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the Proposed Class
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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11
12 TIMUR SAFRANSKY, on behalf of
himself and all others similarly situated,

13 Plaintiffs
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15 vs.

16 FOSSIL GROUP, INC., FOSSIL
17 STORES I, INC. and DOES 1 through
100, inclusive,

18 Defendants.
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CASE NO. '17CV1865 MMANLS

CLASS ACTION COMPLAINT

1. Violation of the “Unfair” Prong of the UCL
2. Violation of the “Fraudulent” Prong of the UCL
3. Violation of the “Unlawful” Prong of the UCL
4. Violation of the California False Advertising Law, California Business & Professions Code Sections 17500, *et seq*
5. Violations of California Consumer Legal Remedies Act

DEMAND FOR JURY TRIAL

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1 Plaintiff Timur Safransky (“Plaintiff”) brings this action against Defendant
2 Fossil Group, Inc. and Defendant Fossil Stores I, Inc. (collectively “Defendants” or
3 “Fossil”) on behalf of himself, and all others similarly situated, upon information
4 and belief, except as to his own actions, the investigation of his counsel, and the
5 facts that are a matter of public record, as follows:

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7 **INTRODUCTION**

8 1. This class action arises out of Defendants’ unlawful, unfair, and
9 fraudulent business practice commonly referred to as “false reference pricing.”
10 “False reference pricing” is the act of misrepresenting the former, original or regular
11 price of some good that is purportedly offered at a “sale price,” a business practice
12 that Defendants engage in to increase sales. As alleged herein, during at least the
13 past four years, Defendants have misled consumers by advertising the false former,
14 original or regular prices which were fabricated, and corresponding phantom
15 “savings” on jewelry, wallets, bags, backpacks, belts and small leather goods sold in
16 their Fossil Outlet Stores located in California.

17 2. California law prohibits the discounting of retail merchandise from its
18 original price for more than ninety (90) days. *See* California Business & Professions
19 Code §17501. Federal regulations also mandate that a retailer offer only genuine
20 discounts from regular retail prices; not false discounts from inflated original prices.
21 *See* 16 C.F.R. §233.1.

22 3. Some retailers, such as Fossil, employ false reference pricing because it
23 misleads consumers into believing that they are “getting a good deal,” thereby
24 increasing sales. The United States Court of Appeals for the Ninth Circuit
25 succinctly explained: “Most consumers have, at some point, purchased merchandise
26 that was marketed as being ‘on sale’ because the proffered discount seemed too
27 good to pass up. Retailers, well aware of consumers’ susceptibility to a bargain,
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1 therefore have an incentive to lie to their customers by falsely claiming that their
2 products have previously sold at a far higher ‘original’ price in order to induce
3 customers to purchase merchandise at a purportedly marked-down ‘sale’ price.
4 Because such practices are misleading – and effective – the California Legislature
5 has prohibited them.” *Hinojos v. Kohl’s Corp.*, 718 F.3d 1098, 1101 (9th Cir.
6 2013).

7 4. The intentional use of false and fraudulent reference pricing tactics is
8 increasingly deceiving consumers in the market. To illustrate, on January 30, 2014,
9 four members of Congress demanded a Federal Trade Commission (“FTC”)
10 investigation of misleading marketing practices by outlet stores across the United
11 States. The four Members of Congress described a pricing scheme similar to the
12 one implemented at Fossil Outlet Stores and stated: “[h]owever, we are concerned
13 that outlet store consumers are being misled into believing they are purchasing
14 products originally intended for sale at the regular retail store. Many outlets may
15 also be engaged in deceptive reference pricing. It is a common practice at outlet
16 stores to advertise a retail price alongside the outlet store price – even on made-for-
17 outlet merchandise that does not sell at regular retail locations. Since the item was
18 never sold in the regular retail store or at the retail price, the retail price is
19 impossible to substantiate. We believe this practice may be a violation of the FTC’s
20 Guides Against Deceptive Pricing (16 CFR 233).” *See*
21 [www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-stores-may-be-](http://www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-stores-may-be-misleading-consumers)
22 [misleading-consumers.](http://www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-stores-may-be-misleading-consumers)

23 5. During the Class Period (defined below), Defendants continuously
24 advertised false price discounts for merchandise designed and manufactured
25 exclusively for sale throughout their Fossil Outlet Stores in California (hereinafter
26 referred to as “Fossil Outlet Products”). Fossil Outlet Products can be identified
27 with the words “Like Style” on the price tags attached to the merchandise.
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1 Specifically, Defendants would offer substantial discounts off a false “Reference
2 Price” listed on the price tags of Fossil Outlet Products. As used throughout the
3 Complaint, Reference Price shall mean the ticketed price listed on the Fossil Outlet
4 Product’s price tag. As addressed in detail below, Plaintiff and reasonable
5 consumers typically understand the Reference Price to be the former, original, or
6 regular price of the item on which it appears.

7 6. Specifically, Defendants represented – on the price tags of Fossil Outlet
8 Products – Reference Prices that were overstated and did not represent a bona fide
9 price at which the Fossil Outlet Products were previously sold. Nor was the
10 advertised Reference Price a prevailing market retail price within three months
11 immediately preceding the publication of the advertised former prices, as required
12 by California law.

13 7. Defendants convey their deceptive pricing scheme through in store
14 signage offering steep discounts from the Reference Price listed on the products’
15 price tags in the Fossil Outlet Stores. The Reference Price listed and advertised on
16 Defendants’ price tags are fake reference prices; utilized only to perpetuate
17 Defendants’ fake-discount scheme. The pricing scheme is prominently displayed on
18 virtually all Fossil Outlet Products throughout the store. There are typically large
19 placard signs on top of or alongside each rack of items, advertising a “discounted %
20 off,” or a “discounted whole-price” reduction for the item. For example, a Fossil
21 Outlet Product may have a price tag with a “Reference Price” of \$248.00 and the
22 related signage advertising “Take 50% Off Lowest Ticketed Price,” which is
23 substantially less than the former regular price listed on the price tag. *See* Exhibits
24 “A” and “B.” Another example is a Fossil Outlet Product having a price tag with a
25 “Reference Price” of \$198.00 and the related signage advertising a “sale price” of
26 \$129.00. *See* Exhibits “C” and “D.” However, the “Reference Price” listed on the
27 price tags have never existed and/or were not the prevailing market retail prices for
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1 such Fossil Outlet Products within the three months next immediately preceding the
2 publication of the price tags, as required by California law. They are fictional
3 creations intentionally designed to enable Defendants' phantom markdowns.
4 Furthermore, upon check-out, Defendants provide California consumers, including
5 Plaintiff, with sales receipts continuing the misrepresentations regarding false price
6 reductions from the "Reference Price." For example, the stated *discount* from the
7 false former "Regular Price" is listed for each item purchased.

8 8. Fossil knows consumers are bargain-hunters, and knows consumers are
9 lured by the prospect of a bargain at "Outlet" stores. "Outlet" stores are commonly
10 understood by the public to be selling the same merchandise that the manufacturer
11 typically sells at its regular non-outlet retail stores, but at a discount. According to
12 Business Insider, "[t]he common assumption about outlet stores is that you're
13 getting the same goods that are in a regular store without the big price tag." *See*
14 <http://www.businessinsider.com/outlet-stores-arent-a-good-deal-2014-5>. However,
15 outlet stores typically sell different merchandise than their retail counterparts.

16 9. In this case, Defendants offer for sale Fossil Outlet Products designed
17 and manufactured *exclusively* for their Fossil Outlet Stores, which means that such
18 items were never sold – or even intended to be sold – at the Reference Price
19 advertised on the price tags. These Fossil Outlet Products were never offered for
20 sale at the company-operated mainline retail stores in California, or in any other
21 state. Further exacerbating consumers' perception of deep discounts is the fact that
22 Defendants sell higher quality products at their mainline retail stores. Defendants
23 know that consumers expect to receive a discount when shopping at their Fossil
24 Outlet Stores, and accordingly, preys on consumer expectations by artificially
25 marking up the Reference Price of their Fossil Outlet Products and then offering
26 discounts off of the artificially inflated Reference Price to induce consumers to
27 purchase their Fossil Outlet Products. The truth is that the Fossil Outlet Products
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1 are not discounted off former, regular, or original prices. Rather, the Reference
2 Price exists to provide an illusory discount when compared to the actual sales price
3 offered. This tactic is called “reference pricing.” The Reference Price listed on the
4 Fossil Outlet Products’ price tags were and are the prices chosen by Defendants to
5 enable them to engage in their phantom markdown scheme.

6 10. Defendants convey their deceptive pricing scheme to consumers
7 through promotional materials, in-store advertising displays, and print
8 advertisements which are uniform. Defendants’ false price advertising scheme has
9 been rampant throughout California as part of a massive, years-long, pervasive
10 campaign and has been consistent across all of Defendants’ exclusive branded Fossil
11 Outlet Products sold in their Fossil Outlet Stores. Indeed, most, if not all Fossil
12 Outlet Products sold in the Fossil Outlet Stores are subject to the same fraudulent
13 pricing scheme complained of herein.

14 11. Upon information and belief, thousands of Defendants’ consumers in
15 California, including Plaintiff, were victims of Defendants’ deceptive, misleading,
16 and unlawful false pricing scheme. This deception will continue if Defendants are
17 not enjoined from continuing their pricing scheme.

18 12. Defendants know or should reasonably know that their comparative
19 (reference) price advertising is false, deceptive, misleading and unlawful under
20 California law.

21 13. Defendants fraudulently concealed from, and intentionally failed to
22 disclose to, Plaintiff and other members of the Class, the fact that Reference Prices
23 displayed on the Fossil Outlet Products do not reflect a former, regular, or original
24 price.

25 14. At all relevant times, Defendants have been under a duty to Plaintiff
26 and the Class to disclose the truth about their Reference Prices and false discounts.

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1 15. The facts which Defendants misrepresented or failed to disclose are
2 material facts that a reasonable person would have considered material, *i.e.*, facts
3 which would contribute to a reasonable person’s decision to purchase Defendants’
4 merchandise. Defendants’ false representations of Reference Prices and false
5 representations of purported savings, discounts and bargains are objectively material
6 to the reasonable consumer, including Plaintiff, and therefore reliance upon such
7 representations may be presumed as a matter of law.

8 16. Plaintiff relied upon Defendants’ false representations of Reference
9 Prices and discounts when purchasing a Fossil Outlet Product from a Fossil Outlet
10 Store in California. Plaintiff would not have made such purchase, but for
11 Defendants’ false representations and fraudulent omissions of the Reference Price of
12 the item he purchased, as compared with the supposedly discounted price at which
13 the Fossil Outlet Store offered the item for sale.

14 17. Plaintiff reasonably believed the truth of the represented price attached
15 to the price tag, or in advertisements or on signage regarding, the Fossil Outlet
16 Product purchased at the Fossil Outlet Store, which expressly represented that
17 Plaintiff was getting a substantial percentage discount off the regular price. Plaintiff
18 reasonably understood the Reference Price representation to indicate a true former
19 price. Indeed, one cannot truly “save” off anything other than a true former price on
20 the identical product. Otherwise, one is not “saving,” one is simply buying a
21 different product than the one that bears a higher price.

22 18. Plaintiff and the Class reasonably and justifiably acted and relied on the
23 substantial price differences that Defendants advertised, and made purchases
24 believing that they were receiving a substantial discount on an item of greater value
25 than it actually was. Plaintiff and the Class reasonably understood the Reference
26 Price on the price tags to be a valid representation of a true former price on the
27 identical product. However, the price on the price tags did not represent a true
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1 former price or the prevailing market retail price in the preceding three months for
2 the Fossil Outlet Products. Plaintiff, like other Class members, was lured in, relied
3 on, and was damaged by these pricing schemes that Defendants carried out.

4 19. Defendants intentionally concealed and failed to disclose material facts
5 regarding the truth about their misrepresentations and false former price advertising
6 scheme for the purpose of inducing Plaintiff and Class members to purchase Fossil
7 Outlet Products in their Fossil Outlet Stores.

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

19 21. Plaintiff brings this action on behalf of himself and other similarly
20 situated consumers who have purchased one or more Fossil Outlet Products at Fossil
21 Outlet Stores in California that were deceptively represented as discounted from
22 false former prices in order to halt the dissemination of this false, misleading, and
23 deceptive pricing scheme, to correct the false and misleading perception it has
24 created in the minds of consumers, and to obtain redress for those who have
25 purchased such products. Plaintiff seeks restitution and other appropriate equitable
26 remedies, including an injunction under the UCL and FAL; and an injunction under
27 the CLRA.

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JURISDICTION AND VENUE

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22. This Court has original jurisdiction of this action pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332 (d)(2) and (6). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and at least one of the members of the proposed Class have a different citizenship from Defendants.

23. The Southern District of California has personal jurisdiction over the Defendants named herein because Defendants do sufficient business in the State of California, have sufficient minimum contacts with California and/or otherwise intentionally avail themselves of the markets within California through the ownership and operation of Fossil Outlet Stores in California where Defendants employed, and continue to employ, the sale tactics detailed herein to render the exercise of jurisdiction by California courts and the application of California law to the claims of the Plaintiff permissible under traditional notions of fair play and substantial justice.

24. Venue is proper in the Southern District of California pursuant to 28 U.S.C. § 1391 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.

THE PARTIES

A. Plaintiff

25. Plaintiff Timur Safransky (“Safransky”) is a citizen and resident of San Diego County, California. It is alleged that on November 16, 2016, in reliance on Defendants’ false and deceptive advertising, marketing and pricing schemes, Plaintiff purchased a Fossil Outlet Product from the Fossil Outlet Store located at the Carlsbad Premium Outlets in Carlsbad, California, and was damaged thereby.

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1 B. Defendants

2 26. Defendant Fossil Group, Inc. is a Delaware corporation which is
3 licensed to do, and is doing, business throughout the United States, with its principal
4 place of business located at 901 S. Central Expressway, Richardson, Texas. As of
5 July 1, 2017, Defendant owned and operated 86 Fossil retail stores located in
6 premier retail sites and 123 Fossil Outlet Stores located in major outlet malls,
7 throughout the United States, and designs, markets, advertises, distributes, and/or
8 sells an extensive line of men’s and women’s fashion watches, jewelry, sunglasses,
9 belts, bags and small leather goods.

10 27. Defendant Fossil Stores I, Inc. is a Delaware corporation which is
11 licensed to do, and is doing, business throughout the United States, with its principal
12 place of business located at 901 S. Central Expressway, Richardson, Texas.
13 Defendant operates as a subsidiary of Defendant Fossil Group, Inc.

14 28. The only stores that are the subject of this Complaint are the Fossil
15 Outlet Stores in California. The Complaint expressly excludes any Fossil Outlet
16 Products sold at Fossil Outlet Stores that advertised a Reference Price that was a
17 prevailing market retail price within the three months preceding. Defendants subtly
18 mark the items exclusively made for the Fossil Outlet Stores by including the words
19 “Like Style” on the price tags attached to the Fossil Outlet Products. *See* Exhibits
20 “B” and “D.”

21 C. Doe Defendants

22 29. The true names and capacities of Defendants sued in this Complaint as
23 Does 1 through 100, inclusive, are currently unknown to Plaintiff, and therefore
24 Plaintiff sues such Defendants by such fictitious names. Plaintiff will amend this
25 Complaint to reflect the true names and capacities of the Defendants designated
26 herein as Does 1 through 100, when they have been ascertained, along with the
27 appropriate charging allegations, as may be necessary.

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1 30. Plaintiff is informed and believes, and on that basis alleges, that each of
2 the fictitiously named Defendants was in some manner legally responsible for the
3 actionable and unlawful actions, policies and practices as alleged herein. Plaintiff
4 will amend this Complaint to set forth the true names and capacities of said
5 Defendants, along with the appropriate charging allegations when the same have
6 been ascertained. Each reference in this Complaint to “Fossil” or “Defendants” is
7 also a reference to all Defendants sued as Does 1 through 100.

8 D. Agency/Aiding And Abetting

9 31. Plaintiff is informed and believes, and on that basis alleges, that at all
10 times herein mentioned, Defendants, and each of them, were an agent or joint
11 venturer of each of the other Defendants, and in doing the acts alleged herein, were
12 acting within the course and scope of such agency. Each Defendant had actual
13 and/or constructive knowledge of the acts of each of the other Defendants, and
14 ratified, approved, joined in, acquiesced and/or authorized the wrongful acts of each
15 co-defendant, and/or retained the benefits of said wrongful acts.

16 32. Plaintiff is further informed and believes, and on that basis alleges, that
17 Defendants, and each of them, aided and abetted, encouraged and rendered
18 substantial assistance to the other Defendants in breaching their obligations to
19 Plaintiff and the Class, as alleged herein. In taking action, as particularized herein,
20 to aid and abet and substantially assist the commissions of these wrongful acts and
21 other wrongdoings complained of, each of the Defendants acted with an awareness
22 of his/her/its primary wrongdoing and realized that his/her/its conduct would
23 substantially assist the accomplishment of the wrongful conduct, wrongful goals,
24 and wrongdoing.

25 33. Whenever reference is made in this Complaint to any act of “Fossil” or
26 “Defendants,” such shall be deemed to mean that officers, directors, agents,
27 employees, or representatives of the Defendants named in this lawsuit committed or
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1 authorized such acts, or failed and omitted to adequately supervise or properly
2 control or direct their employees while engaged in the management, direction,
3 operation or control of the affairs of the Defendants and did so while acting within
4 the scope of their employment or agency.

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6 **CONDUCT GIVING RISE TO THE VIOLATIONS OF THE LAW**

7 A. Plaintiff's Purchase

8 34. On November 16, 2016, Plaintiff went shopping at the Fossil Outlet
9 Store which is located at the Carlsbad Premium Outlets in Carlsbad, California to
10 purchase a bag for himself. He observed a large exterior window display that
11 advertised "Entire Store Up To 40% Off" and an additional "20% Off" the entire
12 purchase.

13 35. Upon entering the store, Plaintiff observed prominent signage on top of
14 or alongside almost each rack of merchandise, advertising a "discounted % off," or a
15 "discounted whole-price" reduction for each item offered for sale. Believing he was
16 able to pay significantly less than the Reference Price for the identical products
17 normally charged in the retail marketplace, Plaintiff was induced to purchase a bag
18 item which was offered at a price significantly lower than its stated "Reference
19 Price." Plaintiff purchased the Fossil Outlet Product after relying on Defendants'
20 false discounts and false Reference Prices for the product.

21 36. Specifically, relying upon Defendants' misrepresentations and false and
22 deceptive advertising, Plaintiff was induced to purchase the following item: a Travis
23 Workbag, Style SBG1136200, SKU Number 762346329138 bearing a Reference
24 Price of "\$198.00" on the price tag. *See* true and correct copy of price tag attached
25 to Travis Workbag which Plaintiff purchased on November 16, 2016, attached
26 hereto as Exhibit "E."

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1 37. Plaintiff observed signage above the subject item that advertised a
2 percentage discount, clearly indicating that the item was being sold at a significant
3 discount off the Reference Price. Specifically, the bag contained a price tag
4 representing it to have a Reference Price of “\$198.00,” and the signage which
5 represented that the bag was on sale for “40% Off Ticketed Price.”

6 38. Relying on Defendants’ misrepresentations and false and deceptive
7 advertising and believing that he was receiving a significant discount from the
8 Reference Price listed on the price tag by purchasing the bag, Plaintiff decided to
9 purchase the item and proceeded to the cash register where he did in fact purchase
10 the item. Plaintiff also believed he was purchasing merchandise that was of the
11 same like, kind and quality of that sold in the regular company-operated Fossil retail
12 stores. The purported Reference Price and corresponding price reduction and saving
13 was false and deceptive, as the prevailing market retail price for the subject bag
14 during the three months immediately prior to Plaintiff’s purchase of the item was
15 never at the represented former Reference Price. Plaintiff would not have purchased
16 the bag in the absence of Defendants’ misrepresentations. Instead, Defendants
17 continuously offered the subject bag, like the vast majority of Fossil Outlet Products
18 offered for sale at Fossil Outlet Stores at discounted prices. As a result, Plaintiff has
19 been personally victimized by and suffered economic injury as a direct result of
20 Defendants’ unlawful, unfair and fraudulent conduct.

21 39. Furthermore, upon check-out on November 16, 2016, Defendants
22 provided Plaintiff with a sales receipt containing the same misrepresentations
23 regarding false price reductions off the Reference Price on the bag. The sales
24 receipt clearly sets forth the false Reference Price (which was the purported
25 “Regular Price” of \$198.00) for the item purchased, and that Plaintiff was receiving
26 the benefit of discounts off (*i.e.* 40% + 20% Special Offer) the Reference Price for
27 the item purchased and listed the discounts or savings amount for the item, and then
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1 the sales price amount after the purported discounts. *See* true and correct copy of
2 Plaintiff's sales receipt, dated November 16, 2017, attached hereto as Exhibit "F."

3 B. Defendants Engage In Deceptive Advertising

4 40. Subsequent to Plaintiff's purchase, an investigation conducted on
5 behalf of Plaintiff confirmed that the "Reference Price" listed on the price tag for
6 Plaintiff's purchase at the Fossil Outlet Store was never the prevailing market retail
7 price in the preceding 90 days before Plaintiff's purchase. Additionally, the
8 investigation revealed that Defendants' deceptive advertising practices were
9 systematic and pervasive at Fossil Outlet Stores as Fossil Outlet Products remain
10 continuously discounted from the Reference Price listed on the tag price or they are
11 not offered for sale at their Reference Price (the purported "Regular" Price") for any
12 substantial period of time, and in most cases, not at all, and in compliance with
13 California law. Indeed, in most instances, *new* Fossil Outlet Products appear at the
14 Fossil Outlet Stores that are immediately discounted, rendering the Reference Prices
15 completely meaningless, false, and misleading. The difference between the
16 discounted sale prices and the Reference Price is a false savings percentage or
17 whole-price reduction used to lure consumers into purchasing products they believe
18 are significantly discounted. In addition, the Fossil Outlet Products sold at Fossil
19 Outlet Stores are designed and manufactured for, and sold *exclusively* by, those
20 stores, which means that such items were never sold – or even intended to be sold –
21 at the Reference Price advertised on the price tags. The Fossil Outlet Products were
22 *never* offered for sale at the Fossil mainline retail stores in California.

23 41. By failing to price Fossil Outlet Products at their actual regular price
24 for a substantial period of time, Defendants artificially inflated the market price or
25 value of the Fossil Outlet Products they sell, including the bag purchased by
26 Plaintiff. Moreover, by failing to price their Fossil Outlet Products, including the
27 bag purchased by Plaintiff at their regular price for a substantial period of time, and
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1 in compliance with California law, Defendants interfered with market forces,
2 driving the selling price of their products higher than they would be if Defendants
3 had complied with the law.

4 42. Defendants' false discounting practice, as described herein, has the
5 effect of setting an artificially high market value for their "on sale" Fossil Outlet
6 Products. Customers, like Plaintiff, purchase Fossil Outlet Products from
7 Defendants believing they are receiving a substantial discount on their purchases,
8 when in fact they are not. They are instead purchasing an item they would not
9 otherwise buy and paying a higher price than they would otherwise pay were the
10 products subject to fair market competition and pricing.

11 43. Plaintiff's and Class members' reliance upon Defendants' false price
12 comparison advertising was not only reasonable, but entirely intended by
13 Defendants. In fact, empirical marketing studies demonstrate that false reference
14 pricing actually creates an impression of higher value and an incentive for retailers
15 to engage in this false and fraudulent behavior:

16 [c]omparative price advertising offers consumers a basis for
17 comparing the relative value of the product offering by suggesting
18 a monetary worth of the product and any potential savings

19 [A] comparative price advertisement can be construed as
20 deceptive if it makes any representation, or involves any
21 practice that may materially mislead a reasonable consumer.

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

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

4 *Id.* at 55, 56.

5 44. A retailer’s “reference price,” the stated price presented alongside the
6 retailer’s “on sale” price, provides consumers a reference point with which to
7 evaluate the prospective purchase. The reference price is often described with terms
8 such as “Regular Price,” “Original Price,” and/or “Former Price.”

9 45. A retailer’s reference price impacts the consumer’s behavior in the
10 marketplace. As the reference price increases, so does the consumer’s perception of
11 the value of the transaction, the consumer’s willingness to make the purchase, and
12 the amount of money the consumer is willing to pay for the product.

13 46. When the reference price is bona fide and truthful, it helps consumers
14 make informed purchasing decisions. In contrast, consumers are harmed when
15 merchants advertise their products alongside falsely-inflated former prices, *i.e.*,
16 “false reference prices,” as consumers are provided a false sense of value. In this
17 context, the reference price is no longer informative but deceptive because
18 consumers are deprived of a full and fair opportunity to accurately evaluate the
19 specific sales offer in its relevant market. As the Ninth Circuit recognizes,
20 “[m]isinformation about a product’s “normal” price is . . . significant to many
21 consumers in the same way as a false product label would be.” *See Hinojos v.*
22 *Kohl’s Inc.* 718 F.3d at 1106.

23 47. Moreover, the hidden nature of false discounting makes it effective.
24 Consumers, like Plaintiff, unaware of the practices at issue, instead complete their
25 purchases believing that they “got a good deal.” Retailers, like Defendants, make
26 falsely-discounted sales without suspicion because consumers do not have access to
27 the comprehensive historical pricing information necessary to reveal the deception.
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1 interest; any of their officers, directors, employees, or agents; the legal
2 representatives, successors or assigns of any such excluded persons or entities; and
3 the judicial officers to whom this matter is assigned as well as their court staff.
4 Plaintiff reserves the right to expand, limit, modify, or amend this class definition,
5 including the addition of one or more subclasses, in connection with his motion for
6 class certification, or at any other time, based upon, *inter alia*, changing
7 circumstances and/or new facts obtained during discovery.

8 52. The members of the Class are so numerous that joinder of all members
9 is impracticable. While the exact number of Class members is unknown to Plaintiff
10 at this time, Plaintiff estimates that the Class consists of thousands of members.
11 Moreover, Plaintiff alleges that the precise number of Class members, their
12 identities, and their locations can be ascertained through appropriate discovery and
13 records of Defendants and their agents. Defendants keep extensive computerized
14 records of their customers through, *inter alia*, customer loyalty programs and
15 general marketing programs. Defendants have one or more databases through which
16 a significant majority of Class members may be identified and ascertained, and they
17 maintain contact information, including email and home mailing addresses, through
18 which notice of this action could be disseminated to potential Class members in
19 accordance with due process requirements.

20 53. There are numerous questions of law and fact common to the Class
21 which predominate over any questions affecting only individual members of the
22 Class.

23 54. Among the questions of law and fact common to the Class are, *inter*
24 *alia*:

25 a. Whether, during the Class Period, Defendants used false price
26 representations and falsely advertised price discounts on Fossil Outlet Products they
27 sold in their Fossil Outlet Stores in California;

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1 b. Whether Defendants intended their Reference Price to be synonymous
2 with the item's former, regular, or original price;

3 c. Whether, during the Class Period, the Reference Prices advertised by
4 Defendants were the prevailing market prices for the associated Fossil Outlet
5 Products sold by Defendants during the three month period preceding the
6 dissemination and/or publication of the advertised Reference Prices;

7 d. Whether Defendants' use of false or deceptive price advertising
8 constituted false advertising under California law;

9 e. Whether Defendants engaged in unfair, unlawful and/or fraudulent
10 business practices under California law;

11 f. Whether Defendants misrepresented and/or failed to disclose material
12 facts about their product pricing and discounts;

13 g. Whether Defendants have made false or misleading statements of fact
14 concerning the reasons for, existence of, or amounts of price reductions;

15 h. Whether Defendants' conduct, as alleged herein, was intentional and
16 knowing;

17 i. Whether Class members are entitled to damages and/or restitution; and,
18 if so, what is the amount of revenues and/or profits Defendants received and/or was
19 lost by Class members as a result of the conduct alleged herein;

20 j. Whether an injunction is necessary to prevent Defendants from
21 continuing to use false, misleading or illegal price comparisons; and

22 k. Whether Plaintiff and Class members are entitled to an award of
23 reasonable attorneys' fees, pre-judgment interest and costs of suit.

24 55. Plaintiff's claims are typical of the claims of the members of the Class
25 and, like all members of the Class, purchased Fossil Outlet Products from a Fossil
26 Outlet Store that conveyed a false Reference Price and a fictitious discount. Plaintiff
27 and the Class he seeks to represent have all been deceived (or were likely to be
28

1 deceived) by Defendants' false former price advertising scheme, as alleged herein.
2 Plaintiff is advancing the same claims and legal theories on behalf of himself and all
3 members of the Class. Accordingly, Plaintiff has no interests antagonistic to the
4 interests of any other member of the Class.

5 56. Plaintiff is an adequate representative of the Class because he is a
6 member of the Class and his interests do not conflict with the interests of the Class
7 members he seeks to represent. Plaintiff will fairly and adequately represent and
8 protect the interest of the Class because he is not antagonistic to the Class. Plaintiff
9 has retained counsel who are competent and experienced in the prosecution of
10 consumer fraud and class action litigation.

11 57. The nature of this action and the nature of laws available to Plaintiff
12 and the Class make the use of the class action format a particularly efficient and
13 appropriate procedure to afford relief to Plaintiff and the Class for the wrongs
14 alleged because:

15 a. The individual amounts of damages involved, while not insubstantial,
16 are such that individual actions or other individual remedies are impracticable and
17 litigating individual actions would be too costly;

18 b. If each Class member was required to file an individual lawsuit, the
19 Defendants would necessarily gain an unconscionable advantage since they would
20 be able to exploit and overwhelm the limited resources of each individual Class
21 member with vastly superior financial and legal resources;

22 c. The costs of individual suits could unreasonably consume the amounts
23 that would be recovered;

24 d. Proof of a common factual pattern that Plaintiff experienced is
25 representative of that experienced by the Class and will establish the right of each
26 member of the Class to recover on the cause of action alleged; and

27 e. Individual actions would create a risk of inconsistent results and would
28

1 be unnecessary and duplicative of this litigation.

2 58. Plaintiff and Class members have all similarly suffered irreparable
3 harm and damages as a result of Defendants' unlawful and wrongful conduct. This
4 action will provide substantial benefits to Plaintiff, the Class and the public because,
5 absent this action, Plaintiff and Class members will continue to suffer losses,
6 thereby allowing Defendants' violations of law to proceed without remedy, and
7 allowing Defendants to retain proceeds of their ill-gotten gains.

8 59. All Class members, including Plaintiff, were exposed to one or more of
9 Defendants' misrepresentations or omissions of material fact claiming that
10 advertised Reference Prices were in existence. Due to the scope and extent of
11 Defendants' consistent false price advertising scheme, disseminated in a massive,
12 years-long campaign to California consumers via in-store display advertising, print
13 advertising, and the like, it can be reasonably inferred that such misrepresentations
14 or omissions of material fact were uniformly made to all members of the Class. In
15 addition, it can be reasonably presumed that all Class members, including Plaintiff,
16 affirmatively acted in response to the representations contained in Defendants' false
17 advertising scheme when purchasing Fossil Outlet Products at Fossil Outlet Stores
18 in California.

19 60. Defendants have acted or refused to act on grounds generally
20 applicable to the Class as a whole and Plaintiff seeks, *inter alia*, equitable remedies
21 with respect to the Class as a whole. As such, the systematic policies and
22 procedures of Defendants make final injunctive relief or declaratory relief with
23 respect to the Class as a whole appropriate.

24
25 **FIRST CAUSE OF ACTION**

26 Violation Of The "Unfair" Prong Of The UCL
27 (By Plaintiff and the Class Against Defendants)

28 61. Plaintiff re-alleges and incorporates by reference the allegations

1 contained in the preceding paragraphs as though fully set forth herein.

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

5 63. The UCL imposes strict liability. Plaintiff need not prove that
6 Defendants intentionally or negligently engaged in unlawful, unfair, or fraudulent
7 business practices – only that such practices occurred.

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

11 65. Defendants have violated and continue to violate the “unfair” prong of
12 the UCL by representing a false Reference Price and corresponding price discount
13 for their Fossil Outlet Products sold at Fossil Outlet Stores in California. As a
14 result, the inflated Reference Price was nothing more than a false, misleading and
15 deceptive price included to create the illusion of a discount.

16 66. Defendants’ acts and practices are unfair because they caused Plaintiff,
17 and reasonable consumers like him, to falsely believe that Fossil Outlet Stores are
18 offering value, discounts or bargains from the prevailing market worth of the Fossil
19 Outlet Products sold that did not, in fact, exist. Defendants intended and intend for
20 Plaintiff and Class members to equate the Reference Price with a higher original or
21 regular price. As a result, purchasers, including Plaintiff, reasonably perceived that
22 they were receiving products that regularly sold in the retail marketplace at
23 substantially higher prices (and are, therefore, worth more) than what they paid.
24 This perception has induced reasonable purchasers, including Plaintiff, to buy Fossil
25 Outlet Products, which they otherwise would not have purchased.

26 67. The gravity of the harm to members of the Class resulting from these
27 unfair acts and practices outweighed any conceivable reasons, justifications and/or
28

1 motives of Defendants for engaging in such deceptive acts and practices. By
2 committing the acts and practices alleged above, Defendants engaged in unfair
3 business practices within the meaning of California Business & Professions Code §§
4 17200, *et seq.*

5 68. As a direct and proximate result of Defendants’ acts and practices,
6 Plaintiff and Class members have suffered injury in fact and have lost money or
7 property as a result of purchasing Defendants’ Fossil Outlet Products.

8 69. Through their unfair acts and practices, Defendants have improperly
9 obtained money from Plaintiff and the Class. As such, Plaintiff requests that this
10 Court cause Defendants to restore this money to Plaintiff and all Class members,
11 and to enjoin Defendants from continuing to violate the UCL as discussed herein
12 and/or from violating the UCL in the future. Otherwise, Plaintiff and the Class may
13 be irreparably harmed and/or denied an effective and complete remedy if such an
14 order is not granted.

15
16 **SECOND CAUSE OF ACTION**

17 **Violation Of The “Fraudulent” Prong Of The UCL**
18 **(By Plaintiff and the Class Against Defendants)**

19 70. Plaintiff re-alleges and incorporates by reference the allegations
20 contained in the preceding paragraphs as though fully set forth herein.

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

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

26 73. The price tags on the Fossil Outlet Products and advertising materials
27 containing false Reference Prices were “fraudulent” within the meaning of the UCL
28 because they deceived Plaintiff, and were likely to deceive members of the Class,

1 into believing that Defendants were offering value, discounts or bargains at Fossil
2 Outlet Stores from the prevailing market value or worth of the Fossil Outlet
3 Products sold that did not, in fact, exist. As a result, purchasers, including Plaintiff,
4 reasonably perceived that they were receiving Fossil Outlet Products that regularly
5 sold in the retail marketplace at substantially higher prices (and were, therefore,
6 worth more) than what they paid. This perception induced reasonable purchasers,
7 including Plaintiff, to buy such products from Defendants, which they otherwise
8 would not have purchased.

9 74. Defendants' acts and practices as described herein have deceived
10 Plaintiff and were highly likely to deceive members of the consuming public.
11 Specifically, in deciding to purchase Fossil Outlet Products from Fossil Outlet
12 Stores, Plaintiff relied on Defendants' misleading and deceptive Reference Prices
13 and discounted prices. Each of these factors played a substantial role in Plaintiff's
14 decision to purchase a Fossil Outlet Product, and Plaintiff would not have purchased
15 the subject item in the absence of Defendants' misrepresentations. Accordingly,
16 Plaintiff suffered monetary loss as a direct result of Defendants' practices described
17 herein.

18 75. As a direct and proximate result of Defendants' acts and practices,
19 Plaintiff and Class members have suffered injury in fact and have lost money or
20 property as a result of purchasing Defendants' Fossil Outlet Products.

21 76. As a result of the conduct described above, Defendants have been
22 unjustly enriched at the expense of Plaintiff and members of the proposed Class.
23 Specifically, Defendants have been unjustly enriched by obtaining revenues and
24 profits that they would not otherwise have obtained absent their false, misleading
25 and deceptive conduct.

26 77. Through their unfair acts and practices, Defendants have improperly
27 obtained money from Plaintiff and the Class. As such, Plaintiff requests that this
28

1 Court cause Defendants to restore this money to Plaintiff and all Class members,
2 and to enjoin Defendants from continuing to violate the UCL as discussed herein
3 and/or from violating the UCL in the future. Otherwise, Plaintiff and the Class may
4 be irreparably harmed and/or denied an effective and complete remedy if such an
5 order is not granted.

6
7 **THIRD CAUSE OF ACTION**

8 **Violations Of The “Unlawful” Prong Of The UCL**
9 **(By Plaintiff and the Class Against Defendants)**

10 78. Plaintiff re-alleges and incorporates by reference the allegations
11 contained in the preceding paragraphs as though fully set forth herein.

12 79. 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 80. A business act or practice is “unlawful” under the UCL if it violates
16 any other law or regulation.

17 81. The FTCA prohibits “unfair or deceptive acts or practices in or
18 affecting commerce” (15 U.S.C. § 45(a)(1)) and specifically prohibits false
19 advertisements. 15 U.S.C. § 52(a)). The FTC has established Guidelines that
20 describe false former pricing schemes, similar to Defendants’ in all material
21 respects, as deceptive practices that would violate the FTCA:

22 (a) One of the most commonly used forms of bargain advertising is to
23 offer a reduction from the advertiser’s own former price for an article.
24 If the former price is the actual, bona fide price at which the article was
25 offered to the public on a regular basis for a reasonably substantial
26 period of time, it provides a legitimate basis for the advertising of a
27 price comparison. Where the former price is genuine, the bargain being
28 advertised is a true one. If, on the other hand, the former price being

1 advertised is not bona fide but fictitious – for example, where an
2 artificial price, inflated price was established for the purpose of
3 enabling the subsequent offer of a large reduction – the “bargain” being
4 advertised is a false one; the purchaser is not receiving the unusual
5 value he expects. In such a case, the “reduced” price is, in reality,
6 probably just the seller’s regular price.

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

15 16 C.F.R. § 233.1.

16 82. California statutory and regulatory law also expressly prohibits false
17 former pricing schemes. Cal. Bus. & Prof. Code § 17501, entitled “*Value*
18 *determinations; Former price advertisements,*” states:

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

23 *No price shall be advertised as a former price of any advertised thing,*
24 *unless the alleged former price was the prevailing market price as*
25 *above defined within three months next immediately preceding the*
26 *publication of the advertisement or unless the date when the alleged*
27

28

1 former price did prevail is clearly, exactly and conspicuously stated in
2 the advertisement. [Emphasis added.]

3 83. As detailed in Plaintiff’s Fifth Cause of Action below, Cal. Civ. Code
4 § 1770, subsection (a)(9), prohibits a business from “[a]dvertising goods or services
5 with intent not to sell them as advertised,” and subsection (a)(13) prohibits a
6 business from “[m]aking false or misleading statements of fact concerning reasons
7 for, existence of, or amounts of price reductions.”

8 84. Defendants also violated and continue to violate Business &
9 Professions Code § 17501, and Civil Code § 1770, sections (a)(9) and (a)(13) by
10 advertising false discounts from purported former prices that were, in fact, not the
11 prevailing market prices within three months next preceding the publication and
12 dissemination of advertisements containing the false former prices.

13 85. Defendants’ use of and reference to a materially false Reference Price,
14 and purported percentage discount or whole-price reduction in connection with their
15 marketing and advertisements concerning the Fossil Outlet Products sold at Fossil
16 Outlet Stores violated and continues to violate the FTCA, 15 U.S.C. § 45(a)(1) and
17 15 U.S.C. § 52(a), as well as FTC Guidelines published at Title 16, Code of Federal
18 Regulations, Section 233.

19 86. As a direct and proximate result of Defendants’ acts and practices,
20 Plaintiff and Class members have suffered injury in fact and have lost money or
21 property as a result of purchasing Defendants’ Fossil Outlet Products.

22 87. As a result of the conduct described above, Defendants have been
23 unjustly enriched at the expense of Plaintiff and members of the proposed Class.
24 Specifically, Defendants have been unjustly enriched by obtaining revenues and
25 profits that they would not otherwise have obtained absent their false, misleading
26 and deceptive conduct.

27 ///

28

1 88. Through their unfair acts and practices, Defendants have improperly
2 obtained money from Plaintiff and the Class. As such, Plaintiff requests that this
3 Court cause Defendants to restore this money to Plaintiff and all Class members,
4 and to enjoin Defendants from continuing to violate the UCL as discussed herein
5 and/or from violating the UCL in the future. Otherwise, Plaintiff and the Class may
6 be irreparably harmed and/or denied an effective and complete remedy if such an
7 order is not granted.

8
9 **FOURTH CAUSE OF ACTION**

10 Violation Of California False Advertising Law
11 California Business & Professions Code Sections 17500, *et. seq.*
(By Plaintiff and the Class Against Defendants)

12 89. Plaintiff re-alleges and incorporates by reference the allegations
13 contained in the preceding paragraphs as though fully set forth herein.

14 90. The California False Advertising Law prohibits unfair, deceptive,
15 untrue, or misleading advertising, including, but not limited to, false statements as to
16 worth, value and former price.

17 91. Cal. Bus. & Prof. Code § 17500 provides that:

18 [i]t is unlawful for any . . . corporation . . . with intent . . . to dispose of
19 . . . personal property . . . to induce the public to enter into any
20 obligation relating thereto, to make or disseminate or cause to be made
21 or disseminated . . . from this state before the public in any state, in any
22 newspaper or other publication, or any advertising device, or by public
23 outcry or proclamation, or in any other manner or means whatever,
24 including over the Internet, any statement . . . which is *untrue* or
25 *misleading*, and which is known, or which by the exercise of
26 reasonable care should be known, to be untrue or misleading . . .

27 [Emphasis added].

1 92. The “intent” required by Cal. Bus. & Prof. Code § 17500 is the intent
2 to dispose of property, and not the intent to mislead the public in the disposition of
3 such property.

4 93. Similarly, Cal. Bus. & Prof. Code § 17501 provides, “no price shall be
5 advertised as a former price of any advertised thing, unless the alleged former price
6 was the prevailing market price . . . within three months next immediately preceding
7 the publication of the advertisement or unless the date when the alleged former price
8 did prevail is clearly, exactly, and conspicuously stated in the advertisement.”

9 94. Defendants’ routine practice of including a false Reference Price on the
10 price tags for Fossil Outlet Products sold at Fossil Outlet Stores, which were never
11 the true prevailing prices of those products was an unfair, deceptive and misleading
12 advertising practice. This deceptive marketing practice gave consumers the false
13 impression that the Fossil Outlet Products sold at Fossil Outlet Stores were regularly
14 sold in the retail marketplace at substantially higher prices than they actually were.
15 Therefore, leading to the false impression that the merchandise was worth more than
16 it actually was. In fact, Fossil Outlet Products that were made exclusively for sale in
17 the Fossil Outlet Stores were never sold at the Reference Price under any
18 circumstances.

19 95. Defendants misled consumers by making untrue and misleading
20 statements and failing to disclose what is required as stated in the Code, as alleged
21 above.

22 96. As a direct and proximate result of Defendants’ acts and practices,
23 Plaintiff and Class members have suffered injury in fact and have lost money or
24 property as a result of purchasing Defendants’ products.

25 97. Through their unfair acts and practices, Defendants have improperly
26 obtained money from Plaintiff and the Class. As such, Plaintiff requests that this
27 Court cause Defendants to restore this money to Plaintiff and all Class members,
28

1 and to enjoin Defendants from continuing to violate the False Advertising Law as
2 discussed herein in the future. Otherwise, Plaintiff and the Class may be irreparably
3 harmed and/or denied an effective and complete remedy if such an order is not
4 granted.

5
6 **FIFTH CAUSE OF ACTION**

7 For Violation Of The Consumer Legal Remedies Act
8 California Civil Code Sections 1750, *et. seq.*
(By Plaintiffs and the Class Against Defendants)

9 98. Plaintiff re-alleges and incorporates by reference the allegations
10 contained in the preceding paragraphs as though fully set forth herein.

11 99. This cause of action is brought pursuant to the CLRA.

12 100. Plaintiff and each member of the proposed Class are “consumers”
13 within the meaning of California Civil Code § 1761(d).

14 101. Defendants’ sale of Fossil Outlet Products at Fossil Outlet Stores to
15 Plaintiff and the Class were “transactions” within the meaning of California Civil
16 Code § 1761(e). The Fossil Outlet Products purchased by Plaintiff and the Class are
17 “goods” within the meaning of California Civil Code § 1761(a).

18 102. As described herein, Defendants violated, and continue to violate, the
19 CLRA by falsely representing the nature, existence and amount of price discounts
20 by fabricating an inflated Reference Price and including that Reference Price on the
21 price tag for Fossil Outlet Products. Such a pricing scheme is in violation of Cal.
22 Civ. Code § 1770, subsection (a)(9) (“[a]dvertising goods or services with intent not
23 to sell them as advertised”) and subsection (a)(13) (“[m]aking false or misleading
24 statements of fact concerning reasons for, existence of, or amounts of price
25 reductions”).

26 103. Plaintiff relied on Defendants’ false representations in deciding to
27 purchase a Fossil Outlet Product from Defendant. Plaintiff would not have
28

1 purchased such merchandise absent Defendants' unlawful conduct. As a result of
2 these acts and practices, Plaintiff suffered damage in that he spent money at the
3 Fossil Outlet Store that he would not have otherwise spent absent Defendants'
4 unlawful and misleading acts and practices.

5 104. Pursuant to Section 1782(a) of the CLRA, on September 13, 2017,
6 Plaintiff's Counsel, on behalf of Plaintiff Safransky, served Defendants by United
7 States certified mail, return receipt requested, with notice of Defendants' particular
8 violations of the CLRA and requested that Defendants identify victims, notify
9 victims and remedy their illegal conduct within 30 days.

10 105. Plaintiff has requested that Defendants timely respond to the CLRA
11 demand notice and presently seeks only injunctive relief pursuant to the CLRA. If
12 Defendants fail to fully, completely and timely comply with Plaintiff's demand
13 letter, Plaintiff will amend this Complaint to seek actual and punitive damages, as
14 appropriate, under the CLRA. Under California Civil Code §1782(d), after the
15 commencement of an action for injunctive relief, and after compliance with the
16 provisions of Section 1782(a), Plaintiff may amend his Complaint without leave of
17 court to include a request for damages.

18
19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff, on behalf of himself and members of the Class,
21 prays for relief and judgment against Defendants as follows:

- 22 1. For an order certifying this matter as a class action and designating
23 Plaintiff as the Class Representative and Plaintiff's Counsel as Class Counsel;
- 24 2. For an order awarding restitution and disgorgement of all profits and
25 unjust enrichment that Defendants obtained from Plaintiff and the Class members as
26 a result of their unlawful, unfair, and fraudulent business practices described herein;
- 27 3. For appropriate injunctive relief as permitted by law or equity;
- 28

EXHIBIT A

Exhibit A
Page 1 of 2

TAKE
50% OFF
LOWEST TICKETED PRICE



Exhibit A
Page 2 of 2

EXHIBIT B

Exhibit B
Page 1 of 2



EXHIBIT C

Exhibit C
Page 1 of 2



SALE
\$129

EXHIBIT D

Exhibit D
Page 1 of 2



SHB1727484
7 23764 53698 0
JENNA TOTE
CORNFLOWER
\$198 00
LIKE STYLE

EXHIBIT E

Exhibit E
Page 1 of 3





EXHIBIT F

FOSSIL

EST.  USA

Carlsbad #7465

5600 Paseo del Norte #112A
Carlsbad CA 92008
(760) 602-9281

TRAVIS WORKBAG	BR 762346329138	
		*118.80 T
REGULAR PRICE		198.00
Special Offer 20%		23.76-
SUBTOTAL		\$95.04
TAX 8.0%		\$7.60
TOTAL		\$102.64
VISA		\$102.64
*****6537		
PURCHASE		
SWIPED		
APPROVED		
AUTH# 816135		
INVOICE #: 6222		
11-16-16 16:56:15		

SHARE FOR A CHANCE TO WIN
 Post a photo of your Fossil purchase
 to Twitter or Instagram and
 tag it with #myfossil #contest.
 Each month, we'll pick one
 winner to receive a FREE, specially
 selected men's or women's watch.

REGISTER YOUR PRODUCT
 Don't forget to register the warranty
 of your new Fossil product at
fossil.com/register



997465030589846222171213

ITEMS 1
 11-16-16 16:56:56 7465 03 58984 6222

Calling All Curious
www.Fossil.com
 #callingallcurious

Fossil will gladly accept unworn or unused merchandise for a refund or exchange within 90 days of purchase. Valid identification will be required for a return.

Normal wear and tear is not warranted on any Fossil product. Fossil reserves the right to determine whether worn and/or damaged items may be returned or exchanged.

Items purchased at a Full price store, will be accepted for returns at a Full price store only. Items purchased at an Outlet store, will be accepted for returns at an Outlet store only. Items must be returned in the same country where they were purchased.

Refund/Exchange with original receipt:

- Full refund or exchange will be accepted in the original form of payment except for items in an amount greater than \$350 that were purchased using cash, travelers checks, mail certificates, or personal checks. For these refunds, a corporate check will be issued and mailed within 20 business days for the full purchase price.

Refund/Exchange with gift receipt:

- Store credit for merchandise will be issued at the selling price at time of purchase.

Refund/Exchange without original or gift receipt:

- Store credit for merchandise will be issued at the current selling price.

For warranty information on Fossil products, visit our website at www.fossil.com.



Longue vie au vintage.

POLITIQUE DE RETOURS

EN VIGUEUR LE 12 AOÛT 2009

Jusqu'à 90 jours après l'achat, toute marchandise retournée qui n'aura été ni usée ni portée sera acceptée par Fossil. Nous exigeons une preuve d'achat valide pour tous retours sur ventes.

L'usure normale ne fait pas partie de la garantie des produits Fossil. Fossil se réserve le droit de décider si les produits usés et/ou endommagés peuvent être retournés ou échangés.

Les articles achetés en magasins de détails ne pourront être retournés que dans un magasin de détail. Les articles achetés dans les points de vente discount (magasin d'usine) pourront être retournés que dans un point de vente discount. En outre, les articles doivent être retournés dans le même pays d'achat.

Remboursement / échange avec le reçu original:

- Un remboursement ou un échange sera accepté avec la même méthode de paiement sauf pour les achats supérieurs à 350 \$ qui auront été payés en espèces, chèque de voyage ou certificat. Pour ces remboursements, un chèque d'entreprise du prix plein sera émis dans un délai de 20 jours ouvrables.

Remboursement / échange avec un reçu cadeau:

- Un crédit en magasin sera accordé d'une valeur égale au produit d'origine pour les retours avec un reçu cadeau.

Remboursement / échange sans reçu ou reçu cadeau :

- Un crédit en magasin sera accordé au prix plein du retour.

Page 3 of 3
Pour les informations concernant les politiques de montres de marque Fossil, veuillez consulter notre site internet à www.fossil.com.



1 LAW OFFICES OF ZEV B. ZYSMAN
A Professional Corporation
2 Zev B. Zysman (176805)
zev@zysmanlawca.com
3 15760 Ventura Boulevard, 16th Floor
Encino, CA 91436
4 Tel.: 818-783-8836
Fax: 818-783-9985

5 Attorneys for Plaintiff and
6 the Proposed Class

7
8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11
12 TIMUR SAFRANSKY, on behalf of
himself and all others similarly situated,

13 Plaintiffs

14 vs.

15 FOSSIL GROUP, INC., FOSSIL
16 STORES I, INC. and DOES 1 through
100, inclusive,

17 Defendants.
18
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CASE NO. '17CV1865 MMANLS

**DECLARATION OF PLAINTIFF IN
SUPPORT OF VENUE PURSUANT
TO CIVIL CODE §1780(d)**

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I, Timur Safransky, declare as follows:

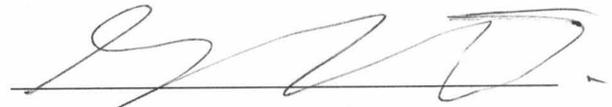
1. I am a competent adult, am a resident of the State of California, and am a Plaintiff in this matter. I have personal knowledge of the facts set forth below, and if called upon to testify to the same, I could and would do so competently and truthfully.

2. This declaration is submitted in accordance with California Civil Code §1780(d).

3. This action has been commenced in the Southern District of California because that is where the transaction or a substantial portion thereof occurred. Accordingly, under California Civil Code §1780 this is a proper place for the trial of the action.

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

Executed this 31 day of August 2017 at Carlsbad, CA.



TIMUR SAFRANSKY

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

Timur Safransky, on behalf of himself 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)

LAW OFFICES OF ZEV B. ZYSMAN, APC, Zev B. Zysman
15760 Ventura Boulevard, 16th Floor, Encino, CA 91436
Tel. 818-783-8836

DEFENDANTS

Fossil Group, Inc. and Fossil Stores I, Inc.

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)

'17CV1865 MMANLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 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 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 checked="" type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise (AJS, deputy clerk)	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	<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	CIVIL RIGHTS	PRISONER PETITIONS			
<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	<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	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. sections 1332(d)(2) and (6)

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 \$

5,000,000.00

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

09/13/2017 /s/ Zev B. Zysman

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.