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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BRITTANY COVELL, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

NINE WEST HOLDINGS, INC., a
Delaware corporation, and DOES 1
through 50, inclusive,

Defendant.

Case No.: **'17CV1371 H JLB**

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"); California Civil Code Sections 1750, et seq.**

[DEMAND FOR JURY TRIAL]

Plaintiff Brittany Covell ("Plaintiff") brings this action on behalf of herself and all others similarly situated against Defendant NINE WEST HOLDINGS, INC. ("Nine West"), and states:

I. NATURE OF ACTION

1. “If everyone is getting a deal, is anyone really getting a deal?”¹ This class action targets Nine West’s unlawful, unfair, and fraudulent business practice of advertising fictitious prices and corresponding phantom discounts on their Nine West outlet store merchandise. This practice of false reference pricing occurs where a retailer fabricates a fake regular, original, and/or former reference price, and then offers an item for sale at a deep “discounted” price. The result is a sham price disparity that misleads consumers into believing they are receiving a good deal and induces them into making a purchase. Retailers drastically benefit from employing a false reference-pricing scheme and experience increased sales.

2. The California legislature prohibits this misleading practice. The law recognizes the reality that consumers often purchase merchandise marketed as being “on sale” purely because the proffered discount seemed too good to pass up. Accordingly, retailers have an incentive to lie to customers and advertise false sales. The resulting harm is tangible—the bargain hunter’s expectations about the product she purchased is that it has a higher perceived value and she may not have purchased the product but for the false savings.

3. Nine West utilizes false and misleading reference prices in the marketing and selling of Nine West merchandise at its outlet stores. Nine West advertises its merchandise for sale by attaching a price tag on the item that sets forth a regular “SUGG. RETAIL” price and a fictitious “OUR PRICE” discounted price.² See e.g. Exhibit A. The “SUGG.

¹ David Streitfeld, *It’s Discounted, but is it a Deal? How List Prices Lost Their Meaning*, New York Times, <https://www.nytimes.com/2016/03/06/technology/its-discounted-but-is-it-a-deal-how-list-prices-lost-their-meaning.html>, (March 6, 2016), last accessed April 28, 2017.

² In approximately late 2016, Defendant changed its practice and stopped utilizing the descriptions “SUGG. RETAIL” to describe the reference price and “OUR PRICE” to describe the sale price on the price tag for all merchandise items. In its place, Defendant started describing the reference price as the “ORIGINAL” price and the sale price as the

1 RETAIL” price is substantially discounted to create the “OUR PRICE” sale price, which
2 is depicted, sometimes in red print, immediately below the “SUGG. RETAIL” price. *See*
3 *id.* The “OUR PRICE” price represents the savings the customer is purportedly saving off
4 the “SUGG. RETAIL” reference price by purchasing the product. Occasionally, Defendant
5 will offer a deeper discount off the “OUR PRICE” price, resulting in a greater misleading
6 price disparity.

7 4. However, the “SUGG. RETAIL” price is a total fiction. The merchandise
8 sold at Nine West outlet stores is created specifically for Nine West outlet stores. Thus,
9 the only market price for the Nine West outlet store merchandise is the price at which the
10 merchandise is sold in the Nine West outlet stores.

11 5. The Nine West outlet store merchandise is never offered for sale, nor actually
12 sold, at the represented “SUGG. RETAIL” price. Thus, the “SUGG. RETAIL” price is
13 false and is used exclusively to induce consumers into believing that the merchandise was
14 once sold at the “SUGG. RETAIL” price and from which the false and discount and
15 corresponding sale price is derived. Nine West’s deceptive pricing scheme has the effect
16 of tricking consumers into believing they are receiving a significant deal by purchasing
17 merchandise at a steep discount, when in reality, consumers are paying for merchandise at
18 its regular or original retail price.

19 6. The advertised discounts are fictitious because the regular reference price, or
20 the “SUGG. RETAIL” price, does not represent a *bona fide* price at which Nine West
21 previously sold a substantial quantity of the merchandise for a reasonable period of time as
22 required by the Federal Trade Commission (“FTC”). In addition, the represented “SUGG.
23 RETAIL” price was not the prevailing market retail price within the three months
24
25

26
27 “NOW” price. The “ORIGINAL” price description of the reference price is equally
28 misleading because the Nine West outlet merchandise is not sold anywhere other than at
the Nine West Outlet stores. In short, it is a false comparison.

1 immediately preceding the publication of the advertised former “SUGG. RETAIL” price,
2 as required by California law.

3 7. Through its false and misleading marketing, advertising, and pricing scheme,
4 Nine West violated and continues to violate, California and federal law prohibiting
5 advertising goods for sale as discounted from former prices that are false, and prohibiting
6 misleading statements about the existence and amount of price reductions. Specifically,
7 Nine West violated and continues to violate: California’s Unfair Competition Law,
8 Business and Professions Code §§ 17200, *et seq.* (the “UCL”); California’s False
9 Advertising Law, Business and Professions Code §§ 17500, *et seq.* (the “FAL”); the
10 California Consumer Legal Remedies Act, Civil Code §§ 1750, *et seq.* (the “CLRA”); and
11 the Federal Trade Commission Act (“FTCA”), which prohibits “unfair or deceptive acts or
12 practices in or affecting commerce” (15 U.S.C. § 45(a)(1)) and false advertisements (15
13 U.S.C. § 52(a)).

14 8. Plaintiff brings this action on behalf of herself and other similarly situated
15 consumers who have purchased one or more Nine West merchandise at Defendant’s Nine
16 West outlet stores that were deceptively represented as discounted from false former
17 “SUGG. RETAIL” prices. Plaintiff seeks to halt the dissemination of this false,
18 misleading, and deceptive pricing scheme, to correct the false and misleading perception it
19 has created in consumer’s minds, and to obtain redress for those who have purchased
20 merchandise tainted by this deceptive pricing scheme. Plaintiff also seeks to enjoin Nine
21 West from using false and misleading misrepresentations regarding retail price
22 comparisons in their labeling and advertising permanently. Further, Plaintiff seeks to
23 obtain damages, restitution, and other appropriate relief in the amount by which Nine West
24 was unjustly enriched as a result of its sales of merchandise offered at a false discount.

25 9. Finally, Plaintiff seeks reasonable attorneys’ fees pursuant to California Code
26 of Civil Procedure § 1021.5, as this lawsuit seeks the enforcement of an important right
27 affecting the public interest and satisfies the statutory requirements for an award of
28 attorneys’ fees.

II. JURISDICTION AND VENUE

10. 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 interests 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 Nine West.

11. The Southern District of California has personal jurisdiction over the defendant named in this action because Nine West is a corporation or other business entity authorized to conduct and does conduct business in the State of California. Nine West is registered with the California Secretary of State to do sufficient business with sufficient minimum contacts in California, and/or otherwise intentionally avails itself of the California market through the ownership and operation of approximately 15 outlet stores in California.

12. Venue is proper under 28 U.S.C. § 1391(b)(2) because Nine West transacts substantial business in this District. A substantial part of the events giving rise to Plaintiff's claims arose here.

III. PARTIES

Plaintiff

13. Brittany Covell is a San Diego County resident. Plaintiff, in reliance on Defendant's false and deceptive advertising, marketing, and "discount" pricing scheme, purchased a pair of Nine West Stefao snakeskin printed, pointed-toe high heels (the "heels") for approximately \$44.50, exclusive of tax, on or around April 16, 2016 at a Nine West outlet store located at the Carlsbad Premium Outlets in San Diego, California 92008. Plaintiff went shopping in order to buy a new pair of shoes for herself. When she entered the Nine West store, she observed the heels and examined the price tag sticker on the bottom of the heels. The price tag advertised that the heels had a "SUGG. RETAIL" price of \$89.00 and an "OUR PRICE" price of \$44.50. The price tag that Plaintiff observed looked similar to the price tag depicted in Exhibit A.

1 14. Plaintiff believed she was receiving a significant discount—specifically,
2 Plaintiff believed the heels she was purchasing were recently offered for sale at the Nine
3 West Outlet store for the advertised “SUGG. RETAIL” price of \$89.00. However,
4 Defendant never sold the heels in any Nine West outlet store at the “SUGG. RETAIL”
5 price of \$89.00 in the 90 days preceding Plaintiff’s purchase. The heels that Plaintiff
6 purchased had been continuously and substantially discounted for at least several months,
7 and possibly longer, according to Plaintiff’s counsel’s investigation. Defendant uses the
8 false or severely outdated “SUGG. RETAIL” regular price as a means to deceive Plaintiff
9 into believing that she was getting a good deal and a steep discount on the heels she
10 purchased. Therefore, Plaintiff did not receive the benefit of the bargain and was damaged
11 by purchasing the heels.

12 15. Plaintiff would not have purchased the heels without the misrepresentations
13 made by Defendant. As a result, Plaintiff has been personally victimized by and suffered
14 economic injury as a direct result of Defendant’s unlawful, unfair, and fraudulent conduct.

15 16. Defendant knows that its comparative pricing advertising is false, deceptive,
16 misleading, and unlawful under California law.

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

20 18. At all relevant times, Defendant has been under a duty to Plaintiff and the
21 proposed class to disclose the truth about its false discounts.

22 19. Plaintiff relied upon Defendant’s artificially inflated market price and false
23 discount when purchasing the heels at Defendant’s outlet store. Plaintiff would not have
24 made such purchase but for Defendant’s representations of fabricated “SUGG. RETAIL”
25 prices and false discounted “OUR PRICE” prices.

26 20. Plaintiff and the Class reasonably and justifiably acted and relied on the
27 substantial price differences that Defendant advertised (*i.e.*, “SUGG. RETAIL” price vs.
28 “OUR PRICE” price), and made purchases believing that they were receiving a substantial

1 discount on an item of greater value than it actually was. Plaintiff, like other class
2 members, was lured in, relied on, and damaged by these pricing schemes that Defendant
3 carried out.

4 21. Defendant intentionally concealed and failed to disclose material facts
5 regarding the truth about its false former pricing in order to provoke Plaintiff and the
6 proposed class to purchase Nine West merchandise in its outlet stores.

7 **Defendant**

8 22. Plaintiff is informed and believes, and upon such information and belief
9 alleges, Defendant Nine West Holdings, Inc. is a privately held Delaware corporation with
10 its headquarters located at 180 Rittenhouse Circle, Bristol, Pennsylvania 19007. Defendant
11 maintains the Nine West brand, a fashion line of women's clothing, shoes, handbags, and
12 other accessories. Defendant operates Nine West retail and outlet stores and the
13 ninewest.com website, and advertises, markets, and sells its merchandise in California and
14 throughout the United States.

15 23. Plaintiff does not know the true names or capacities of the persons or entities
16 sued herein as DOES 1-50 inclusive, and therefore sues such Defendants by such fictitious
17 names. Plaintiff is informed and believes, and upon such information and belief alleges,
18 that each of the DOE Defendants is in some manner legally responsible for the damages
19 suffered by Plaintiff and the Class members, as alleged herein. Plaintiff will amend this
20 Complaint to set forth the true names and capacities of these Defendants when they have
21 been ascertained, along with appropriate charging allegations, as may be necessary.

22 **IV. FACTUAL BACKGROUND**

23 **The Fraudulent Sale Discounting Scheme**

24 24. Nine West is a worldwide iconic fashion brand, specializing in the sale of
25 trendy footwear, clothing, and accessories for women. The Nine West brand is owned by
26 parent company Nine West Holdings, Inc., a privately owned corporation with a presence
27 in over 78 countries. Nine West directly markets its merchandise to consumers in the State
28 of California and throughout the United States via its in-store advertisements and its e-

1 commerce website (www.ninewest.com). Nine West sells its own branded merchandise at
2 its retail stores, outlet stores, and through its e-commerce website. This case involves only
3 the Nine West branded merchandise sold at Nine West's outlet stores.

4 25. The Nine West merchandise sold in the Nine West outlet stores are
5 exclusively sold at the Nine West outlet stores and it is not sold anywhere else. Thus, there
6 is no other market for the Nine West outlet store merchandise other than at Defendant's
7 Nine West outlet stores.

8 26. Nine West engages in a scheme to defraud its customers by perpetually
9 discounting its merchandise in its outlet stores. Nine West consistently advertises its
10 merchandise with a regular "SUGG. RETAIL" price and a corresponding "OUR PRICE"
11 sale price. The "SUGG. RETAIL" price conveys to the customer the purported regular
12 price of the item. The "OUR PRICE" sale price conveys to the customer a deeply
13 discounted price at which the item is presently being offered for sale. The two prices (the
14 "SUGG. RETAIL" price and the "OUR PRICE" price) are conveyed to consumers on the
15 price tags. The price tags are white stickers with black and red handwriting and
16 approximately 2" x 1 1/2" in size. *See e.g.* Exhibit A. Occasionally, Nine West runs a
17 promotion of "___% Off Entire Store," which is advertised on a red placard. *See e.g.*
18 Exhibit L.

19 27. However, at no time is the Nine West outlet store merchandise ever offered
20 for sale anywhere at the "SUGG. RETAIL" price. The "SUGG. RETAIL" price is merely
21 a false reference price, which Nine West utilizes to deceptively manufacture a deeply
22 discounted sale price referred to as the "OUR PRICE" price on the merchandise sold at the
23 Nine West outlet stores during the class period.

24 28. This practice is not accidental. Rather, this practice is a fraudulent scheme
25 intended to deceive consumers into: 1) making purchases they otherwise would not have
26 made; and/or 2) paying substantially more for merchandise consumers believed was
27 heavily discounted and thus, worth more than its actual value.
28

1 29. Retailers, including Nine West, understand that consumers are susceptible to
2 a good bargain, and therefore, Nine West has a substantial interest in lying in order to
3 generate sales. A product's "regular," "original," or "market" price matters to consumers
4 because it serves as a baseline upon which consumers perceive a product's value. In this
5 case, Nine West has marked its merchandise with an "SUGG. RETAIL" price, which it
6 intends to be the equivalent of a "regular" or "market" price. The "SUGG. RETAIL" price
7 conveys to consumers, including Plaintiff, "the product's worth and the prestige that
8 ownership of the product conveys." *See Hinojos v. Kohl's Corp.*, 718 F.3d 1098, 1106 (9th
9 Cir. 2013) (citing Dhruv Grewal & Larry D. Compeau, Comparative Price Advertising:
10 Informative or Deceptive?, 11 J. Pub. Pol'y & Mktg. 52, 55 (Spring 1992) ("By creating
11 an impression of savings, the presence of a higher reference price enhances subjects'
12 perceived value and willingness to buy the product."); *id.* at 56 ("[E]mpirical studies
13 indicate that as discount size increases, consumers' perceptions of value and their
14 willingness to buy the product increase, while their intention to search for a lower price
15 decreases.").

16 30. Nine West's pricing advertisements uniformly include both the false regular
17 price (the "SUGG. RETAIL" price) with a corresponding discount price ("OUR PRICE"
18 price) displayed on the price tags on the merchandise. This uniform scheme intends to and
19 does provide misinformation to the customer. This misinformation communicates to
20 consumers, including Plaintiff, that the Nine West outlet store products have a greater value
21 than the advertised "OUR PRICE" sale price.

22 31. As the Ninth Circuit recognizes, "[m]isinformation about a product's 'normal'
23 price is . . . significant to many consumers in the same way as a false product label would
24 be." *See Hinojos*, 718 F.3d at 1106.

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26 ///

27 ///

Plaintiff's Investigation

32. Plaintiff's investigation of Nine West revealed that Nine West's outlet store merchandise is priced uniformly. That is, Nine West merchandise sold at Nine West outlet stores bears a price tag with a false "SUGG. RETAIL" price and a substantially discounted "OUR PRICE" sale price. Plaintiff's investigation confirmed that Nine West's heels were priced with false "SUGG. RETAIL" prices and corresponding "OUR PRICE" prices in the 90-day period immediately preceding Plaintiff's purchase of her heels. Defendant's deceptive pricing practice remains uniform even after Defendant changed the language on the price tag to advertise the "ORIGINAL" price and "NOW" price.

33. Since 2016, Plaintiff's investigation cataloged the pricing practices at two Nine West outlet stores in San Diego County, including: Carlsbad Premium Outlets 5630 Paseo Del Norte, Carlsbad, California 92008 ("Carlsbad") and Shops at Las Americas, 4155 Camino De La Plaza, San Ysidro, California 92173 ("Las Americas"). The false "SUGG. RETAIL" price and corresponding purported "OUR PRICE" pricing scheme was both uniform and identical at all stores investigated. For example, Plaintiff's investigation revealed the following items were continuously discounted at the stores indicated:

Item	"SUGG. RETAIL" Price	"OUR PRICE" Price	Continuously discounted from (at least)	Discounted through (at least)	Stores Observed	Photo Exhibit
Nine West Fireball Black Suede Heeled Ankle Bootie with Fringes	\$149.00	\$99.00, discounted to \$49.99	February 2016	Over 90 days	Las Americas Carlsbad	A
Nine West Sasafras Cheetah Print High Heels	\$99.00	\$69.99, discounted to \$49.99	February 2016	Over 90 days	Las Americas Carlsbad	B

1	Nine West	\$89.99	\$59.99	February	Over 90	Las	C
2	Chillax			2016	days	Americas	
3	Gold					Carlsbad	
4	Sandal						
5	Wedge						
6	Nine West	\$109.00	\$69.99,	March 2016	Over 90	Las	D
7	Briagd		discounted		days	Americas	
8	Sand Lace		to \$59.99			Carlsbad	
9	Up Heeled						
10	Ankle						
11	Bootie						
12	Item	“ORIGINAL”	“NOW”	Continuously	Discounted	Stores	Photo
13		Price	Price	discounted	through (at	Observed	Exhibit
14				from (at	least)		
15				least)			
16	Nine West	\$89.00	\$59.99	February	Present	Las	E
17	Adeline			16, 2017		Americas	
18	Bluesu						
19	Closed-Toe						
20	Block						
21	Pump						
22	Nine West	\$89.00	\$49.99	February	Present	Carlsbad	F
23	Gigio			16, 2017			
24	Whitesy						
25	Open-Toe						
26	Heel w/						
27	Ankle						
28	Strap						
29	Abee Wine	\$179.00	\$49.99	February	Over 90	Las	G
30	Knee-High			16, 2017	days	Americas	
31	Heeled						
32	Boot						
33	Axwell	\$89.00	\$19.99	February	Present	Carlsbad	H
34	Pewter			16, 2017			
35	Open-Toe						
36	Heel w/						

Ankle Strap						
Aniston Ruby Red St. Open-Toe Heel w/ Ankle Strap	\$89.00	\$29.99	February 16, 2017	Present	Carlsbad	I
Zahina Tan FB Patterned Ankle Bootie	\$119.00	\$79.99	February 16, 2017	Present	Carlsbad Las Americas	J
Somella Taupe Buckled Ankle Bootie	\$139.00	\$59.99	February 16, 2017	Present	Carlsbad	K

34. The fraudulent pricing scheme applies to all Nine West outlet store merchandise offered on sale at every Nine West outlet store, including the heels purchased by Plaintiff on or about April 16, 2016. By way of example, all items in the above referenced chart were offered at an “OUR PRICE” price substantially less than their “SUGG. RETAIL” price for every day Plaintiff’s investigation was conducted and for well over 90 days at a time. Similarly, all items in the above referenced chart were offered at a “NOW” price substantially less than their “ORIGINAL” price for every day Plaintiff’s investigation was conducted and for well over 90 days at a time.

Plaintiff and the Class Are Injured by Nine West’s Deceptive Pricing Scheme

35. The “SUGG. RETAIL” price listed and advertised on Nine West’s outlet store products are fake reference prices, utilized only to perpetuate Nine West’s fake discount scheme.

1 36. Nine West knows that its comparative price advertising is false, deceptive,
2 misleading, and unlawful under California and federal law.

3 37. Nine West fraudulently concealed from and intentionally failed to disclose to
4 Plaintiff and other members of the Class the truth about its advertised discount prices and
5 former reference prices.

6 38. At all relevant times, Nine West has been under a duty to Plaintiff and the
7 Class to disclose the truth about its false discounts.

8 39. Plaintiff relied upon Nine West's artificially inflated "SUGG. RETAIL" price
9 and false "OUR PRICE" discount price when purchasing the heels from Nine West.
10 Plaintiff would not have made such purchase but for Nine West's representations regarding
11 the false "SUGG. RETAIL" price and the fictitious "OUR PRICE" price of the
12 merchandise. Plaintiff may in the future shop at Nine West's outlet stores.

13 40. Plaintiff and the Class reasonably and justifiably acted and relied on the
14 substantial price differences that Nine West advertised, and made purchases believing that
15 they were receiving a substantial discount on an item of greater value than it actually was.
16 Plaintiff, like other Class members, was lured in, relied on, and was damaged by the
17 deceptive pricing scheme that Nine West carried out.

18 41. Nine West intentionally concealed and failed to disclose material facts
19 regarding the truth about false former price advertising in order to provoke Plaintiff and
20 the Class to purchase merchandise in its Nine West outlet stores.

21 **V. CLASS ALLEGATIONS**

22 42. Plaintiff brings this action on behalf of herself and all other similarly situated
23 Class members pursuant to Rule 23 of the Federal Rules of Civil Procedure and seeks
24 certification of the following Class against Nine West for violations of California state
25 laws:

26 All persons who, within the State of California and during the applicable
27 statute of limitations period (the "Class Period"), purchased from a Nine West
28 outlet store one or more products at discounts from the advertised "SUGG.

1 RETAIL” price and who have not received a refund or credit for their
2 purchase(s).

3 Excluded from the Class are Nine West, as well as its officers, employees, agents,
4 or affiliates, and any judge who presides over this action, as well as all past and present
5 employees, officers, and directors of Nine West. Plaintiff reserves the right to expand,
6 limit, modify, or amend this class definition, including the addition of one or more
7 subclasses, in connection with her motion for class certification, or at any other time, based
8 upon, *inter alia*, changing circumstances and/or new facts obtained during discovery.

9 43. **Numerosity:** The class members are so numerous that joinder of all members
10 is impracticable. Plaintiff is informed and believes that the proposed Class contains
11 hundreds of thousands of individuals who have been damaged by Nine West’s conduct as
12 alleged herein. The precise number of Class members is unknown to Plaintiff.

13 44. ***Existence and Predominance of Common Questions of Law and Fact:*** This
14 action involves common questions of law and fact, which predominate over any questions
15 affecting individual Class members. These common legal and factual questions include,
16 but are not limited to, the following:

- 17 a. Whether, during the Class Period, Nine West used false “SUGG.
18 RETAIL” price tags and falsely advertised price discounts on its outlet
19 store products sold in its Nine West outlet stores;
- 20 b. Whether, during the Class Period, the “SUGG. RETAIL” prices
21 advertised by Nine West were the prevailing market prices for the
22 respective Nine West outlet store merchandise during the three months
23 preceding the dissemination and/or publication of the advertised former
24 prices;
- 25 c. Whether Nine West’s alleged conduct constitutes violations of the laws
26 asserted;
- 27 d. Whether Nine West engaged in unfair, unlawful, and/or fraudulent
28 business practices under the laws asserted;

- e. Whether Nine West engaged in false or misleading advertising;
- f. Whether Plaintiff and Class members are entitled to damages and/or restitution and the proper measure of that loss; and
- g. Whether an injunction is necessary to prevent Nine West from continuing to use false, misleading, or illegal price comparison.

45. **Typicality:** Plaintiff's claims are typical of the claims of the Class members because, *inter alia*, all Class members have been deceived (or were likely to be deceived) by Nine West's false and deceptive price advertising scheme, as alleged herein. Plaintiff is advancing the same claims and legal theories on behalf of herself and all Class members.

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

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

48. All Class members, including Plaintiff, were exposed to one or more of Nine West's misrepresentations or omissions of material fact claiming that former "SUGG. RETAIL" prices were in fact *bona fide*. Due to the scope and extent of Nine West's consistent false "discount" price advertising scheme, disseminated in a years-long campaign to California consumers, it can be reasonably inferred that such

misrepresentations or omissions of material fact were uniformly made to all members of the Class. In addition, it can be reasonably presumed that all Class members, including Plaintiff, affirmatively acted in response to the representations contained in Nine West's false advertising scheme when she purchased her heels at the Nine West outlet store.

49. Nine West keeps extensive computerized records of its customers through, *inter alia*, customer loyalty rewards programs and general marketing programs. Nine West has one or more databases through which a significant majority of Class members may be identified and ascertained, and it maintains contact information, including email and home addresses, through which notice of this action could be disseminated in accordance with due process requirements.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violation of California's Unfair Competition Law ("UCL") California Business & Professions Code Section 17200, *et seq.*

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

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

52. The UCL imposes strict liability. Plaintiff need not prove that Nine West intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices—but only that such practices occurred.

"Unfair" Prong

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

1 54. Nine West's actions constitute "unfair" business practices because, as alleged
2 above, Nine West engaged in misleading and deceptive price comparison advertising that
3 represented false "SUGG. RETAIL" prices and corresponding deeply discounted "OUR
4 PRICE" prices. The "SUGG. RETAIL" prices were nothing more than fabricated
5 "regular" prices leading to phantom markdowns. Nine West's acts and practices offended
6 an established public policy of transparency in pricing, and engaged in immoral, unethical,
7 oppressive, and unscrupulous activities that are substantially injurious to consumers.

8 55. The harm to Plaintiff and Class members outweighs the utility of Nine West's
9 practices. There were reasonably available alternatives to further Nine West's legitimate
10 business interests other than the misleading and deceptive conduct described herein.

11 ***"Fraudulent" Prong***

12 56. A business act or practice is "fraudulent" under the UCL if it is likely to
13 deceive members of the consuming public.

14 57. Nine West's acts and practices alleged above constitute fraudulent business
15 acts or practices as they have deceived Plaintiff and are highly likely to deceive members
16 of the consuming public. Plaintiff relied on Nine West's fraudulent and deceptive
17 representations regarding its "SUGG. RETAIL" prices for products which Nine West sells
18 exclusively at its Nine West outlet stores. These misrepresentations played a substantial
19 role in Plaintiff's decision to purchase those products at steep discounts, and Plaintiff
20 would not have purchased those products without Nine West's misrepresentations.

21 ***"Unlawful" Prong***

22 58. A business act or practice is "unlawful" under the UCL if it violates any other
23 law or regulation.

24 59. Nine West's acts and practices alleged above constitute unlawful business acts
25 or practices as they have violated state and federal law in connection with their deceptive
26 pricing scheme. The Federal Trade Commissions Act ("FTCA") prohibits "unfair or
27 deceptive acts or practices in or affecting commerce" (15 U.S.C. § 45(a)(1)) and prohibits
28 the dissemination of any false advertisements. 15 U.S.C. § 52(a). Under the Federal Trade

Commission, false former pricing schemes, similar to the ones implemented by Nine West, are described as deceptive practices that would violate the 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 artificial, inflated price was established for the purpose of enabling a 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).

60. 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.

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

2 61. As detailed in Plaintiff's Third Cause of Action below, the Consumer Legal
3 Remedies Act, Cal. Civ. Code § 1770(a)(9), ("CLRA"), prohibits a business from
4 "[a]dvertising goods or services with intent not to sell them as advertised," and subsection
5 (a)(13) prohibits a business from "[m]aking false or misleading statements of fact
6 concerning reasons for, existence of, or amounts of price reductions."

7 62. The violation of any law constitutes an "unlawful" business practice under the
8 UCL.

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

11 64. Nine West's practices, as set forth above, have misled Plaintiff, the proposed
12 Class, and the public in the past and will continue to mislead in the future. Consequently,
13 Nine West's practices constitute an unlawful, fraudulent, and unfair business practice
14 within the meaning of the UCL.

15 65. Nine West's violation of the UCL, through its unlawful, unfair, and fraudulent
16 business practices, are ongoing and present a continuing threat that Class members and the
17 public will be deceived into purchasing products based on price comparisons of arbitrary
18 and inflated "SUGG. RETAIL" prices and substantially discounted "OUR PRICE" prices.
19 These false comparisons created phantom markdowns and lead to financial damage for
20 consumers like Plaintiff and the Class.

21 66. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent
22 injunctive relief and order Nine West to cease this unfair competition, as well as
23 disgorgement and restitution to Plaintiff and the Class of all Nine West's revenues
24 associated with its unfair competition, or such portion of those revenues as the Court may
25 find equitable.

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SECOND CAUSE OF ACTION

**Violation of California's False Advertising Law ("FAL")
California Business and Professions Code Section 17500, *et seq.***

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

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

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

69. The "intent" required by Section 17500 is the intent to dispose of property, and not the intent to mislead the public in the disposition of such property.

70. Similarly, this section provides that "no price shall be advertised as a former price of any advertised thing, unless the alleged former prices was the prevailing market price . . . 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.

71. Nine West's routine of advertising discounted prices from false "SUGG. RETAIL" prices, which were never the prevailing market prices of those products and were materially greater than the true prevailing prices, was an unfair, untrue, and misleading practice. This deceptive marketing practice gave consumers the false impression that the products were regularly sold on the market for a substantially higher price than they actually were; therefore, leading to the false impression that the Nine West outlet store products were worth more than they actually were.

72. Nine West misled consumers by making untrue and misleading statements and failing to disclose what is required as stated in the Code alleged above.

73. As a direct and proximate result of Nine West's misleading and false advertisements, Plaintiff and the Class have suffered injury in fact and have lost money. As such, Plaintiff requests that this Court order Nine West to restore this money to Plaintiff and all Class members, and to enjoin Nine West from continuing these unfair practices in violation of the UCL in the future. Otherwise, Plaintiff, Class members, and the broader public will be irreparably harmed and/or denied an effective and complete remedy.

THIRD CAUSE OF ACTION

Violation of California's Consumers Legal Remedies Act ("CLRA"), California Civil Code Section 1750, *et seq.*

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

75. This cause of action is brought pursuant to the CLRA, Cal. Civ. Code § 1750, *et seq.* Plaintiff and each member of the proposed Class are "consumers" as defined by Cal. Civ. Code § 1761(d). Nine West's sale of their merchandise to Plaintiff and the Class were "transactions" within the meaning of Cal. Civ. Code § 1761(e). The products purchased by Plaintiff and the Class are "goods" within the meaning of Cal. Civ. Code § 1761(a).

76. Nine West violated and continues to violate the CLRA by engaging in the following practices proscribed by Cal. Civ. Code § 1770(a) in transactions with Plaintiff and the Class which were intended to result in, and did result in, the sale of Nine West products:

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

77. Pursuant to Section 1782(a) of the CLRA, on July 5, 2017, Plaintiff's counsel notified Nine West 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 Nine West's intent to act.

1 78. If Nine West fails to respond to Plaintiff's letter, fails to agree to rectify the
2 problems associated with the actions detailed above, or fails to give notice to all affected
3 consumers within 30 days of the date of written notice, as proscribed by Section 1782,
4 Plaintiff will move to amend her Complaint to pursue claims for actual, punitive, and
5 statutory damages, as appropriate against Nine West. As to this cause of action at this time,
6 Plaintiff seeks only injunctive relief.

7 **VII. PRAYER FOR RELIEF**

8 79. Wherefore, Plaintiff, on behalf of herself and all other members of the Class,
9 requests that this Court award relief against Nine West as follows:

- 10 a. An order certifying the Class and designating Plaintiff as the Class
11 Representative and her counsel as Class Counsel;
- 12 b. Awarding Plaintiff and the proposed Class members damages;
- 13 c. Awarding restitution and disgorgement of all profits and unjust
14 enrichment that Nine West retained from Plaintiff and the Class
15 members as a result of its unlawful, unfair, and fraudulent business
16 practices described herein;
- 17 d. Awarding declaratory and injunctive relief as permitted by law or
18 equity, including: enjoining Nine West from continuing the unlawful
19 practices as set forth herein, and directing Nine West to identify, with
20 Court supervision, victims of its misconduct and pay them all money
21 they are required to pay;
- 22 e. Order Nine West to engage in a corrective advertising campaign;
- 23 f. Awarding attorneys' fees and costs; and
- 24 g. For such other and further relief as the Court may deem necessary or
25 appropriate.

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1 **VIII. DEMAND FOR JURY TRIAL**

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

3
4 Dated: July 5, 2017

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

5
6 /s/ Todd D. Carpenter

7 Todd D. Carpenter (CA 234464)
8 402 West Broadway, 29th Floor
9 San Diego, California 92101
10 Telephone: (619) 756-6994
11 Facsimile: (619) 756-6991
12 tcarpenter@carlsonlynch.com
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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

Brittany Covell, on behalf of herself and all others similarly situated,

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorneys (Firm Name, Address, and Telephone Number)
Todd D. Carpenter (CA Bar No.: 234464) 619-756-6994
402 West Broadway, 29th Floor
San Diego, CA 92101**DEFENDANTS**

Nine West Holdings, Inc., a Delaware corporation

County of Residence of First Listed Defendant Delaware
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'17CV1371 H JLB**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 3 Federal Question (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 checked="" 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 type="checkbox"/> 2 | <input checked="" 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	PERSONAL INJURY <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 PERSONAL INJURY <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 PERSONAL PROPERTY <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 LABOR <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 IMMIGRATION <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 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <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)) FEDERAL TAX SUITS <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
REAL PROPERTY <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	CIVIL RIGHTS <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 PRISONER PETITIONS Habeas Corpus: <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 Other: <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. section 1332(d)

Brief description of cause:

1) Violation of Cal. Bus. & Prof. 17200; 2) Violation of Cal. Bus. & Prof. 17500; 3) Violation of Cal. Civ. Code 1750

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

07/05/2017

/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.

EXHIBIT A

Exhibit A
Page 1 of 3



Exhibit A
Page 2 of 3



NINE WEST

Exhibit A
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EXHIBIT B



Exhibit B
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Exhibit B
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EXHIBIT C





Exhibit C
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EXHIBIT D



Exhibit D
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Exhibit D
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EXHIBIT E





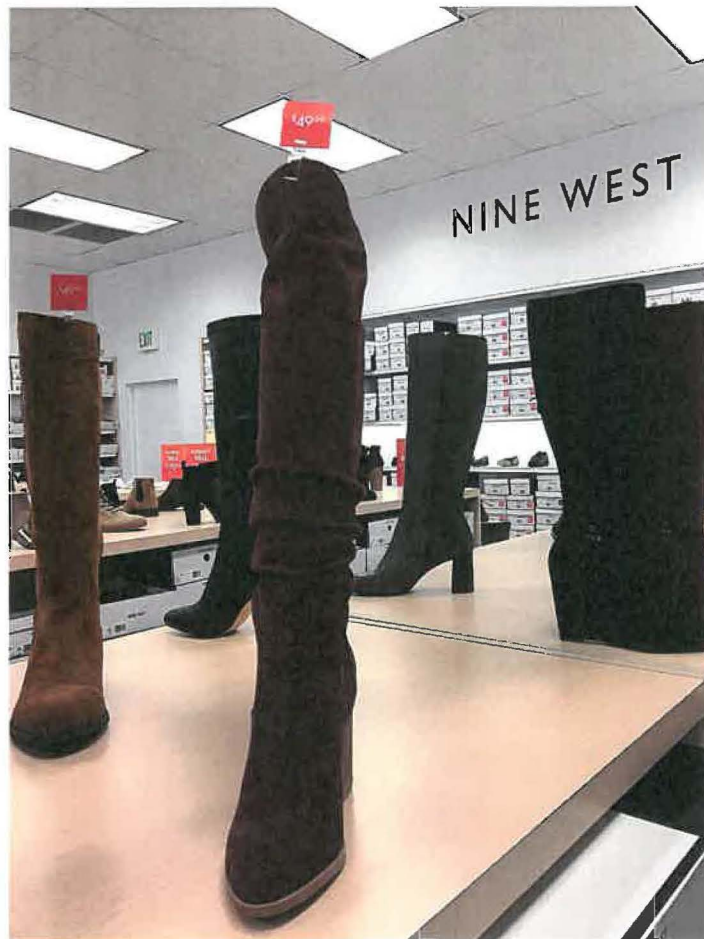
EXHIBIT F



Exhibit F
Page 2 of 3



EXHIBIT G



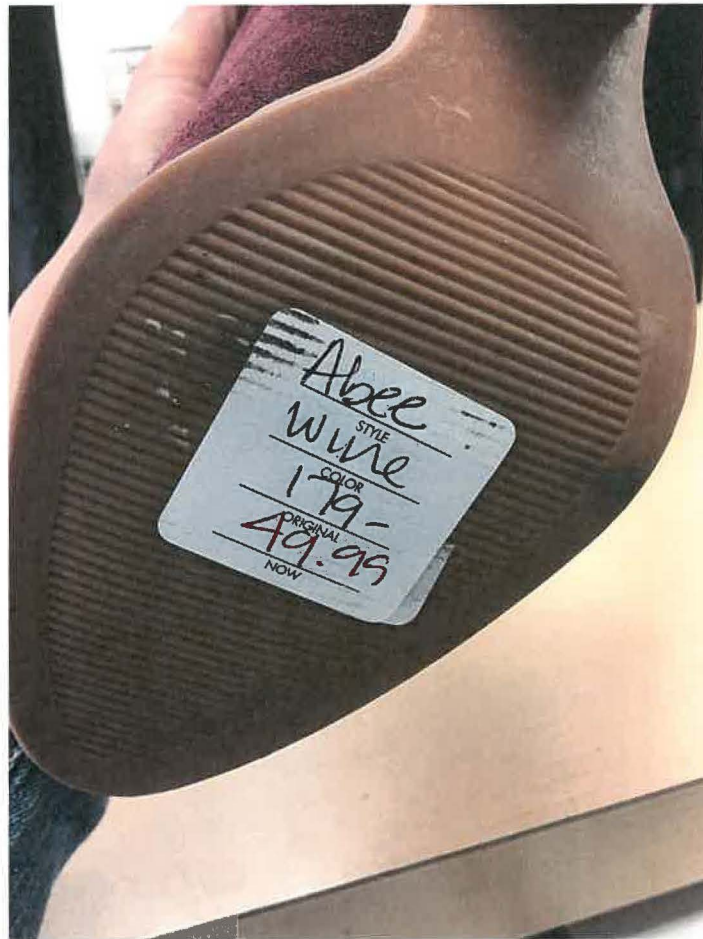


EXHIBIT H



Exhibit H
Page 2 of 3



EXHIBIT I



Exhibit I
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EXHIBIT J



Exhibit J
Page 2 of 3

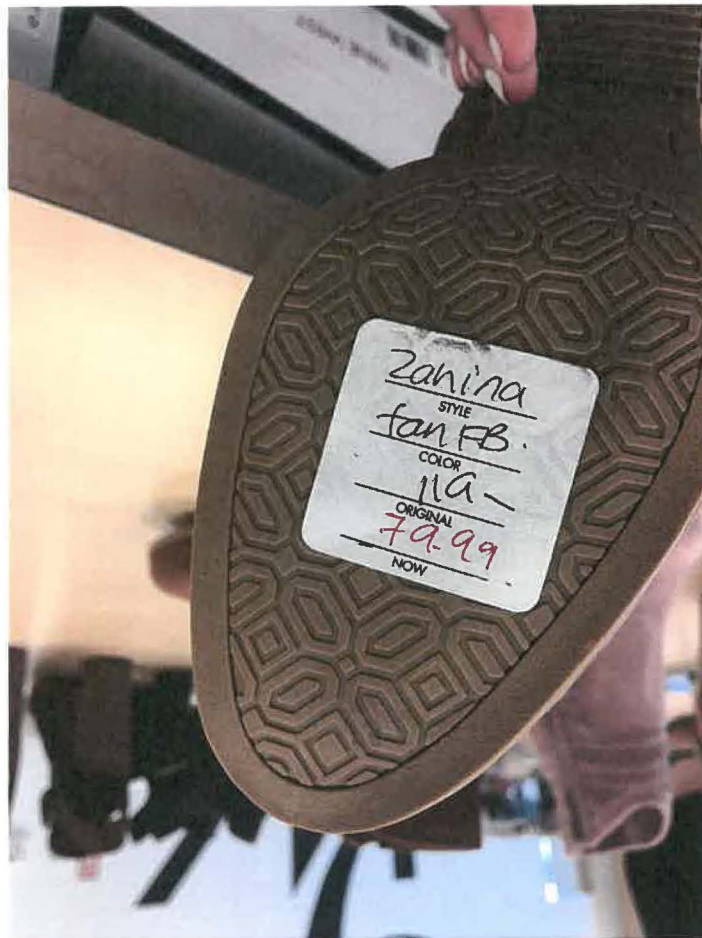


EXHIBIT K





EXHIBIT L



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

Todd D. Carpenter (CA 234464)
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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**

BRITTANY COVELL, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

NINE WEST HOLDINGS, INC., a
Delaware corporation, and DOES 1-50,
inclusive,

Defendant.

Case No.: '17CV1371 H JLB

**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. Defendant Nine West Holdings, Inc. has done and is doing business in the County of San Diego. Such business includes the marketing, distributing, and sale of women's footwear and accessories at its Nine West outlet stores.

