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

ALYSSA HEDRICK, on behalf of  
herself and all others similarly situated,

Plaintiff,

vs.

NEW YORK & COMPANY, INC., a  
DELAWARE corporation, NEW YORK  
& COMPANY STORES, INC., a NEW  
YORK corporation, and DOES 1- 50,  
inclusive,

Defendants.

Case No. '17CV1153 AJB JMA

**CLASS ACTION COMPLAINT**

- 1. Violation of California's Unfair Competition Laws ("UCL"); California Business & Professions Code Sections 17200, *et seq.***
- 2. Violation of California's False Advertising Laws ("FAL"); California Business & Professions Code Sections 17500, *et seq.***
- 3. Violations of California Consumer Legal Remedies Act ("CLRA"); Civ. Code § 1750, *et seq.***

**DEMAND FOR JURY TRIAL**

1 Plaintiff ALYSSA HEDRICK brings this action on behalf of herself and all others  
 2 similarly situated against Defendant NEW YORK & COMPANY, INC. and Defendant  
 3 NEW YORK & COMPANY STORES, INC. (collectively “Defendants”), and states:

4 **I. NATURE OF ACTION**

5 1. This is a class action regarding Defendants’ false and misleading  
 6 advertisement of regular “OUR PRICE” prices, and corresponding phantom “% Off”  
 7 savings on clothing, accessories, and fashion apparel sold in their New York & Company  
 8 outlet stores. During the Class Period (defined below), Defendants advertised false price  
 9 discounts for merchandise sold throughout their outlet stores.

10 2. During the Class Period, Defendants continually misled consumers by  
 11 advertising clothing, accessories, and fashion apparel at discounted, “% Off” prices in  
 12 their outlet stores. Defendants would offer substantial, continual discounts from their  
 13 “OUR PRICE” (*i.e.* the price listed on the original price tag) prices. Defendants’ “OUR  
 14 PRICE” prices in their outlet stores were false and misleading, because their “OUR  
 15 PRICE” prices were either never offered to the general public, or they were offered for an  
 16 inconsequential period and then continuously discounted, rendering the “OUR PRICE”  
 17 price false, evasive, and misleading. The advertised discounts were nothing more than  
 18 mere phantom markdowns because the represented “OUR PRICE” prices in the outlet  
 19 stores were artificially inflated and were not the predominant prices at which Defendants  
 20 offered for sale or sold their outlet store products.

21 3. Defendants list the “OUR PRICE” regular price<sup>1</sup> on the price tag for almost  
 22 every product offered for sale in their outlet stores. The represented “OUR PRICE” prices  
 23 on the price tags in the outlet stores were artificially inflated and were not the  
 24 predominant prices at which Defendants offered or sold their outlet store products. In fact,  
 25 based on Plaintiff’s investigation, Defendants never used or offered for sale their outlet

26 \_\_\_\_\_  
 27 <sup>1</sup> The false “regular” prices in the outlet stores are commonly referred to as “OUR  
 28 PRICE” prices. The words “OUR PRICE” are set forth on almost every price tag in the  
 outlet stores to indicate the “regular” price at which merchandise was purportedly offered  
 for sale.

1 store products at the “OUR PRICE” price. As such, the “OUR PRICE” price constitutes a  
2 sham regular price.

3 4. Defendants convey their deceptive pricing scheme to consumers through in-  
4 store signage offering steep discounts from the “OUR PRICE” prices listed in the outlet  
5 stores. *See* Exhibit A. For example, Defendants prominently display their pricing scheme  
6 by advertising deep discounts on various items throughout their outlet stores. There are  
7 typically large placard signs advertising the sale price or the “% Off” of the regular price  
8 tag price. *See* Exhibit A.

9 5. In the New York & Company outlet stores, Defendants convey their prices to  
10 consumers by advertising the “regular” price of the goods sold on the price tag as the  
11 “OUR PRICE.” *See* Exhibit A, p.4 (displaying the “OUR PRICE” price listed on the  
12 item’s price tag). Defendants then offer a “% Off” discount from the “OUR PRICE” price.  
13 *See* Exhibit A, pp. 1-3. However, the “OUR PRICE” price offered on the price tag is a  
14 false regular price because Defendants never sell their outlet store products at the “OUR  
15 PRICE” price. The “OUR PRICE” price is never actually the “regular” or market” price  
16 for the goods sold at the outlet stores; rather, it is a fictional price from which Defendants  
17 offer deep discounts to lure consumers into believing they are receiving a substantial  
18 discount. Defendants utilize the “OUR PRICE” price to mislead consumers into believing  
19 they are purchasing New York & Company merchandise that Defendants once sold or  
20 offered for sale at the “OUR PRICE” at their outlet stores.

21 6. Defendants manufacture and sell a completely different line of clothing in  
22 their outlet stores than those sold in their retail stores. The only channel Defendants ever  
23 sell the majority (90%) of their outlet store clothing is at the New York & Company outlet  
24 stores, not at Defendants’ traditional retail stores. Defendants manufacture their branded  
25 outlet clothing strictly for distribution in their outlet stores. It follows that Defendants  
26 never actually sell their outlet-made clothing at the “OUR PRICE” price. Instead, they  
27 uniformly and systematically at all times offer deep discounts from the “OUR PRICE”  
28 regular price tag prices.

1           7. By commonly offering 30%-50% off the “OUR PRICE” price tag in their  
2 outlet stores, Defendants create the false impression that consumers are getting goods  
3 traditionally sold in the New York & Company retail stores, when in fact they are  
4 purchasing clothing that Defendants manufactured specifically for their outlet stores. In  
5 reality, Defendants never sold their outlet store clothing at the “OUR PRICE” price; thus,  
6 the “OUR PRICE” price is simply a false regular price used to create the (false)  
7 impression of significant savings geared to encourage consumer purchasing.

8           8. Since Defendants’ “OUR PRICE” never existed, it certainly did not  
9 constitute the prevailing market retail price for such products within the three months next  
10 immediately preceding the publication of the sales tag. Because Defendants sell their own  
11 exclusive, branded merchandise, there is no other market price for the products other than  
12 the price set at Defendants’ outlet stores. The difference between the sale price and the  
13 “OUR PRICE” price constitutes a false savings percentage designed to lure consumers  
14 into purchasing products they believe are significantly discounted.

15           9. Through their false and misleading marketing, advertising and pricing  
16 scheme, Defendants violated, and continue to violate California law prohibiting  
17 advertising goods for sale as discounted from former prices, which are false, and  
18 prohibiting misleading statements about the existence of and amount of price reductions.  
19 Specifically, Defendants violated, and continue to violate California’s Business &  
20 Professions Code §§ 17200, *et seq* (the “UCL”), California’s Business & Professions  
21 Code §§ 17500, *et seq* (the “FAL”), the California Consumers’ Legal Remedies Act,  
22 California Civil Code §§ 1750, *et seq* (the “CLRA”), and the Federal Trade Commission  
23 Act (“FTCA”), which prohibits “unfair or deceptive acts or practices in or affecting  
24 commerce” (15 U.S.C. § 45(a)(1)) and false advertisements. 15 U.S.C. § 52(a).

25           10. Plaintiff brings this action on behalf of herself and other similarly situated  
26 consumers who have purchased one or more clothing, accessories, and fashion apparel at  
27 Defendants’ outlet stores that were deceptively represented as discounted from false  
28 regular prices in order to halt the dissemination of this false, misleading, and deceptive

price scheme, to correct the false and misleading perception it has created in the minds of consumers, and to obtain redress for those who have purchased Defendants' products. Plaintiff seeks restitution and other equitable remedies under the UCL and FAL; and restitution and damages under the CLRA.

## **II. JURISDICTION AND VENUE**

11. This Court has original jurisdiction of this Action pursuant to the Class Action Fairness Act, 28 U.S.C §1332 (d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and at least some members of the proposed Class have a different citizenship from Defendants.

12. The Southern District of California has personal jurisdiction over Defendants named in this action because Defendants conduct business in the State of California. Defendants have sufficient minimum contacts in California, and/or otherwise intentionally avail themselves of the California market through the ownership and operation of 47 outlet stores within the State of California.

13. Venue is proper under 28 U.S.C. § 1391(b) because Defendants transact substantial business in this District and a substantial part of the events or omissions giving rise to Plaintiff's claims arose here.

## **III. PARTIES**

### **Plaintiff**

14. ALYSSA HEDRICK now resides in Phoenix, Arizona. At all relevant times during the events described herein, Plaintiff lived in San Diego, California. Plaintiff, in reliance on Defendants' false and deceptive advertising, marketing and "discount" pricing scheme, purchased a hot pink sleeveless women's keyhole top with silver hardware, for approximately \$13.47, exclusive of tax, on or around April 27, 2016 at a New York & Company outlet store, located at Las Americas Premium Outlets, 4211 Camino De La Plaza, San Diego, CA 92173. *See* Exhibit B, Plaintiff's purchase receipt. Plaintiff went shopping in order to buy some clothing for herself. When she entered the New York & Company outlet store, she noticed a large rectangular sign sitting on a table above a

1 clothing rack. The sign she observed looked similar to the sign in Exhibit A, pp. 1-3. The  
2 sign advertised that the women's tops hanging on the rack were "40% Off." She found a  
3 hot pink sleeveless women's keyhole top with silver hardware and examined the regular  
4 "OUR PRICE" price as announced by the price tag as \$24.95. *See* Exhibit C.12, picture of  
5 top Plaintiff purchased. The price tag looked similar to the price tag depicted in Exhibit A,  
6 p.4. She understood the discount sign to mean that the tops were on sale for "40% Off"  
7 their regular price.

8 15. Ms. Hedrick believed she was receiving a significant discount. Ms. Hedrick  
9 believed the top she was purchasing was recently offered for sale in the New York &  
10 Company outlet store for the advertised regular price of \$24.95. However, Defendants  
11 never sold the top in any New York & Company outlet store at the regular price of \$24.95  
12 in the 90 days preceding her purchase. The top Ms. Hedrick purchased had been  
13 continuously and substantially discounted for at least several months, and possibly longer,  
14 according to Plaintiff's counsel's investigation. Defendants used the false or severely  
15 outdated "OUR PRICE" regular price as a means to deceive Ms. Hedrick into believing  
16 that she was getting a good deal and a steep discount on the top she purchased. Therefore,  
17 Ms. Hedrick did not receive the benefit of the bargain and was damaged by purchasing the  
18 top.

19 16. Plaintiff would not have purchased the top without the misrepresentations  
20 made by Defendants. As a result, Plaintiff has been personally victimized by and suffered  
21 economic injury as a direct result of Defendants' unlawful, unfair and fraudulent conduct.

22 17. Defendants know that their comparative price advertising is false, deceptive,  
23 misleading and unlawful under California law.

24 18. Defendants fraudulently concealed from and intentionally failed to disclose  
25 to Plaintiff and other members of the proposed class the truth about their advertised price  
26 and former prices.

27 19. At all relevant times, Defendants have been under a duty to Plaintiff and the  
28 proposed class to disclose the truth about their false discounts.



1           20. Plaintiff relied upon Defendants' artificially inflated market price and false  
2 discounts when purchasing her top at Defendants' outlet store. Plaintiff would not have  
3 made such purchases but for Defendants' representations of fabricated regular "OUR  
4 PRICE" prices and false discounts.

5           21. Plaintiff and the Class reasonably and justifiably acted and relied on the  
6 substantial price differences that Defendants advertised, and made purchases believing  
7 that they were receiving a substantial discount on an item of greater value than it actually  
8 was. Plaintiff, like other class members, was lured in, relied on, and damaged by these  
9 pricing schemes that Defendants carried out.

10           22. Defendants intentionally concealed and failed to disclose material facts  
11 regarding the truth about false former price advertising in order to provoke Plaintiff and  
12 the proposed class to purchase New York & Company branded products in their outlet  
13 stores.

14           **Defendants**

15           23. Plaintiff is informed and believes, and upon such information and belief  
16 alleges, Defendant New York & Company, Inc. is a Delaware Corporation with its  
17 principal executive offices in New York, New York.

18           24. Plaintiff is informed and believes, and upon such information and belief  
19 alleges, Defendant New York & Company Stores, Inc. is a New York Corporation with its  
20 principal executive offices in New York, New York.

21           25. Defendants operate New York & Company retail stores, outlet stores, as well  
22 as the nyandcompany.com website, and advertise, market, distribute, and/or sell clothing  
23 and clothing accessories in California and throughout the United States. Defendants  
24 maintain 47 outlet stores in the State of California and over 300 outlet stores nationwide.  
25 This action involves only those products Defendants sell at their outlet store locations.

26           26. Plaintiff does not know the true names or capacities of the persons or entities  
27 sued herein as DOES 1-50, inclusive, and therefore sues such Defendants by such  
28 fictitious names. Plaintiff is informed and believes, and upon such information and belief

1 alleges, that each of the DOE Defendants is in some manner legally responsible for the  
2 damages suffered by Plaintiff and the Class members as alleged herein. Plaintiff will  
3 amend this Complaint to set forth the true names and capacities of these Defendants when  
4 they have been ascertained, along with appropriate charging allegations, as may be  
5 necessary.

#### 6 **IV. FACTUAL BACKGROUND**

7       27. In the spring of 2015, Plaintiff's counsel launched an investigation to observe  
8 and evaluate the pricing practices of dozens of San Diego County retail stores engaged in  
9 improper sale-discounting practices. Plaintiff's counsel tracked the stores by sending  
10 investigators into shopping malls and outlet malls to record the prices of the  
11 corresponding discounts of products offered for sale. Utilizing this data and online  
12 research, Plaintiff's counsel identified retailers who were engaged in improper sale-  
13 discounting practices. Plaintiff's counsel focused their investigation on retailers who  
14 advertised their products by utilizing "false" regular prices from which discounts were  
15 advertised and by identifying those retailers who were continuously advertising their  
16 products at discounted prices.

17       28. Plaintiff's counsel identified Defendants engaging in deceptive pricing  
18 practices at their outlet stores as follows: Defendants listed each item for sale with a price  
19 tag, which contains the language "OUR PRICE" and the corresponding price of the item.  
20 The "OUR PRICE" price tags are false regular prices. Defendants continuously offer a  
21 discounted "% Off" from the false "OUR PRICE" price tags. The "OUR PRICE" prices  
22 are never actually offered at the outlet stores. Rather, the "OUR PRICE" prices are  
23 elusive and used only as a baseline to advertise the continuous discounts.

24       29. The discounts from the false "OUR PRICE" prices are communicated to  
25 consumers through the use of in store placards and signage. See Exhibit A, pp. 1-3. The  
26 signs convey a certain percentage off of the false "OUR PRICE" prices. Plaintiffs'  
27 counsel's investigation revealed that the in-store discounts frequently change every couple  
28 of weeks, but the products are never sold at their "OUR PRICE" prices in the outlet stores.



30. Plaintiffs' investigation entailed one or more investigators entering Defendants' outlet stores to observe the "OUR PRICE" prices and corresponding discounts on items offered for sale. Plaintiff's investigations were conducted at Defendants' stores, including: the New York & Company outlet store located at 415 Parkway Plaza, El Cajon, CA 92020 and the New York & Company outlet store located at 4211 Camino De La Plaza, San Diego, CA 92173<sup>2</sup>.

31. Plaintiffs' investigations revealed all items in the outlet store were discounted at all times. Plaintiffs' investigators never discovered an item that was offered for sale at the "OUR PRICE" price. The sales in each of the outlet stores would change over time, but none of the items in the outlet store would be offered for sale at the "OUR PRICE" price. Set forth in Exhibit C is an example of the products Plaintiff investigated and determined to be continuously discounted from their false "OUR PRICE" price in the outlet stores for 90 days or more.

32. The substantial number and variety of products continuously discounted demonstrates that Defendants are engaged in systematic and pervasive practice of improperly discounting their products for sale in their outlet stores.

33. Defendants engaged in a systematic scheme to continuously discount its merchandise in its outlet stores without ever offering the merchandise for sale at the "OUR PRICE" price.

34. New York & Company, Inc.'s 10-K Annual Report ("Report") for the United States Securities and Exchange Commission for the fiscal year ending on January 30, 2016 identifies the channels through which Defendants sell their merchandise: New York & Company retail stores, New York & Company Outlet stores, and their eCommerce store ("website").

35. Within this Report, Defendants represent to the public that their "Outlet stores offer a merchandise mix consisting of apparel and accessories that is approximately

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<sup>2</sup> The period of the various investigations are set forth in Exhibit C.

1 90% exclusive to the Outlet stores, and some merchandise that can be found at New York  
2 & Company and clearance merchandise."

3 36. Since approximately 90% of the merchandise sold at Defendants' outlet  
4 stores is sold exclusively at those outlet stores, it is reasonable to conclude that  
5 Defendants manufacture apparel and accessories specifically for their outlet stores.

6 37. This is further evidenced by Defendants' return policy that states,  
7 "[m]erchandise purchased at a New York & Company Outlet stores may only be returned  
8 to New York & Company Outlet stores." See New York & Company Returns and  
9 Exchanges, <http://www.nyandcompany.com/static/help/returns/policy/>, last accessed  
10 January 23, 2017 (emphasis added).

11 38. Defendants operate their systematic false pricing scheme within the margins  
12 of the relevant market it creates. The relevant market for Defendants' outlet store  
13 merchandise is defined by the outlet-specific inventory offered for sale exclusively at  
14 Defendants' outlet stores.

15 39. Defendants know that their comparative price advertising is false, deceptive,  
16 misleading and unlawful under California law.

17 40. Defendants fraudulently concealed from and intentionally failed to disclose  
18 to Plaintiff and other members of the proposed class the truth about its advertised price  
19 and former prices.

20 41. At all relevant times, Defendants have been under a duty to Plaintiff and the  
21 proposed class to disclose the truth about their false discounts.

22 42. Plaintiff relied upon Defendants' artificially inflated "OUR PRICE" and false  
23 discounts when purchasing her top at Defendants' outlet store. Plaintiff would not have  
24 made such purchase but for Defendants' representation of the fabricated original "OUR  
25 PRICE" and false discount.

26 43. Plaintiff and the Class reasonably and justifiably acted and relied on the  
27 substantial price differences that Defendants advertised, and made purchases believing  
28 that they were receiving a substantial discount on an item of greater value than it actually

1 was. Plaintiff, like other class members, was lured in, relied on, and damaged by these  
2 pricing schemes that Defendants carried out.

3 44. Defendants intentionally concealed and failed to disclose material facts  
4 regarding the truth about false former price advertising in order to provoke Plaintiff and  
5 the proposed class to purchase New York & Company branded products in their outlet  
6 stores.

## 7 **V. CLASS ALLEGATIONS**

8 45. Plaintiff brings this action on behalf of herself and all other similarly situated  
9 Class members pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil  
10 Procedure and seeks certification of the following Class (the "Class") against Defendant:

11 All persons residing in the State of California who purchased one or more  
12 items from Defendants' outlet store, which was offered at a purported  
13 discount from an "OUR PRICE" or regular price at any time from June 9,  
2013 to the date of certification (the "Class Period").

14 46. Excluded from the Class are Defendants, as well as their officers, employees,  
15 agents or affiliates, and any judge who presides over this action, as well as all past and  
16 present employees, officers and directors of Defendants. Plaintiff reserves the right to  
17 expand, limit, modify, or amend this class definition, including the addition of one or  
18 more subclasses, in connection with her motion for class certification, or at any other  
19 time, based upon, *inter alia*, changing circumstances and/or new facts obtained during  
20 discovery.

21 47. **Numerosity:** The class members are so numerous that joinder of all members  
22 is impracticable. Plaintiff is informed and believes that the proposed Class contains  
23 hundreds of thousands of individuals who have been damaged by Defendants' conduct as  
24 alleged herein. The precise number of Class members is unknown to Plaintiff.

25 48. ***Existence and Predominance of Common Questions of Law and Fact:***  
26 This action involves common questions of law and fact, which predominate over any  
27 questions affecting individual Class members. These common legal and factual questions  
28

1 include, but are not limited to, the following:

- 2 a. Whether, during the Class Period, Defendants used false regular or
- 3 “OUR PRICE” price labels and falsely advertised price discounts on
- 4 their New York & Company branded products they sold in their outlet
- 5 stores;
- 6 b. Whether, during the Class Period, the regular or “OUR PRICE” prices
- 7 advertised by Defendants were the prevailing market prices for the
- 8 respective New York & Company branded products during the three
- 9 month period preceding the dissemination and/or publication of the
- 10 advertised former prices;
- 11 c. Whether Defendants’ alleged conduct constitutes violations of the laws
- 12 asserted;
- 13 d. Whether Defendants informed consumers of the last date on which the
- 14 purported regular “OUR PRICE” price did prevail prior to placing
- 15 discounted products on sale or offering them as final sale items;
- 16 e. Whether Defendants informed consumers that the regular or “OUR
- 17 PRICE” prices of the products sold in their outlet stores were fictional
- 18 prices; prices at which the products had never been offered for sale;
- 19 f. Whether Defendants engaged in unfair, unlawful and/or fraudulent
- 20 business practices under the laws asserted;
- 21 g. Whether Defendants engaged in false or misleading advertising; and
- 22 h. Whether Plaintiff and Class members are entitled to damages and/or
- 23 restitution and the proper measure of that loss.

24 49. **Typicality:** Plaintiff’s claims are typical of the claims of the members of the  
 25 Class because, *inter alia*, all Class members have been deceived (or were likely to be  
 26 deceived) by Defendants’ false and deceptive price advertising scheme, as alleged herein.  
 27 Plaintiffs are advancing the same claims and legal theories on behalf of themselves and all  
 28 members of the class.

1           50. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the  
2 members of the Class. Plaintiff has retained counsel experienced in complex consumer  
3 class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff  
4 has no antagonistic or adverse interest to those of the Class.

5           51. **Superiority:** The nature of this action and the nature of laws available to  
6 Plaintiff and the Class make the use of the class action format a particularly efficient and  
7 appropriate procedure to afford relief to her and the class for the wrongs alleged. The  
8 damages or other financial detriment suffered by individual Class members is relatively  
9 modest compared to the burden and expense that would be entailed by individual  
10 litigation of their claims against Defendants. It would thus be virtually impossible for  
11 Plaintiff and Class members, on an individual basis, to obtain effective redress for the  
12 wrongs done to them. Absent the class action, Class members and the general public  
13 would not likely recover, or would not likely have the chance to recover, damages or  
14 restitution, and Defendants will be permitted to retain the proceeds of their fraudulent and  
15 deceptive misdeeds.

16           52. All Class members, including Plaintiff, were exposed to one or more of  
17 Defendants' misrepresentations or omissions of material fact claiming that former regular  
18 or "OUR PRICE" advertised prices were in existence. Due to the scope and extent of  
19 Defendants' consistent false discount price advertising scheme, disseminated in a years-  
20 long campaign to consumers via a number of different platforms – in-store displays, print  
21 advertisements, etc. – it can be reasonably inferred that such misrepresentations or  
22 omissions of material fact were uniformly made to all members of the Class. In addition,  
23 it can be reasonably presumed that all Class members, including, Plaintiff affirmatively  
24 acted in response to the representations contained in Defendants' false advertising scheme  
25 when purchasing New York & Company branded merchandise at Defendants' outlet  
26 stores.

27           53. Defendants keep extensive computerized records of their customers through,  
28 *inter alia*, customer loyalty programs and general marketing programs. Defendants also

1 monitor all transactions through XBR reporting & analysis software. Defendants have one  
 2 or more databases through which Defendants can identify and ascertain a significant  
 3 majority of Class members. Defendants also maintain contact information, including  
 4 email and home addresses, through which Defendants can disseminate notice of this  
 5 action in accordance with due process requirements.

## 6 **VI. CAUSES OF ACTION**

### 7 8 **FIRST CAUSE OF ACTION** **Violation Unfair Competition Law** **Business and Professions Code § 17200 et seq.**

9  
10 54. Plaintiff repeats and re-alleges the allegations contained in every preceding  
 11 paragraph as if fully set forth herein.

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

15 56. The UCL imposes strict liability. Plaintiff need not prove that Defendants  
 16 intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices –  
 17 but only that such practices occurred.

#### 18 ***“Unfair” Prong***

19 57. A business act or practice is “unfair” under the UCL if it offends an  
 20 established public policy or is immoral, unethical, oppressive, unscrupulous or  
 21 substantially injurious to consumers, and that unfairness is determined by weighing the  
 22 reasons, justifications and motives of the practice against the gravity of the harm to the  
 23 alleged victims.

24 58. Defendants’ actions constitute “unfair” business acts or practices because, as  
 25 alleged above, Defendants engaged in misleading and deceptive price comparison.  
 26 Defendants’ advertised regular or “OUR PRICE” prices were nothing more than  
 27 fabricated regular prices leading to phantom “% Off” markdowns. Defendants’ acts and  
 28 practices offended an established public policy because they engaged in immoral,



1 unethetical, oppressive, and unscrupulous activities that are substantially injurious to  
2 consumers.

3 59. The harm to Plaintiff and Class members outweighs the utility of  
4 Defendants' practices. There were reasonably available alternatives to further  
5 Defendants' legitimate business interests, other than the misleading and deceptive conduct  
6 described herein.

7 ***"Fraudulent" Prong***

8 60. A business act or practice is "fraudulent" under the UCL if it is likely to  
9 deceive members of the consuming public.

10 61. Defendants' acts and practices alleged above have deceived Plaintiff and are  
11 highly likely to deceive members of the consuming public. Plaintiff relied on Defendants'  
12 fraudulent and deceptive representations regarding their "OUR PRICE" prices at  
13 Defendants' outlet stores, and the corresponding discounts for the New York & Company  
14 branded products, which Defendants sell. These misrepresentations played a substantial  
15 role in Plaintiff's decision and that of the proposed class to purchase the products at steep  
16 discounts, and Plaintiff would not have purchased their products without Defendants'  
17 misrepresentations.

18 ***"Unlawful" Prong***

19 62. A business act or practice is "unlawful" under the UCL if it violates any  
20 other law or regulation.

21 63. Defendants' acts and practices alleged above constitute unlawful business  
22 acts or practices as they have violated state and federal law in connection with their  
23 deceptive pricing scheme. The Federal Trade Commissions Act ("FTCA") prohibits  
24 "unfair or deceptive acts or practices in or affecting commerce" (15 U.S.C. § 45(a)(1))  
25 and prohibits the dissemination of any false advertisements. 15 U.S.C. § 52(a). Under the  
26 Federal Trade Commission, false former pricing schemes, similar to the ones  
27 implemented by Defendants, are described as deceptive practices that would violate the  
28 FTCA:

(a) One of the most commonly used forms of bargain advertising is to offer a reduction from the advertiser's own former price for an article. If the former price is the actual, bona fide price at which the article was offered to the public on a regular basis for a reasonably substantial period of time, it provides a legitimate basis for the advertising of a price comparison. Where the former price is genuine, the bargain being advertised is a true one. If, on the other hand, the former price being advertised is not bona fide but fictitious – for example, where an article price, 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.

(b) A former price is not necessarily fictitious merely because no sales at the advertised price were made. The advertiser should be especially careful, however, in such a case, that the price is one at which the product was openly and actively offered for sale, for a reasonably substantial period of time, in the recent, regular course of her business, honestly and in good faith – and, of course, not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based.

16 C.F.R. § 233.1(a) and (b) (emphasis added).

64. In addition to federal law, California law also expressly prohibits false former pricing schemes. California's False Advertising Law, Bus. & Prof. Code §17501, (“FAL”), entitled “*Worth or value; statements as to former price,*” states:

For the purpose of this article the worth or value of any thing advertised is the prevailing market price, wholesale if the offer is at wholesale, retail if the offer is 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.

Cal. Bus. & Prof. Code § 17501 (emphasis added).

65. As detailed in Plaintiff's Third Cause of Action below, the California

Consumer Legal Remedies Act, Civ. Code § 1770(a)(9), prohibits a business from “[a]dvertising goods or services with intent not to sell them as advertised,” and subsection (a)(13) prohibits a business from “[m]aking false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.”

66. The violation of any law constitutes an “unlawful” business practice under the UCL.

67. As detailed herein, the acts and practices alleged were intended to or did result in violations of the FTCA, the FAL, and the CLRA.

68. Defendants’ practices, as set forth above, have mislead Plaintiff, the proposed class, and the public in the past and will continue to misled in the future. Consequently, Defendants’ practices constitute an unlawful, fraudulent, and unfair business practice within the meaning of the UCL.

69. Defendants’ violation of the UCL through their unlawful, unfair, and fraudulent business practices are ongoing and present a continuing threat that members of the public will be deceived into purchasing products based on price comparisons of arbitrary and inflated regular “OUR PRICE” prices to “% Off” sale prices. These false comparisons created phantom markdowns and lead to financial damage for consumers, like Plaintiff and the proposed Class.

70. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent injunctive relief to order Defendants to cease this unfair competition, as well as disgorgement and restitution to Plaintiff and the Class of all Defendants’ revenues associated with its unfair competition, or such portion of those revenues as the Court may find equitable.

**SECOND CAUSE OF ACTION**  
**Violation of the California False Advertising Law,**  
**California Business & Professions Code § 17500, *et seq.***

71. Plaintiff repeats and re-alleges the allegations contained in every preceding paragraph as if fully set forth herein.

72. Cal. Bus. & Prof. Code § 17500 provides:

1 It is unlawful for any...corporation...with intent...to dispose of...personal  
 2 property...to induce the public to enter into any obligation relating thereto, to  
 3 make or disseminate or cause to be made or disseminated...from this state  
 4 before the public in any state, in any newspaper or other publication, or any  
 5 advertising device, or by public outcry or proclamation, or in any other  
 6 manner or means whatever, including over the Internet, any  
 7 statement...which is untrue or misleading, and which is known, or which by  
 8 the exercise of reasonable care should be known, to be untrue or  
 9 misleading...

10 [Emphasis added].

11 73. The “intent” required by Section 17500 is the intent to dispose of property,  
 12 and not the intent to mislead the public in the disposition of such property.

13 74. Similarly, this section provides, “no price shall be advertised as a former  
 14 price of any advertised thing, unless the alleged former prices was the prevailing market  
 15 price...within three months next immediately preceding the publication of the  
 16 advertisement or unless the date when the alleged former price did prevail is clearly,  
 17 exactly, and conspicuously stated in the advertisement.” Cal Bus. & Prof. Code § 17501.

18 75. Defendants’ routine of advertising continuing discounted prices from false  
 19 regular or “OUR PRICE” prices in their outlet stores associated with their New York &  
 20 Company branded outlet store products, which were never the true prevailing “market”  
 21 prices of those products and were materially greater than the true prevailing prices, was an  
 22 unfair, untrue and misleading practice. This deceptive marketing practice gave consumers  
 23 the false impression that the products were regularly sold at New York & Company outlet  
 24 stores for a substantially higher price than they actually were—therefore, leading to the  
 25 false impression that the New York & Company branded products were worth more than  
 26 they actually were.

27 76. Defendants misled consumers by making untrue and misleading statements  
 28 and failing to disclose what is required as stated in the Code, as alleged above.

77. As a direct and proximate result of Defendants’ misleading and false  
 advertisements, Plaintiff and Class members have suffered injury in fact and have lost

1 money. As such, Plaintiff requests that this Court order Defendants to restore this money  
 2 to Plaintiff and all Class members. Otherwise, Plaintiff, Class members and the broader,  
 3 general public will be irreparably harmed and/or denied an effective and complete  
 4 remedy.

5 **THIRD CAUSE OF ACTION**  
 6 **Violation of the Consumers Legal Remedies Act (“CLRA”),**  
 7 **California Civil Code § 1750, *et seq.***

7 78. Plaintiff repeats and re-alleges the allegations contained in every preceding  
 8 paragraph as if fully set forth herein.

9 79. This cause of action is brought pursuant to the Consumers Legal Remedies  
 10 Act (CLRA), California Civil Code § 1750, *et seq.* Plaintiff and each member of the  
 11 proposed class are “consumers” as defined by Cal. Civ. Code § 1761(d). Defendants’ sale  
 12 of the New York & Company branded products at their outlet stores to Plaintiff and the  
 13 Class were “transactions” within the meaning of Cal. Civ. Code § 1761(e). The products  
 14 purchased by Plaintiff and the Class are “goods” within the meaning of Cal. Civ. Code §  
 15 1761(a).

16 80. Defendants violated and continue to violate the CLRA by engaging in the  
 17 following practices proscribed by Cal. Civ. Code § 1770(a)(13) in transactions with  
 18 Plaintiff and the Class which were intended to result in, and did result in, the sale of New  
 19 York & Company outlet store products:

- 20 a. Advertising goods or services with intent not to sell them as
- 21 advertised; (a)(9); and
- 22 b. Making false or misleading statements of fact concerning reasons for,
- 23 existence of, or amounts of price reductions; (a)(13).

24 81. At no time did Defendants disclose to Plaintiff that the “OUR PRICE” prices  
 25 for the outlet products were fictional prices. Every discount offered in Defendants’ outlet  
 26 stores is therefore deceptive and misleading. Defendants failed to disclose to Plaintiff and  
 27 members of the class that 90% of the merchandise sold at Defendants’ outlet stores was  
 28 never sold in their retail stores or in any other store except Defendants’ outlet stores.

Defendants' use of the regular or "OUR PRICE" price tags misleads consumers, including Plaintiff into believing that the represented price on the outlet store products was a real, former price, when in fact it was not. Therefore, the discounts offered from the false "OUR PRICE" price tags were phantom discounts—false representations intended to improperly influence consumers into purchasing products at higher prices than they would have paid if Defendants had not engage in the deceptive conduct.

82. Pursuant to § 1782(a) of the CLRA, on June 9, 2017, Plaintiff's counsel notified Defendants in writing by certified mail of the particular violations of § 1770 of the CLRA and demanded that it rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendants' intent to act.

83. If Defendants fail to appropriately respond to Plaintiff's letter or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice, as proscribed by §1782, Plaintiff will amend her complaint to pursue claims for actual, punitive, and statutory damages as appropriate against Defendants. As to this cause of action, at this time, Plaintiff seeks only injunctive relief.

## **VII. PRAYER FOR RELIEF**

84. Wherefore, Plaintiff, on behalf of herself and on behalf of the other members of the Class, requests that this Court award relief against Defendants as follows:

- a. An order certifying the class and designating ALYSSA HEDRICK as the Class Representative and her counsel as Class Counsel;
- b. Awarding Plaintiff and the proposed Class members damages;
- c. Awarding restitution and disgorgement of all profits and unjust enrichment that Defendants obtained from Plaintiff and the Class members as a result of their unlawful, unfair and fraudulent business practices described herein;
- d. Awarding declaratory and injunctive relief as permitted by law or equity, including: enjoining Defendants from continuing the unlawful



1 practices as set forth herein, and directing Defendants to identify, with  
2 Court supervision, victims of its misconduct and pay them all money  
3 they are required to pay;

- 4 e. Order Defendants to engage in a corrective advertising campaign;  
5 f. Awarding attorneys' fees and costs; and  
6 g. For such other and further relief as the Court may deem necessary or  
7 appropriate.

8 ///

9 ///

10 ///

1 **VIII. DEMAND FOR JURY TRIAL**

2 85. Plaintiff hereby demands a jury trial for all of the claims so triable.

3  
4  
5 Dated: June 9, 2017

**CARLSON LYNCH SWEET  
KILPELA & CARPENTER, LLP**

6  
7 /s/ Todd D. Carpenter

8 Todd D. Carpenter (CA 234464)  
9 402 West Broadway, 29th Floor  
10 San Diego, California 92101  
11 Telephone: (619) 347-3517  
12 Facsimile: (619) 756-6990  
13 tcarpenter@carlsonlynch.com  
14 bcasola@carlsonlynch.com

15 Edwin J. Kilpela  
16 Gary F. Lynch  
17 1133 Penn Avenue, 5th Floor  
18 Pittsburgh, Pennsylvania 15222  
19 Telephone: (412) 322-9243  
20 Facsimile: (412) 231-0246  
21 ekilpela@carlsonlynch.com  
22 glynch@carlsonlynch.com

23 *Attorneys for Plaintiff*  
24  
25  
26  
27  
28

JS 44 (Rev. 06/17)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

ALYSSA HEDRICK, on behalf of herself and all others similarly situated,

(b) County of Residence of First Listed Plaintiff Maricopa

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Todd D. Carpenter, Carlson Lynch Sweet Kilpela & Carpenter, LLP  
402 West Broadway, 29th Floor San Diego, CA 92101  
(619) 756-6994

**DEFENDANTS**

NEW YORK & COMPANY, INC., a DELAWARE corporation, NEW  
YORK & COMPANY STORES, INC., a NEW YORK corporation, and  
DOES 1-50, inclusive,

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**'17CV1153 AJB JMA****II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)
☐ 1 U.S. Government  
Plaintiff

☒ 3 Federal Question  
(mxn) (U.S. Government Not a Party)

☐ 2 U.S. Government  
Defendant

☒ 4 Diversity  
(Indicate Citizenship of Parties in Item III)
**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

☒ 1 Original Proceeding  
 ☐ 2 Removed from State Court  
 ☐ 3 Remanded from Appellate Court  
 ☐ 4 Reinstated or Reopened  
 ☐ 5 Transferred from Another District (specify)  
 ☐ 6 Multidistrict Litigation - Transfer  
 ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §1332(d); 28 U.S.C. §1331

Brief description of cause:

Violation of unfair competition law; False and Misleading Advertising; etc....

**VII. REQUESTED IN COMPLAINT:**
☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

06/09/2017

/s/ Todd D. Carpenter

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

**CARLSON LYNCH SWEET  
KILPELA & CARPENTER, LLP**

Todd D. Carpenter (CA 234464)  
402 West Broadway, 29th Floor  
San Diego, California 92101  
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Facsimile: (619) 756-6991  
tcarpenter@carlsonlynch.com

*Attorneys for Plaintiff and Class Counsel*

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

ALYSSA HEDRICK, on behalf of herself  
and all others similarly situated,

Plaintiff,

v.

NEW YORK & COMPANY, INC., a  
DELAWARE corporation, NEW YORK  
& COMPANY STORES, INC., a NEW  
YORK corporation, and DOES 1-50,  
inclusive,

Defendants.

Case No.: '17CV1153 AJB JMA

**DECLARATION IN SUPPORT OF  
JURISDICTION**

I, Todd D. Carpenter, declare under penalty of perjury the following:

1. I am an attorney duly licensed to practice before all of the courts in the State of California. I am a partner at Carlson Lynch Sweet Kilpela & Carpenter, LLP, and the counsel of record for Plaintiff in the above-entitled action.

2. Defendants New York & Company, Inc. and New York & Company Stores, Inc. have done and are doing business in the County of San Diego. Such business includes

1 the marketing, distributing, and sale of women's clothing at New York & Company outlet  
2 stores.

3 3. Plaintiff Alyssa Hedrick purchased her shirt from a New York & Company  
4 outlet store in San Diego, California.

5 I declare under penalty of perjury under the laws of the State of California that the  
6 foregoing is true and correct.

7 Executed this 9<sup>th</sup> day of June 2017 in San Diego, California.

8  
9 /s/ Todd D. Carpenter

10 Todd D. Carpenter  
11  
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# **EXHIBIT A**



FIND YOUR *FIT*

*EVERYTHING!*  
NO EXCLUSIONS

50%  
OFF









## **EXHIBIT B**



NEW YORK

NEW YORK & COMPANY OUTLET  
 4211 CAMINO DE LA PLAZA #  
 SAN DIEGO, CA 92173  
 619-428-5741

Transaction: 8081 Date: 4/27/16  
 Store: 3592 Register: 1  
 350937 Time 16:21:36

Item	Qty	Price	Amount
SA KEITHOR W/ 100%	1	13.47	13.47
3009666			
Select 50% off			(9.95)
10% off			11
Net Price: 13.47			
		subtotal	13.47
		DISTRICT 500%	0.07
		COUNTY 1 250%	0.17
		STATE & 250%	0.84
		<b>total</b>	<b>14.55</b>

Cash

Change

Cash 14.55

\*\*\*\*\*  
 You have saved \$11.48.  
 \*\*\*\*\*

SOLD ITEM COUNT = 1



913559015381161182

\*\*\*

\*\*\*\*\*

THANK YOU

# **EXHIBIT C**

## Exhibit C

Item:	"Our" Price:	Sale Price:	First Observed:	Continuously discounted at various discounts for 90 days or until out of stock:	Outlet Store:	Exhibit
Women's floral top	\$64.95	50% off	9/11/2016	90 days+	Las Americas Outlet, 4211 Camino De La Plaza, San Diego, CA 92173	C.1
7 <sup>th</sup> Avenue Pants; Straight leg	\$44.95	40% off	8/24/2016	90 days+	Las Americas Outlet	C.2
Average Pant Straight leg	\$44.95	40% off	8/24/2016	90 days+	Las Americas Outlet	C.3
Black Slacks	\$39.95	50% off	8/24/2016	90 days+	Las Americas Outlet	C.4
Jeans Average	\$54.95	50% off	9/13/2016	90 days+	Las Americas Outlet	C.5
Camo Leggings	\$59.95	\$39.99	9/13/2016	90 days+	Las Americas Outlet	C.6
Grey Fringy Cover	\$39.95	50% off	9/13/2016	45 days; out of stock	Las Americas Outlet	C.7
Cami	\$12.95	50% off	9/13/2016	45 days; out of stock	Las Americas Outlet	

Pink Patterned Collared Blouse	\$36.95	50% off	9/13/2016	45; days out of stock	Las Americas Outlet	C.8
7 <sup>th</sup> Avenue Pants; Straight leg	\$39.95	40% off	8/19/2015	90 days+	Las Americas Outlet	C.9
Average Pant Straight leg	\$39.95	40% off	8/19/2015	90 days+	Las Americas Outlet	
Black Slacks	\$39.95	40% off	8/19/2015	90 days+	Las Americas Outlet	
Women's Cardigan sweater tops	\$39.95	30% off	07/14/2016	90 days+	Las Americas Outlet	
Women's Jean Jackets	\$54.95	30% off	07/14/2016	90 days+	Las Americas Outlet	C.10
Women's bright colored jeans; Style 3695	\$39.95	30% off	07/14/2016	90 days+	Las Americas Outlet	Depicted in Exhibit A
7 <sup>th</sup> Avenue Pants; Straight leg	\$44.95	30% off	1/14/2016	90 days+	Las Americas Outlet	
Average Pant Straight leg	\$44.95	30% off	1/14/2016	90 days+	Las Americas Outlet	
Women's sleeveless two pocket blouse	\$32.95	30% off	1/14/2016	90 days+	Las Americas Outlet	C.11
Women's sleeveless zero pocket key-hole blouse	\$24.95	30% off	1/14/2016	90 days+	Las Americas Outlet	C.12

# C.1





## C.2





## C.3



## C.4



**C.5**



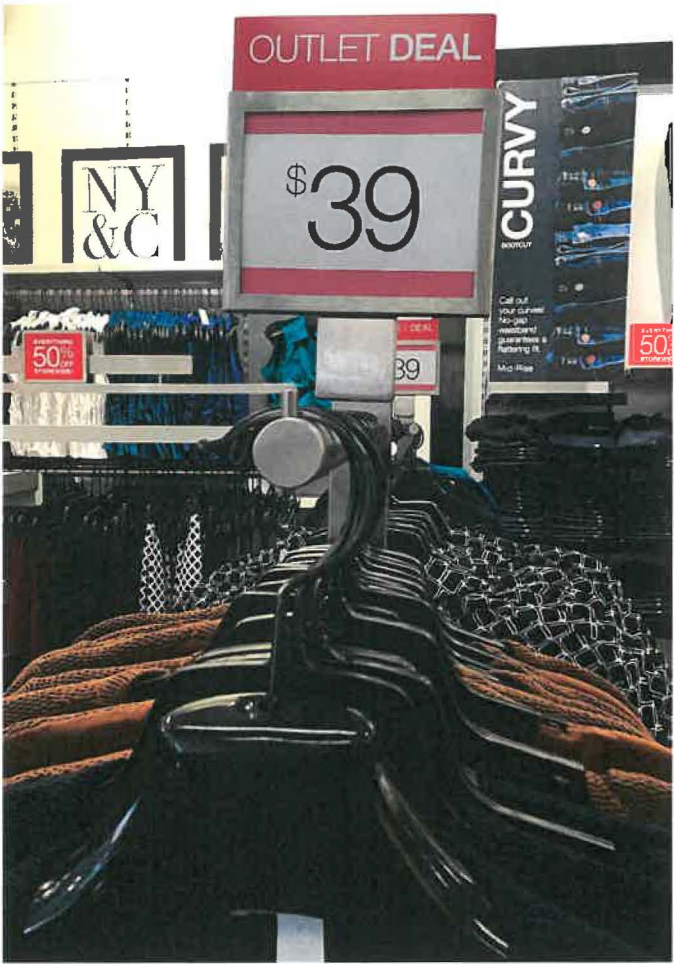




## C.6



## **C.7**



## C.8





## C.9





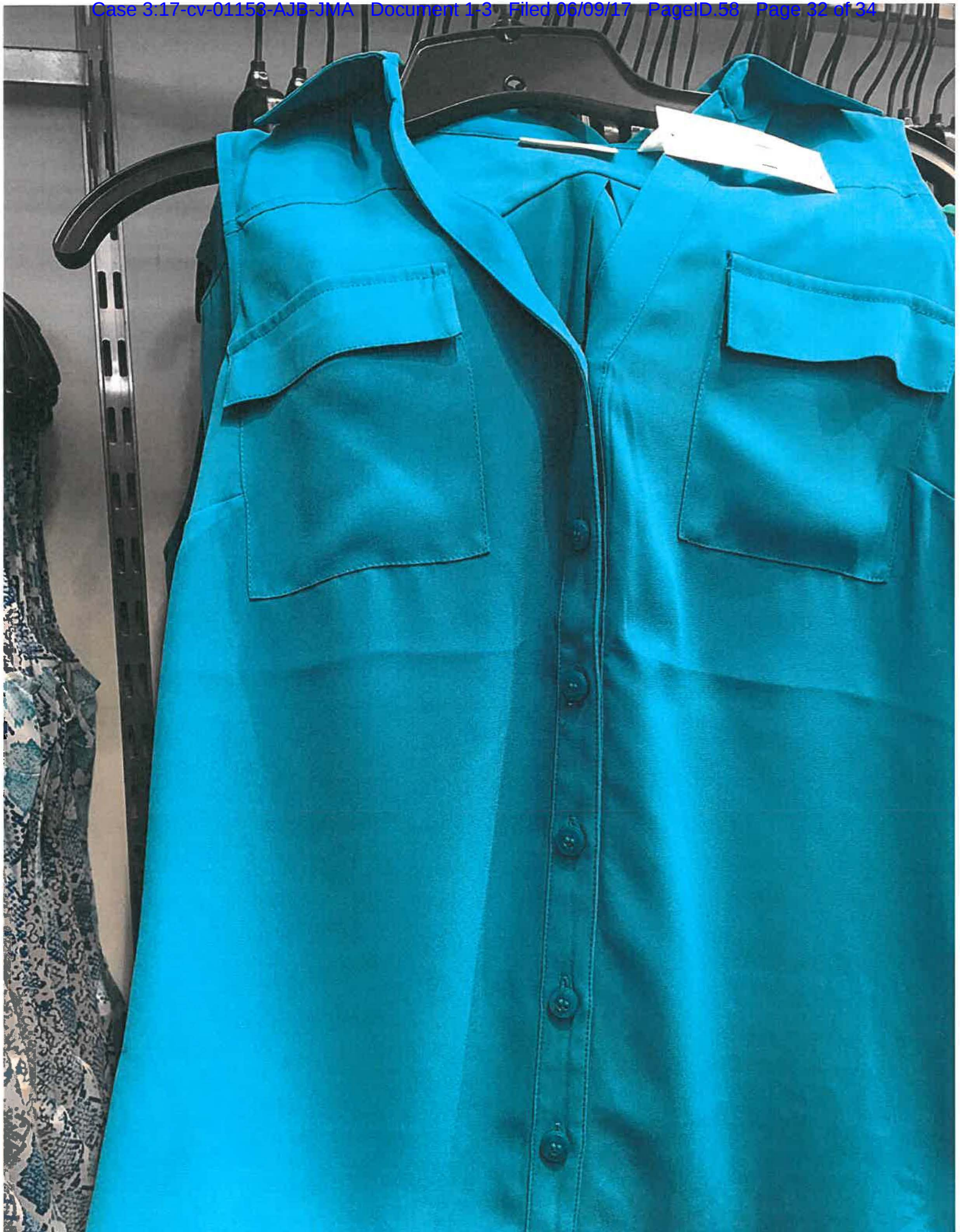
## C.10





## C.11







**C.12**

