detailed herein, was damaged as a result thereof.
11
12

13 18. Defendant Nordstrom, Inc. is a corporation duly organized and existing
14 under the laws of the State of Washington, with its principal place of business at 1617
15 Sixth Avenue, Seattle, WA, 98101.
16

17 19. As of 2013, Nordstrom operates thirty seven (37) Nordstrom Rack stores
18 in California.
19

20 **JURISDICTION AND VENUE**

21 20. This Court has original jurisdiction of this action under the Class Action
22 Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has
23 original jurisdiction because the aggregate claims of the members of the putative Class
24 exceed \$5 million, exclusive of costs, and at least one of the members of the proposed
25 Class is a citizen of a different state than Nordstrom, Inc.
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1 21. The Southern District of California has personal jurisdiction over
2 Nordstrom, Inc. because Nordstrom, Inc. is licensed and doing business in San Diego
3 County, State of California, authorized to do business in California and registered
4 with the California Secretary of State, and has sufficient minimum contacts with
5 California, having intentionally availed itself of the California market so as to render
6 the exercise of jurisdiction over it by this District Court consistent with traditional
7 notions of fair play and substantial justice.
8
9

10 22. Venue is proper in the United States District Court, Southern District of
11 California pursuant to 28 U.S.C. § 1391, because Plaintiff is a resident of San Diego
12 County, California; Defendant operates its stores in San Diego County, California and
13 because a the events giving rise to the claims occurred in San Diego County,
14 California.
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16

17 **FACTUAL ALLEGATIONS**

18 23. Traditionally, retail outlet stores were located in remote areas and
19 typically maintained an inventory of defective and excess merchandise. Customers
20 often flocked to these outlets in hopes of finding steep discounts and bargains. *See*
21 <http://www.forbes.com/sites/investopedia/2012/12/29/7-tips-for-outlet-mall-shopping/>
22 (last visited August 11, 2014).
23
24

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

3 25. The very term “outlet” conveys to reasonable consumers that products
4 are comprised of merchandise formerly offered for sale at full-price retail locations.
5 Similarly, the Nordstrom Rack name connotes a store selling discounted outlet
6 clothing. Indeed, Nordstrom Rack’s website describes Nordstrom Rack as “the off-
7 price retail division of Nordstrom Inc., which was founded in 1901 in Seattle,
8 Washington by John W. Nordstrom.”
9

10 26. Instead, retailers like Nordstrom create the illusion of traditional outlet
11 discounts and bargains by offering the made-for-outlet goods at prices reduced from
12 fabricated, arbitrary, and false prices. In short, outlet stores such as Nordstrom Rack
13 are using false and fraudulent price comparison tactics. See
14 [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) (“While price tags on outlet goods
16 may list a manufacturer-suggested retail price (known as an MSRP) or, a ‘valued at’
17 price, that’s little more than a number ascribed by the retailer and doesn’t mean it was
18 ever sold for such a sum in an actual full-price retail location. (Giant discounters like
19 T.J. Maxx and Nordstrom Rack also label prices this way.)”).
20
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24

25 27. The intentional use of false and fraudulent price comparison tactics is
26 increasingly deceiving consumers in the market. To illustrate, on January 30, 2014,
27 four Members of Congress demanded an FTC investigation of misleading marketing
28

1 practices by outlet stores across the United States. The four Members of Congress
2 described a pricing scheme similar to the one implemented at Nordstrom Rack stores
3 and stated, “[i]t is a common practice at outlet stores to advertise a retail price
4 alongside the outlet store price—even on made-for-outlet merchandise that does not
5 sell at regular retail locations. Since the item was never sold in the regular retail store
6 or at the retail price, the retail price is impossible to substantiate. We believe this
7 practice may be a violation of the FTC’s Guides Against Deceptive Pricing (16 CFR
8 233).” See [http://www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-](http://www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-stores-may-be-misleading-consumers)
9 [stores-may-be-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).

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13 28. This is precisely the practice used by Nordstrom in its Nordstrom Rack
14 stores.

15 **Plaintiff’s Purchase**

16
17 29. On July 12, 2013, Plaintiff entered the Nordstrom Rack located in San
18 Marcos, California. He observed that merchandise was advertised with price tags that
19 represented “Compare At” prices that were directly on top of prices significantly
20 reduced by a percentage amount. Enticed by the idea of paying significantly less than
21 the “Compare At” price charged outside of Nordstrom Rack, Plaintiff was induced to
22 purchase one pair of cargo shorts with a “Compare At” price of \$49.50 and an actual
23 price of \$29.97.
24

25
26 30. By purchasing the cargo shorts for the \$29.97 instead of the “Compare
27 At” price of \$49.50, Plaintiff was led to believe that he saved at least 60% on his
28

1 purchase. In reality, Nordstrom never intended, nor did it ever, sell the cargo shorts at
2 the represented “Compare At” price. Thus, Plaintiff was deceived by the false price
3 comparison into making a full retail purchase with no discount.
4

5 31. On the same date, Plaintiff made two other purchases at Nordstrom Rack.
6 Again, enticed by the idea of paying significantly less than the “Compare At” price
7 charged outside of Nordstrom Rack, Plaintiff was induced to purchase a hooded
8 sweatshirt with a “Compare At” price of \$65.00 and an actual price of \$29.97, as well
9 as one pair of pants with a “Compare At” price of \$150.00 and an actual price of
10 \$79.97.
11

12 32. By purchasing the hooded sweatshirt for the \$29.97 instead of the
13 “Compare At” price of \$65.00, Plaintiff was led to believe that he saved at least 46%
14 on his purchase. In reality, Nordstrom never intended, nor did it ever, sell the hooded
15 sweatshirt at the represented “Compare At” price. Thus, Plaintiff was deceived by the
16 false price comparison into making a full retail purchase with no discount.
17

18 33. By purchasing the pants for the \$79.97 instead of the “Compare At”
19 price of \$150.00, Plaintiff was led to believe that he saved at least 53% on his
20 purchase. In reality, Nordstrom never intended, nor did it ever, sell the pants at the
21 represented “Compare At” price. Thus, Plaintiff was deceived by the false price
22 comparison into making a full retail purchase with no discount.
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1 34. Plaintiff’s and class members’ reliance on Nordstrom’s false price
2 comparison advertising was reasonable. In fact, empirical marketing studies provide
3 an incentive for retailers to engage in this false and fraudulent behavior:
4

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

11 *Comparative Price Advertising: Informative or Deceptive?*, Dhruv Grewal and Larry
12 D. Compeau, *Journal of Public Policy & Marketing* , Vol. 11, No. 1, at 52 (Spring
13 1992). In short:

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

18 *Id.* at 55, 56.

19 35. Despite the “Compare At” scheme used at Nordstrom Rack stores,
20 Plaintiff would purchase Nordstrom Rack Products in the future from Nordstrom Rack
21 stores and/or other retail establishments, if price tags accurately reflect “former”
22 prices and discounts. Currently, however, Plaintiff and California consumers have no
23 realistic way to know which—if any—of Nordstrom Rack price tag comparisons are
24 not false or deceptive. If the Court were to issue an injunction ordering Nordstrom to
25 comply with California’s comparative price advertising laws, and prohibiting
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1 Nordstrom's use of the deceptive practices discussed herein, Plaintiff would likely
2 shop for Nordstrom Rack Products again in the near future at Nordstrom Rack stores.

3
4 **CLASS ALLEGATIONS**

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

7 37. Plaintiff brings this action on behalf of himself and the members of the
8 proposed Class. The proposed Class consists of:
9

10 All individuals residing in the State of California who, within the
11 applicable statute of limitations preceding the filing of this action,
12 purchased Nordstrom Rack Products.

13 38. Excluded from the Class are Nordstrom, its parents, subsidiaries,
14 affiliates, officers and directors, any entity in which Nordstrom has a controlling
15 interest, all customers who make a timely election to be excluded, governmental
16 entities, and all judges assigned to hear any aspect of this litigation, as well as their
17 immediate family members.
18

19 39. The members of the Class are so numerous that joinder is impractical.
20 The Class consists of thousands of members, the precise number which is within the
21 knowledge of and can be ascertained only by resort to Nordstrom's records.
22

23 40. There are numerous questions of law and fact common to the Class
24 which predominate over any questions affecting only individual members of the Class.
25 Among the questions of law and fact common to the Class are:
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- 1 (a) Whether, during the Class Period, Nordstrom used false price
2 representations and falsely advertised price discounts on Nordstrom Rack
3 Products;
4
- 5 (b) Whether, during the Class Period, the “Compare At” prices advertised by
6 Nordstrom were the prevailing market prices for the Nordstrom Rack
7 Products during the three month periods preceding the dissemination
8 and/or publication of the advertised former prices;
9
- 10 (c) Whether Nordstrom’s use of false or deceptive price advertising
11 constituted false advertising under California Law;
12
- 13 (d) Whether Nordstrom engaged in unfair, unlawful and/or fraudulent
14 business practices under California law;
15
- 16 (e) Whether Nordstrom misrepresented and/or failed to disclose material
17 facts about its product pricing and discounts.
18
- 19 (f) Whether Nordstrom made false or misleading statements of fact
20 concerning the reasons for, existence of, or amounts of price reductions;
21
- 22 (g) Whether Nordstrom’s conduct, as alleged herein, was intentional and
23 knowing;
24
- 25 (h) Whether Class members are entitled to damages and/or restitution, and in
26 what amount;
27
- 28 (i) Whether Nordstrom is likely to continue using false, misleading or illegal
price comparisons such that an injunction is necessary; and

1 (j) Whether Plaintiff and Class members are entitled to an award of
2 reasonable attorneys' fees, pre-judgment interest and costs of suit.

3 41. Plaintiff's claims are typical of the claims of the members of the Class
4 and, like all members of the Class, purchased goods from a Nordstrom Rack store that
5 falsely conveyed a "Compare At" price and a fictitious discount. Accordingly,
6 Plaintiff has no interests antagonistic to the interests of any other member of the Class.
7

8 42. Plaintiff is a representative who will fully and adequately assert and
9 protect the interests of the Class, and has retained counsel who is experienced in
10 prosecuting class actions. Accordingly, Plaintiff is an adequate representative and will
11 fairly and adequately protect the interests of the Class.
12

13 43. A class action is superior to all other available methods for the fair and
14 efficient adjudication of this lawsuit, because individual litigation of the claims of all
15 members of the Class is economically unfeasible and procedurally impracticable.
16 While the aggregate damages sustained by the Class are in the millions of dollars, the
17 individual damages incurred by each member of the Class resulting from Nordstrom's
18 wrongful conduct are too small to warrant the expense of individual lawsuits. The
19 likelihood of individual Class members prosecuting their own separate claims is
20 remote, and, even if every member of the Class could afford individual litigation, the
21 court system would be unduly burdened by individual litigation of such cases.
22

23 44. The prosecution of separate actions by members of the Class would
24 create a risk of establishing inconsistent rulings and/or incompatible standards of
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1 conduct for Nordstrom. For example, one court might enjoin Nordstrom from
2 performing the challenged acts, whereas another might not. Additionally, individual
3 actions may be dispositive of the interests of the Class, although certain class
4 members are not parties to such actions.
5

6 45. The conduct of Nordstrom is generally applicable to the Class as a whole
7 and Plaintiff seeks, *inter alia*, equitable remedies with respect to the Class as a whole.
8 As such, the systematic policies and practices of Nordstrom make declaratory relief
9 with respect to the Nordstrom California class as a whole appropriate.
10

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

13 46. Plaintiff incorporates and realleges by reference each and every
14 allegation contained in the preceding paragraphs as if fully set forth herein.
15

16 47. The UCL defines unfair business competition to include any “unlawful,
17 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or
18 misleading” advertising. *Business & Professions Code* § 17200.
19

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

24 49. Nordstrom has violated the “unfair” prong of the UCL by representing a
25 false “Compare At” price and corresponding percentage discount price for Nordstrom
26 Rack Products. As a result, the inflated “Compare At” price and corresponding
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1 percentage discount price was nothing more than a false, misleading and deceptive
2 illusion of a discount.

3 50. These acts and practices are unfair because they caused Plaintiff, and are
4 likely to cause consumers, to falsely believe that Nordstrom Rack is offering value,
5 discounts or bargains from the prevailing market worth of the products sold that did
6 not, in fact, exist. As a result, purchasers, including Plaintiff, reasonably perceived
7 that they were receiving products that regularly sold in the non-outlet retail
8 marketplace at substantially higher prices (and were, therefore, worth more) than what
9 they paid. This perception has induced reasonable purchasers, including Plaintiff, to
10 buy Nordstrom Rack Products, which they otherwise would not have purchased.

11 51. The gravity of the harm to members of the Class resulting from these
12 unfair acts and practices outweighed any conceivable reasons, justifications and/or
13 motives of Nordstrom Rack for engaging in such deceptive acts and practices. By
14 committing the acts and practices alleged above, Nordstrom engages in unfair
15 business practices within the meaning of California Business & Professions Code §§
16 17200, *et seq.*

17 52. Through its unfair acts and practices, Nordstrom has improperly obtained
18 money from Plaintiff and the Class. As such, Plaintiff requests that this court cause
19 Nordstrom to restore this money to Plaintiff and all Class members, and to enjoin
20 Nordstrom from continuing to violate the UCL as discussed herein and/or from
21 violating the UCL in the future. Otherwise, Plaintiff and the Class may be irreparably

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

3
4 **COUNT II**
(Violation of the “Fraudulent” Prong of the UCL)

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

7
8 54. The UCL defines unfair business competition to include any “unlawful,
9 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or
10 misleading” advertising. Cal. Bus. & Pro. Code § 17200.

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

14
15 56. The labels on the Nordstrom Rack Products and advertising materials
16 concerning false former prices were fraudulent within the meaning of the UCL
17 because they deceived Plaintiff, and were likely to deceive members of the class, into
18 believing that Nordstrom was offering value, discounts or bargains at Nordstrom Rack
19 stores from the prevailing market value or worth of the products sold that did not, in
20 fact, exist.

21
22 57. Nordstrom deceived consumers into believing that it was offering value,
23 discounts or bargains at Nordstrom Rack stores from the prevailing market value or
24 worth of the Nordstrom Rack products sold that did not, in fact, exist.

25
26 58. As a result, purchasers, including Plaintiff, reasonably perceived that they
27 were receiving products that regularly sold in the main line retail marketplace at
28

1 substantially higher prices (and were, therefore, worth more) than what they paid.
2 This perception induced reasonable purchasers, including Plaintiff, to buy Nordstrom
3 Rack Products, which they otherwise would not have purchased.
4

5 59. Nordstrom's acts and practices as described herein have deceived
6 Plaintiff and were highly likely to deceive members of the consuming public.
7 Specifically, in deciding to purchase Nordstrom Rack Products, Plaintiff relied on
8 Nordstrom's misleading and deceptive representations regarding its "Compare At"
9 and percentage discounted prices. Each of these factors played a substantial role in
10 Plaintiff's decision to purchase those products, and Plaintiff would not have purchased
11 those items in the absence of Nordstrom's misrepresentations. Accordingly, Plaintiff
12 suffered monetary loss as a direct result of Nordstrom's pricing practices described
13 herein.
14
15

16
17 60. As a result of the conduct described above, Nordstrom has been unjustly
18 enriched at the expense of Plaintiff and members of the proposed Class. Specifically,
19 Nordstrom has been unjustly enriched by obtaining revenues and profits that it would
20 not otherwise have obtained absent its false, misleading and deceptive conduct.
21

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

3 **COUNT III**
4 **(Violation of the “Unlawful” Prong of the UCL)**

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

7 63. The UCL defines unfair business competition to include any “unlawful,
8 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or
9 misleading” advertising. *Business & Professions Code* § 17200.

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

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

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

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

25 66. *Civil Code* § 1770, subsection (a)(9), prohibits a business from
26 “[a]dvertising goods or services with intent not to sell them as advertised,” and
27
28

1 subsection (a)(13) prohibits a business from “[m]aking false or misleading statements
2 of fact concerning reasons for, existence of, or amounts of price reductions.”

3 67. Nordstrom also violated and continues to violate *Business & Professions*
4 *Code* § 17501, and *Civil Code* § 1770, sections (a)(9) and (a)(13) by advertising false
5 discounts from purported former prices that were, in fact, not the prevailing market
6 prices within three months next preceding the publication and dissemination of
7 advertisements containing the false former prices.
8
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10 68. The FTCA prohibits “unfair or deceptive acts or practices in or affecting
11 commerce” and specifically prohibits false advertisements. (15 U.S.C. § 45(a)(1) and
12 15 U.S.C. § 52(a)). The FTC has established guidelines which prohibit false pricing
13 schemes, similar to Nordstrom’s “Compare At” scheme in material respects, as
14 deceptive practices that would violate the FTCA:
15
16

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

26 16 C.F.R. § 233.1.

27 69. Nordstrom’s use of and reference to a materially false “Compare At”
28 price in connection with its marketing and advertisements concerning the Nordstrom

1 Rack Products violated and continues to violate the FTCA, 15 U.S.C. § 45(a)(1) and
2 15 U.S.C. § 52(a), as well as FTC Guidelines published at 16 C.F.R. § 233.

3 70. As a result of the conduct described above, Nordstrom has been unjustly
4 enriched at the expense of Plaintiff and members of the proposed Class. Specifically,
5 Nordstrom has been unjustly enriched by obtaining revenues and profits that it would
6 not otherwise have obtained absent its false, misleading and deceptive conduct.
7

8 71. Through its unlawful acts and practices, Nordstrom has improperly
9 obtained money from Plaintiff and the Class. As such, Plaintiff requests that this
10 court cause Nordstrom to restore this money to Plaintiff and all Class members, and to
11 enjoin Nordstrom from continuing to violate the UCL as discussed herein and/or from
12 violating the UCL in the future. Otherwise, Plaintiff and the Class may be irreparably
13 harmed and/or denied an effective and complete remedy if such an order is not
14 granted.
15
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18 **COUNT IV**
19 **(Violation of the California False Advertising Law,**
20 **California Business & Professions Code Sections 17500, et seq.)**

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

23 73. California's *Business and Professions Code* §§ 17500, *et seq.* prohibits
24 unfair, deceptive, untrue, or misleading advertising, including, but not limited to, false
25 statements as to worth, value and former price.
26

27 74. Nordstrom's practice of advertising "Compare At" prices on price tags on
28 Nordstrom Rack Products, which were materially greater than the actual prices of

1 those products was an unfair, deceptive and misleading advertising practice because it
2 gave the false impression that the Nordstrom Rack Products were regularly sold in the
3 main line retail marketplace at substantially higher prices (and were, therefore, worth
4 more) than they actually were. In fact, the exclusive, Nordstrom Rack Products did
5 not have a prevailing market price anywhere close to the “Compare At” price
6 advertised because the merchandise was always sold under the percentage discounted
7 price when placed on sale at the Nordstrom Rack stores.
8
9

10 75. Through its unfair acts and practices, Nordstrom has improperly obtained
11 money from Plaintiff and the Class. As such, Plaintiff requests that this court cause
12 Nordstrom to restore this money to Plaintiff and all Class members, and to enjoin
13 Nordstrom from continuing to violate the FAL as discussed herein and/or from
14 violating the FAL in the future. Otherwise, Plaintiff and the Class may be irreparably
15 harmed and/or denied an effective and complete remedy if such an order is not
16 granted.
17
18

19 **COUNT V**
20 **(Violation of the Consumers Legal Remedies Act,**
21 **California Civil Code Sections 1750, et seq.: Injunctive Relief)**

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

24 77. This cause of action is brought pursuant to the CLRA.

25 78. Plaintiff and each member of the proposed class are “consumers” within
26 the meaning of California Civil Code § 1761(d).
27
28

1 79. Nordstrom's selling of Nordstrom Rack Products to Plaintiff and the
2 Class were "transactions" within the meaning of California *Civil Code* § 1761(e). The
3 Nordstrom Rack Products purchased by Plaintiff and the Class are "goods" within the
4 meaning of *Civil Code* §1761(a).
5

6 80. As described herein, Nordstrom violated the CLRA by falsely
7 representing the nature, existence and amount of price discounts by fabricating
8 inflated labeled "Compare At" prices. Such a pricing scheme is in violation of *Civ.*
9 *Code* § 1770, subsection (a)(9) ("[a]dvertising goods or services with intent not to sell
10 them as advertised") and subsection (a)(13) ("[m]aking false or misleading statements
11 of fact concerning reasons for, existence of, or amounts of price reductions").
12
13

14 81. Plaintiff relied on Nordstrom's false representations in deciding to
15 purchase Nordstrom Rack Products. Plaintiff would not have purchased Nordstrom
16 Rack Products absent Nordstrom's unlawful conduct.
17

18 82. On September 2, 2014, counsel for Plaintiff provided proper notice of his
19 intent to pursue claims under the CLRA and an opportunity to cure to Defendants via
20 certified mail to their principal place of business at 1617 Sixth Avenue, Seattle, WA,
21 98101. Counsel for Nordstrom acknowledged receipt of the notice and rejected the
22 opportunity to cure by letter dated October 7, 2014.
23
24

25 83. Plaintiff requests this Court enjoin Nordstrom from continuing to violate
26 the CLRA as discussed herein and/or from violating the UCL in the future and to
27 order restitution to Plaintiff and each member of the proposed class. Otherwise,
28

1 Plaintiff, the Class and members of the general public may be irreparably harmed
2 and/or denied effective and complete remedy if such an order is not granted.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff and the members of the Class demand a jury trial on
5 all claims so triable and judgment against Defendant, Nordstrom, Inc., as follows:
6

7 A. An order certifying that this action may be maintained as a class action,
8 that Plaintiff be appointed Class Representative and Plaintiff's counsel be appointed
9 Class Counsel;
10

11 B. A judgment awarding Plaintiff and all members of the Class restitution
12 and/or other equitable relief, including, without limitation, restitutionary disgorgement
13 of all profits and unjust enrichment that Nordstrom obtained from Plaintiff and the
14 Class as a result of its unlawful, unfair and fraudulent business practices described
15 herein;
16

17 C. An order enjoining Nordstrom from continuing to violate the UCL, False
18 Advertising Law and CLRA as described herein.
19

20 D. A judgment awarding Plaintiff his costs of suit; including reasonable
21 attorneys' fees pursuant to California Civil Code § 1780(d), Code of Civil Procedure §
22 1021.5 and as otherwise permitted by statute; and pre and post-judgment interest; and
23

24 E. Such other and further relief as may be deemed necessary or appropriate.
25
26
27
28

1 DATED: October 10, 2014

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

2
3 By: /s/ Wayne S. Kreger
4 Wayne S. Kreger
5 Attorneys for Plaintiff
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9 **JURY TRIAL DEMANDED**

10 PLAINTIFF demands a jury trial on all triable issues.

11 DATED: October 10, 2014

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

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13
14 By: /s/ Wayne S. Kreger
15 Wayne S. Kreger
16 Attorneys for Plaintiff
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