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11 **SUPERIOR COURT OF CALIFORNIA**  
12 **COUNTY OF SAN DIEGO**

13 KRISTEN SCHERTZER, on behalf of herself and  
14 all others similarly situated,

15 Plaintiff,

16 v.

17 SAMSONITE COMPANY STORES, LLC, an  
18 Indiana Limited Liability Company and Does 1-  
19 100, inclusive,

20 Defendant.

Case No. 37-2019-00011100-CU-MC-CTL

[E-FILE]

**CLASS ACTION COMPLAINT**

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

[DEMAND FOR JURY TRIAL]

1 Plaintiff Kristen Schertzer brings this action on behalf of herself and all others similarly situated  
2 against Defendant Samsonite Company Stores, LLC (“Samsonite” or “Defendant”), and states:

3 **I. NATURE OF THE ACTION**

4 1. This is a class action regarding Defendant’s false and misleading advertisement of deep  
5 discounts on its Samsonite luggage and travel accessories sold in its retail outlet stores. The discounts  
6 offered by Defendant on its Samsonite merchandise are fake sales – the advertised discounts are not real.

7 2. Samsonite advertises all of its Samsonite branded products for sale by listing the  
8 merchandise with an “OUR PRICE” price and a corresponding discounted “Now” price. See, e.g. Exhibit  
9 A, exemplar of in-store pricing placard. The “OUR PRICE” price represents to consumers the  
10 merchandise’s regular price and the “Now” price represents to consumers a significant discount or  
11 savings from the regular, “OUR PRICE” price.

12 3. The Samsonite merchandise is never offered for sale, nor sold at the “OUR PRICE” price.  
13 The “OUR PRICE” price is used exclusively as a benchmark from which the false discount and  
14 corresponding “Now” price is derived. Samsonite’s scheme has the effect of tricking consumers into  
15 believing they are getting a significant deal by purchasing merchandise at a steep discount, when in  
16 reality, consumers are paying for merchandise at its regular retail price.

17 4. As recognized by the Ninth Circuit, this practice is prohibited in California:

18 “Most consumers have, at some point, purchased merchandise that was marketed as being  
19 “on sale” because the proffered discount seemed too good to pass up. Retailers, well  
20 aware of consumers’ susceptibility to a bargain, therefore have an incentive to lie to their  
21 customers by falsely claiming that their products have previously sold at a far higher  
22 “original” price in order to induce customers to purchase merchandise at a purportedly  
23 marked-down “sale” price. Because such practices are misleading — and effective — the  
24 California legislature has prohibited them”.

25 *See Hinojos v. Kohl’s Corp.* 718, F.3d 1098 (2013)

26 5. During the Class Period, Defendant continually mislead consumers by advertising its  
27 Samsonite branded luggage, bags, and travel accessories at discounted, “Now” prices. However, the  
28 “Now” prices were actually the regular prices of the Samsonite products.

6. The advertised discounts overstated and did not represent a *bona fide* price at which  
Defendant formerly sold the merchandise and were nothing more than mere phantom markdowns

1 because the represented "OUR PRICE" prices were artificially inflated and were never the original prices  
2 for merchandise sold at Defendant's outlet stores. In addition, the represented "OUR PRICE" prices  
3 were not the prevailing market retail prices within three months next immediately preceding the  
4 publication of the advertised former prices, as required by California law.

5 7. Defendant conveys its deceptive pricing scheme to consumers through the use of  
6 promotional materials, in-store pricing placards, price tags, and other related price advertisements.

7 8. The "OUR PRICE" price never existed and/or did not constitute the prevailing market  
8 retail prices for such products within the three months next immediately preceding the publication of the  
9 sales tag. The difference between the "Now" and "OUR PRICE" price is a false savings percentage used  
10 to lure consumers into purchasing products they believe are significantly discounted.

11 9. Through its false and misleading marketing, advertising, and pricing scheme, Defendant  
12 violated and continues to violate California and federal law prohibiting advertising goods for sale as  
13 discounted from former prices which are false, and prohibiting misleading statements about the existence  
14 and amount of price reductions. Specifically, Defendant violated and continues to violate California  
15 Business and Professions Code §§ 17200, *et seq.* (the "UCL"), California Business and Professions Code  
16 §§ 17500, *et seq.* (the "FAL"), the California Consumer Legal Remedies Act, California Civil Code §§  
17 1750, *et seq.* (the "CLRA"), and the Federal Trade Commission Act ("FTCA"), which prohibits "unfair  
18 or deceptive acts or practices in or affecting commerce" (15 U.S.C. § 45(a)(1)) and false advertisements  
19 (15 U.S.C. § 52(a)).

20 10. Plaintiff brings this action on behalf of herself and other similarly situated consumers who  
21 have purchased one or more Samsonite branded items at Defendant's outlet stores that were deceptively  
22 represented as discounted from false former "OUR PRICE" prices in order to halt the dissemination of  
23 this false, misleading, and 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 purchased merchandise  
25 tainted by this scheme. Plaintiff seeks to obtain damages, restitution, and other appropriate relief in the  
26 amount by which Defendant was unjustly enriched as a result of their sales of merchandise offered at a  
27 false discount.

28 11. Finally, Plaintiff seeks reasonable attorneys' fees pursuant to California Code of Civil

1 Procedure § 1021.5, as this lawsuit seeks the enforcement of an important right affecting the public  
2 interest and satisfies the statutory requirements for an award of attorneys' fees.

3 **II. JURISDICTION AND VENUE**

4 12. This Court has jurisdiction over Defendant and the claims set forth pursuant to Code of  
5 Civil Procedure § 410.10 and the California Constitution, Article VI § 10, because this case is a cause not  
6 given by statute to other trial courts.

7 13. Venue is proper in the Superior Court of California, County of San Diego because  
8 Plaintiff Schertzer resides in this County, the acts and transactions giving rise to her causes of action  
9 occurred in this County, and Defendant has accepted credit cards for the transaction of business  
10 throughout California, including the County of Diego, which has caused both obligations and liability of  
11 Defendant to arise in the County of San Diego.

12 14. The amount in controversy exceeds the jurisdictional minimum of this Court.

13 **III. PARTIES**

14 **A. Plaintiff**

15 15. Plaintiff Kristen Schertzer resides in San Diego County, California. Plaintiff Schertzer  
16 visited a Samsonite outlet store located in Carlsbad, California on October 18, 2018, and, in reliance on  
17 Defendant's false and deceptive advertising, marketing, and "discount" pricing scheme, purchased a  
18 Samsonite On Air 3 Hardside Spinner 20" (the "Suitcase") for \$167.99, exclusive of tax. Defendant,  
19 through price tags and related in-store signage, advertised the Suitcase has having an "OUR PRICE" of  
20 approximately \$280.00. *See Exhibit A, exemplar of in-store pricing placard.* Additional in-store signage  
21 also advertised the Suitcase on sale as "Take 40% off OUR PRICE" and set forth a pricing chart that  
22 advertised the Suitcase as having a regular "OUR PRICE" as \$280.00 and a sale "Now 40%" off price as  
23 \$167.99. *See id.*

24 16. Upon information and belief, the Suitcase, however, was never offered for sale at its  
25 original "OUR PRICE" in Defendant's outlet stores, nor was it offered for sale at its advertised "OUR  
26 PRICE" within the 90-day period immediately preceding Plaintiff Schertzer's purchase anywhere in the  
27 relevant market. Upon information and belief, at all times during the 90 days preceding Ms. Schertzer's  
28 purchase, the Suitcase was offered for sale at a substantial discount from its advertised "OUR PRICE"

1 price.

2 17. Ms. Schertzer believed the higher "OUR PRICE" price was an actual and legitimate price  
3 at which Defendant had previously sold the Suitcase. Had she known the "OUR PRICE" price was  
4 fictitious and that Defendant never sold the Suitcase at that price, she would not have purchased the  
5 suitcase or would have paid less for the item.

6 **B. Defendant**

7 18. Plaintiff alleges upon information and belief that Defendant Samsonite Company Stores,  
8 LLC is an Indiana limited liability company with its principal executive offices in Mansfield,  
9 Massachusetts. It operates as a subsidiary of Samsonite International S.A. Defendant designs,  
10 manufactures, advertises, markets, distributes, and/or sells travel luggage and accessories to hundreds of  
11 thousands of consumers in California and throughout the United States.

12 19. Plaintiff does not know the true names and capacities of the persons or entities sued herein  
13 as DOES 1-100, inclusive, and therefore sues such Defendants by such fictitious names. Plaintiff is  
14 informed and believes, and upon such information and belief alleges, that each of the DOE Defendants is  
15 in some manner legally responsible for the damages suffered by Plaintiff and the Class members as  
16 alleged herein. Plaintiff will amend this Complaint to set forth the true names and capacities of these  
17 Defendants when they have been ascertained, along with appropriate charging allegations, as may be  
18 necessary.

19 **IV. FACTUAL BACKGROUND**

20 **A. The Fraudulent Sale Discounting Scheme**

21 20. Samsonite is a travel luggage retailer, selling products such as luggage, business bags,  
22 backpacks and duffels, and travel accessories. Samsonite operates over 100 stores in the United States,  
23 including approximately 14 outlet stores in California. Samsonite sells a variety of travel baggage and  
24 accessories from its own name brand at its retail and outlet stores, as well at various authorized retailers  
25 such as JC Penney, Macy's, and Kohl's. This case involves only the Samsonite branded merchandise  
26 sold by Defendant at its Samsonite outlet store locations.

27 21. Samsonite engages in a scheme to defraud its customers by perpetually discounting its  
28 Samsonite merchandise in its retail outlet stores. The scheme is effectuated as follows: Every single piece

1 of Samsonite brand merchandise sold in Samsonite's retail outlet stores is advertised with two prices; the  
2 "OUR PRICE" price and the corresponding "Now" price. The "OUR PRICE" price conveys to the  
3 consumer the purported regular price of the item. The "Now" price conveys to the customer a deeply  
4 discounted price at which the item presently being offered for sale. The two prices ("OUR PRICE" and  
5 "Now") are conveyed to consumers via in-store signage.

6 22. However, upon information and belief, at no time are the Samsonite branded products  
7 ever offered for sale at the "OUR PRICE" price. The "OUR PRICE" price is merely a false reference  
8 price from which Defendant utilizes to reference a deeply discounted "Now" price on every piece of  
9 Samsonite branded merchandise sold in its outlet stores during the class period.

10 23. This practice is not accidental; it is a fraudulent scheme intended to deceive consumers  
11 into: 1) making purchases they otherwise would not have made; or 2) into paying substantially more for  
12 merchandise consumers believed was heavily discounted; and thereby believed was worth more than its  
13 actual value.

14 24. Retailers, including Defendant understand that consumers are susceptible to a good  
15 bargain and therefore Defendant has substantial interest in lying in order to generate sales. A product's  
16 "regular" price or "original" price matters to consumers. In this case, Defendant has marked its  
17 merchandise with an "OUR PRICE" price; intended to be the equivalent of a "regular" or "original"  
18 price. The regular price and/or the original price conveys to consumers, including Plaintiff, the product's  
19 worth and the prestige that ownership of the product conveys. *See Dhruv Grewal & Larry D. Compeau,*  
20 *Comparative Price Advertising: Informative or Deceptive?*, 11 J. of Pub. Pol'y & Mktg. 52, 55 (Spring  
21 1992) ("By creating an impression of savings, the presence of a higher reference price enhances subjects'  
22 perceived value and willingness to buy the product."); *id.* at 56 ("[E]mpirical studies indicate that as  
23 discount size increases, consumers' perceptions of value and their willingness to buy the product  
24 increase, while their intention to search for a lower price decreases.").

25 25. Defendant's pricing advertisements uniformly include both the false regular price ("OUR  
26 PRICE"), and right next to it, the purported "Now" price. This uniform scheme is intended to and does  
27 provide misinformation to the customer. This misinformation communicates to consumers, including  
28 Plaintiff, that the Samsonite branded products have a greater value than the advertised "Now" Price. As

1 the Ninth Circuit recognizes, “[m]isinformation about a product’s “normal” price is...significant to many  
2 consumers in the same way as a false product label would be.” *See Hinojos v. Kohl’s Inc.* 718 F.3d at  
3 1106.

4 **B. Plaintiff’s Investigation**

5 26. Plaintiff’s counsel has investigated dozens of retailers to determine whether they are  
6 engaged in fraudulent sale discounting. Plaintiff’s investigation of Samsonite outlet stores included the  
7 90-day period immediately preceding Plaintiff’s purchase. To be clear, Plaintiff’s counsel was  
8 investigating Samsonite retail sale discounting practices long before Plaintiff made a purchase at  
9 Samsonite and long before Plaintiff contacted Plaintiff’s counsel seeking representation.

10 27. Plaintiff’s investigation cataloged the pricing practices of Samsonite outlet stores in San  
11 Diego County, including at the Carlsbad Premium Outlets at 5620 Paseo Del Norte, Carlsbad, CA 92008  
12 and the Las Americas Premium Outlets 4265 Camino De La Plaza, San Diego, CA 92173. The false  
13 “OUR PRICE” price and corresponding purported “Now” price pricing scheme was both uniform and  
14 identical at all stores investigated.

15 28. The fraudulent pricing scheme applies to all Samsonite branded products sold in every  
16 Samsonite retail outlet store, and included the Suitcase purchased by Ms. Schertzer on October 18, 2018.

17 29. Plaintiff’s counsel initially investigated Samsonite in the summer of 2018. On every  
18 occasion that Plaintiff’s counsel cataloged Defendant’s pricing; the Samsonite branded merchandise  
19 was discounted; meaning: it was offered at the “Now” price, not the listed “OUR PRICE” price. In fact,  
20 as of the date of this filing the Samsonite branded merchandise remains on sale at a “Now” price.

21 30. The “OUR PRICE” prices listed and advertised on Defendant’s products are fake  
22 reference prices; utilized only to perpetuated Defendant’s fake-discount scheme.

23 31. Defendant knows that its comparative price advertising is false, deceptive, mislead, and  
24 unlawful under California and federal law.

25 32. Defendant fraudulently concealed from and intentionally failed to disclose to Plaintiff and  
26 other members of the Class the truth about its advertised price and former prices.

27 33. At all relevant times, Defendant has been under a duty to Plaintiff and the Class to  
28 disclose the truth about its false discounts.



1 34. Plaintiff relied upon Defendant’s artificially inflated “OUR PRICE” prices and false  
2 discounts when purchasing the Suitcase from Defendant. Plaintiff would not have made such purchase  
3 but for Defendant’s representations of fabricated “OUR PRICE” prices and false discounts. Plaintiff may  
4 in the future shop at Defendant’s Samsonite outlet store.

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

9 36. Defendant intentionally concealed and failed to disclose material facts regarding the truth  
10 about false former price advertising in order to provoke Plaintiff and the Class to purchase merchandise  
11 in its outlet stores.

12 **V. CLASS ALLEGATIONS**

13 37. Plaintiff brings this action individually and on behalf of all other similarly situated Class  
14 members pursuant to Code of Civil Procedure section 382, which Class is defined as follows:

15 All persons who, within the State of California, during the relevant statutory time period,  
16 purchased one or more products at a discount from the advertised “OUR PRICE” price from a  
Samsonite outlet store and who have not received a refund or credit for their purchase(s).

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

23 39. **Numerosity:** The Class members are so numerous that joinder of all members is  
24 impracticable. Plaintiff is informed and believes that the proposed Class contain hundreds of thousands  
25 of individuals who have been damaged by Defendant’s conduct as alleged herein. The precise number of  
26 Class members is unknown to Plaintiff.

27 40. **Existence and Predominance of Common Questions of Law and Fact:** This action  
28



1 involves common questions of law and fact, which predominate over any questions affecting individual  
2 Class members. These common legal and factual questions include, but are not limited to, the following:

- 3 a. Whether, during the Class Period, Samsonite used false "OUR PRICE" prices and falsely  
4 advertised price discounts on merchandise it sold in outlet stores;
- 5 b. Whether, during the Class Period, the "OUR PRICE" prices advertised by Defendant were  
6 the prevailing market prices for the respective merchandise during the three-month period  
7 preceding the dissemination and/or publication of the advertised former prices;
- 8 c. whether Defendant's alleged conduct constitutes violations of the laws asserted;
- 9 d. whether Defendant engaged in unfair and/or unlawful business practices under the laws  
10 asserted;
- 11 e. whether Defendant engaged in false or misleading advertising; and
- 12 f. whether Plaintiff and the Class are entitled to damages and/or restitution and the proper  
13 measure of that loss.

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

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

22 43. **Superiority:** The nature of this action and the nature of laws available to Plaintiff and the  
23 Class make the use of the class action format a particularly efficient and appropriate procedure to afford  
24 relief to her and the Class for the wrongs alleged. The damages or other financial detriment suffered by  
25 individual Class members is relatively modest compared to the burden and expense that would be  
26 entailed by individual litigation of their claims against Defendant. Thus, it would be virtually impossible  
27 for Plaintiff and Class members, on an individual basis, to obtain effective redress for the wrongs done to  
28 them. Absent the class action, Class members and the general public would not likely recover, or would

1 not likely have the chance to recover, damages or restitution, and Defendant will be permitted to retain  
2 the proceeds of its unfair and unlawful misdeeds.

3 44. All Class members, including Plaintiff, were exposed to one or more of Defendant’s  
4 misrepresentations or omissions of material fact claiming that former “OUR PRICE” prices represented  
5 former market prices and those “OUR PRICE” prices advertised prices were in existence. Due to the  
6 scope and extent of Defendant’s consistent false “discount” price advertising scheme that has been  
7 disseminated in a continuous campaign to consumers via a number of different platforms—in-store  
8 displays, media advertisements, print advertisements, etc.—it can be reasonably inferred that such  
9 misrepresentations or omissions of material fact were uniformly made to all members of the Class. In  
10 addition, it can be reasonably presumed that all Class members, including Plaintiff, affirmatively acted in  
11 response to the representations contained in Defendant’s false advertising scheme when purchasing  
12 merchandise from Defendant.

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

18 **CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**

20 **Violation of Unfair Competition Law  
Business and Professions Code § 17200, *et seq.***

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

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

26 48. The UCL imposes strict liability. Plaintiff need not prove that Defendant intentionally or  
27 negligently engaged in unlawful or unfair business practices – only that such practices occurred.  
28

1           ***“Unfair” Prong***

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

6           50. Defendant’s actions constitute “unfair” business acts of practices because, as alleged  
7 above, Defendant engaged in misleading and deceptive price comparison advertising that represented  
8 false “OUR PRICE” prices and discounted “Now” prices that were nothing more than fabricated  
9 “regular” prices leading to phantom markdowns. Defendant’s acts and practices offended an established  
10 public policy, and engaged in immoral, unethical, oppressive, and unscrupulous activities that are  
11 substantially injurious to consumers.

12           51. The harm to Plaintiff and Class members outweighs the utility of Defendant’s practices.  
13 There were reasonably available alternatives to further Defendant’s legitimate business interests, other  
14 than the misleading and deceptive conduct described herein.

15           ***“Fraudulent” Prong***

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

18           53. Defendant’s acts and practices alleged above have deceived Plaintiff and are highly likely  
19 to deceive members of the consuming public. Plaintiff relied on Defendant’s fraudulent and deceptive  
20 representations regarding its “OUR PRICE” prices and the corresponding discounts for Defendant’s  
21 merchandise, which Defendant sells at its outlet stores. These misrepresentations played a substantial  
22 role in Plaintiff’s decision and that of the proposed Class to purchase the products at steep discounts, and  
23 Plaintiff would not have purchased the Suitcase without Defendant’s misrepresentations.

24           ***“Unlawful” Prong***

25           54. A business act or practice is “unlawful” under the UCL if it violates any other law or  
26 regulation.

27           55. Samsonite’s acts and practices alleged above constitute unlawful business acts or  
28 practices, as it has violated state and federal law in connection with its deceptive pricing scheme. The

1 Federal Trade Commissions Act (“FCTA”) prohibits “unfair or deceptive acts or practices in or affecting  
2 commerce” (15 U.S.C. § 45(a)(1)) and prohibits the dissemination of any false advertisements. (15  
3 U.S.C. § 52(a)). Under the FTCA, false former pricing schemes similar to the ones implemented by  
4 Defendant are described as deceptive practices that would violate the FTCA:

5 (a) One of the most commonly used forms of bargain advertising is to offer a  
6 reduction from the advertiser’s own former price for an article. If the former price is  
7 the actual, bona fide price at which the article was offered to the public on a regular  
8 basis for a reasonably substantial period of time, it provides a legitimate basis for the  
9 advertising of a price comparison. Where the former price is genuine, the bargain  
10 being advertised is a true one. If, on the other hand, the former price being advertised  
11 is not bona fide but fictitious—for example, where an artificial, inflated price was  
12 established for the purpose of enabling the subsequent offer of a large reduction—the  
13 “bargain” being advertised is a false one; the purchaser is not receiving the unusual  
14 value he expects.

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

21 16 C.F.R. § 233.1.

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

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

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

34 [Emphasis added.]

35 57. As detailed in Plaintiff’s Third Cause of Action below, the Consumer Legal Remedies Act  
36 (“CLRA”). Cal. Civil Code § 1770(a)(9) prohibits a business from “[a]dvertising goods or services with  
37  
38

1 intent not to sell them as advertised,” and subsection (a)(13) prohibits a business from “[m]aking false or  
2 misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.”

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

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

6 60. Samsonite’s practices, as set forth above, have misled Plaintiff, the proposed Class, and  
7 the public in the past and will continue to mislead in the future. Consequently, Samsonite’s practices  
8 constitute an unlawful, fraudulent, and unfair business practice within the meaning of the UCL.

9 61. Samsonite’s violation of the UCL, through its unlawful, unfair, and fraudulent business  
10 practices, are ongoing and present a continuing threat that members of the public will be deceived into  
11 purchasing products based on price comparisons of arbitrary and inflated “OUR PRICE” prices to  
12 discounted “Now” prices that created phantom markdowns and led to financial damage for consumers  
13 like Plaintiff and the Class.

14 62. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent injunctive relief  
15 ordering Samsonite to cease this unfair competition, as well as disgorgement and restitution to Plaintiff  
16 and the Class of all Samsonite’s revenues associated with its unfair competition, or such portion of those  
17 revenues as the Court may find equitable.

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

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

23 64. Cal. Bus. & Prof. Code § 17500 provides that:

24 [i]t is unlawful for any . . . corporation . . . with intent . . . to dispose of . . . personal  
25 property . . . to induce the public to enter into any obligation relating thereto, to make or  
26 disseminate or cause to be made or disseminated . . . from this state before the public in  
27 any state, in any newspaper or other publication, or any advertising device, or by public  
28 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.]

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

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

8 67. Defendant’s routine of advertising and publishing “OUR PRICE” prices on all of its  
 9 merchandise, which were never the true prevailing prices, was an unfair, untrue, and misleading practice.  
 10 This deceptive marketing practice gave consumers the false impression that the products were regularly  
 11 sold on the market for a substantially higher price than they actually were. Therefore, leading to the false  
 12 impression that the merchandise was worth more than it actually was.

13 68. Defendant misled consumers by making untrue and misleading statements and failing to  
 14 disclose what is required as stated in the Code, as alleged above.

15 69. As a direct and proximate result of Defendant’s misleading and false advertisements,  
 16 Plaintiff and Class members have suffered injury in fact and have lost money. As such, Plaintiff requests  
 17 that this Court order Defendant to restore this money to Plaintiff and all Class members. Otherwise,  
 18 Plaintiff, Class members, and the broader general public will be irreparably harmed and/or denied an  
 19 effective and complete remedy.

20 **THIRD CAUSE OF ACTION**  
 21 **Violation of the Consumer Legal Remedies Act (“CLRA”),**  
**California Civil Code § 1750, *et seq.***

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

24 71. This cause of action is brought pursuant to the Consumer Legal Remedies Act (“CLRA”),  
 25 California Civil Code § 1750, *et seq.* Plaintiff and each member of the proposed class are “consumers” as  
 26 defined by California Civil Code § 1761(d). Defendant’s sale of merchandise to Plaintiff and the  
 27 California Class were “transactions” within the meaning of California Civil Code § 1761(e). The  
 28

1 products purchased by Plaintiff and the Class are “goods” within the meaning of California Civil Code §  
2 1761(a).

3 72. Defendant violated, and continues to violate, the CLRA by engaging in the following  
4 practices proscribed by California Civil Code § 1770(a) in transactions with Plaintiff and the Class which  
5 were intended to result in, and did result in, the sale of merchandise:

- 6 a. Representing that its merchandise has characteristics, uses, and/or benefits, which it does  
7 not;
- 8 b. Advertising goods or services with intent not to sell them as advertised;
- 9 c. Making false or misleading statements of fact concerning reasons for, existence of, or  
10 amounts of price reductions.

11 73. Pursuant to §1782(a) of the CLRA, on February 27, 2019, Plaintiff’s counsel notified  
12 Defendant in writing by certified mail of the particular violations of § 1770 of the CLRA and demanded  
13 that it rectify the problems associated with the actions detailed above and give notice to all affected  
14 consumers of Defendant’s intent to act. If Defendant fails to respond to Plaintiff’s letter or agree to  
15 rectify the problems associated with the actions detailed above and give notice to all affected consumers  
16 within 30 days of the date of written notice, as proscribed by § 1782, Plaintiff will move to amend her  
17 complaint to pursue claims for actual, punitive, and statutory damages, as appropriate against Defendant.  
18 As to this cause of action at this time, Plaintiff only seeks injunctive relief.

19 **VI. PRAYER FOR RELIEF**

20 Wherefore, Plaintiff, on behalf of herself and on behalf of the other members of the Class,  
21 requests that this Court award relief against Defendant as follows:

- 22 A. An order certifying the Class and designating Plaintiff as the Class Representative  
23 and her counsel as Class Counsel;
- 24 B. Awarding restitution and disgorgement of all profits that Defendant obtained from  
25 Plaintiff and the Class members as a result of its unlawful, unfair, and fraudulent  
26 business practices described herein;
- 27 C. Awarding declaratory relief as permitted by law or equity;
- 28 D. Order Defendant to engage in a corrective advertising campaign;



E. Awarding attorneys' fees and costs; and

F. For such other and further relief as the Court may deem necessary or appropriate.

**VII. DEMAND FOR JURY TRIAL**

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

Dated: February 27, 2019

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*Attorneys for Plaintiff and  
Proposed Class Counsel*

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