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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

IRINA ZHURAVLEVA, on behalf of herself
and all others similarly situated,

Plaintiffs

vs.

UNITED STATES POLO ASSOCIATION,
and DOES 1 through 100, inclusive,

Defendants.

CASE NO. 37-2019-00036327-CU-BT-CTL

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

1 Plaintiff Irina Zhuravleva ("Plaintiff") brings this action against Defendant United States
 2 Polo Association ("Defendant" or "U.S. Polo") on behalf of herself, and all others similarly situated,
 3 upon information and belief, except as to her own actions, the investigation of her counsel, and the
 4 facts that are a matter of public record, as follows:

5 INTRODUCTION

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 7 1. This class action arises out of Defendant's unlawful, unfair, and fraudulent business
 8 practice commonly referred to as "false reference pricing." "False reference pricing" is the act of
 9 misrepresenting the former, original or regular price of some good that is purportedly offered at a
 10 "sale price," a business practice that Defendant engaged in to increase sales. As alleged herein,
 11 during at least the past four years, Defendant has misled consumers by advertising the false former,
 12 original or regular prices which were fabricated, and corresponding phantom "savings" on apparel
 13 for men, women and children, as well as accessories and footwear sold in its U.S. Polo Outlet Stores
 14 located in California.

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

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

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

15 5. During the Class Period (defined below), Defendant continuously advertised false
16 price discounts for merchandise made predominately, if not exclusively, for sale throughout its U.S.
17 Polo Outlet Stores in California (hereinafter referred to as "U.S. Polo Outlet Products").

18 6. Specifically, Defendant intentionally represented – on the price tags of U.S. Polo
19 Outlet Products – "Reference Prices" that were overstated and did not represent a bona fide price at
20 which U.S. Polo Outlet Products were previously sold. Nor was the advertised Reference Price a
21 prevailing market retail price within three months immediately preceding the publication of the
22 advertised former prices, as required by California law. As used throughout the Complaint,
23 Reference Price(s) shall mean the ticketed price(s) listed on the U.S. Polo Outlet Product's price
24 tag. As addressed in detail below, Plaintiff and reasonable consumers typically understand the
25 Reference Price to be the former, original, or regular price of the item on which it appears.

26 7. Defendant conveys its deceptive pricing scheme through in store signage offering
27 steep discounts from the Reference Prices listed on the products' price tags in the U.S. Polo Outlet
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1 Stores. The Reference Prices listed and advertised on Defendant's price tags are fake reference
2 prices; utilized only to perpetuate Defendant's fake-discount scheme. The pricing scheme is
3 prominently displayed on virtually all U.S. Polo Outlet Products throughout the store. Defendant's
4 deception is two-fold. The first aspect of Defendant's deceptive advertising is in how the price tags
5 advertise the U.S. Polo Outlet Products at the Outlet Stores. The U.S. Polo Outlet branded products
6 sold at the Outlet Stores contain a price tag which prominently and conspicuously represents to the
7 consumer two purported prices: a higher "original" price and a seemingly lower "current" price.
8 The original price is always the highest price conveyed to the consumer at the U.S Polo Outlet
9 Stores, and the current price is always less than the original price. The "original price" conveys to
10 the consumer that the merchandise sold in the U.S. Polo Outlet Store was, at one time in the past,
11 sold at the "higher price," while the "current price" conveys to the consumer that the "lower price"
12 listed is the current, regular price for the merchandise in the U.S. Polo Outlet Stores.

13 8. The higher "original" price is deceptive to consumers because the U.S. Polo Outlet
14 Products were never sold at the original price in the Outlet Stores. Defendant does not give
15 consumers any indication as to when the U.S. Polo Outlet Products had the original price, if ever,
16 or how that price was in fact determined. Therefore, the "original" price on the price tag establishes
17 a false bona fide and/or original price for each U.S. Polo Outlet branded product offered for sale in
18 the U.S. Polo Outlet Stores. It is a price at which the products were never sold in the Outlet Stores.

19 9. Moreover, beneath the "original" higher price on the price tags of U.S. Polo Outlet
20 Products sold at the Outlet Stores is a second deceiving, false bona fide and/or regular price: the
21 lower "current" price. The "current" price is always lower than the "original" higher price.
22 Defendant uses the "current" price description to convey to consumers that the "current" prices are
23 ostensibly lower than the "original" price description. However, the lower "current" price is
24 deceptive to consumers because the products were never sold at the current price in the Outlet Stores.
25 Defendant does not give consumers any indication as to when the U.S. Polo Outlet Products had the
26 current price, if ever, or how that price was in fact determined. Therefore, the "current" price on
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1 the price tag also establishes a false bona fide price for each U.S. Polo Outlet Product offered for
2 sale in the U.S. Polo Outlet Stores.

3 10. The Outlet Stores are the only stand-alone stores owned by Defendant where
4 primarily all the U.S. Polo Outlet Products are sold. The comparison of the former value as
5 described by the higher "original" price on the price tag to the lower "current" price offered by
6 Defendant as represented on the price tag is false, evasive, and misleading. Stated plainly, the entire
7 price tag which is composed of the higher "original" price and the lower "current" price is
8 misleading because the U.S. Polo Outlet Products were never sold at *either* price in the Outlet Stores.
9 Both prices are fictitious and misleading, and did not constitute the prevailing market retail prices
10 for U.S. Polo Outlet Products sold by Defendant in its Outlet Stores.

11 11. The second aspect of Defendant's deceptive advertising is in how the Defendant
12 *continuously* discounts the U.S. Polo Outlet Products below the purported higher "original" price
13 and the lower "current" price listed on the original price tag, rendering the prices illusory. There
14 are typically large placard signs on top of or alongside each rack of items, advertising a "discounted
15 whole-price," or a "discounted % off" for the item in the Outlet Stores. For example, a U.S. Polo
16 Outlet Product may have a price tag with a higher "original" price of \$44.00 and a lower "current"
17 price of \$29.99 and the related signage advertising a "new price" of \$24.99. *See* Exhibits "A" and
18 "B." Another example, is a U.S. Polo Outlet Product may have a price tag with a higher "original"
19 price of \$48.00 and a lower "current" price of \$29.99 and the related signage advertising a "new
20 price" of "14.99." *See* Exhibits "C" and "D." However, the "Reference Prices" listed on the price
21 tags have never existed and/or were not the prevailing market retail prices for such U.S. Polo Outlet
22 Products within the three months next immediately preceding the publication of the price tags, as
23 required by California law. They are fictional creations intentionally designed to enable
24 Defendant's phantom markdowns. Furthermore, upon check-out, Defendant provides California
25 consumers, including Plaintiff, with sales receipts continuing the misrepresentations regarding false
26 price reductions from the "Reference Prices." For example, the stated *discount* from the false lower
27 "current" price is listed for each item purchased.

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

8 13. In this case, Defendant offers for sale U.S. Polo Outlet Products made
9 predominately, if not *exclusively*, for its U.S. Polo Outlet Stores, which means that such items were
10 never sold – or even intended to be sold – at the Reference Prices advertised on the price tags. Most
11 of these U.S. Polo Outlet Products were never offered for sale at the company-operated mainline
12 retail stores in California. Further exacerbating consumers' perception of deep discounts is the fact
13 that Defendant sells higher quality products at their mainline retail stores. Defendant knows that
14 consumers expect to receive a discount when shopping at its U.S. Polo Outlet Stores, and
15 accordingly, preys on consumer expectations by artificially marking up the Reference Prices of its
16 U.S. Polo Outlet Products and then offering discounts off of the artificially inflated Reference Prices
17 to induce consumers to purchase its U.S. Polo Outlet Products. The truth is that the U.S. Polo Outlet
18 Products are not discounted off former, regular, or original prices. Rather, the Reference Prices
19 exist to provide an illusory discount when compared to the actual sales price offered. This tactic is
20 called "reference pricing." The Reference Prices listed on the U.S. Polo Outlet Products' price tags
21 were and are the prices chosen by Defendant to enable it to engage in its phantom markdown
22 scheme.

23 14. Defendant conveys its deceptive pricing scheme to consumers through promotional
24 materials, in-store advertising displays, print advertisements, and price tags, which are uniform.
25 Defendant's false price advertising scheme has been rampant throughout California as part of a
26 massive, years-long, pervasive campaign and has been consistent across all of Defendant's U.S.
27 Polo Outlet Products sold in its U.S. Polo Outlet Stores. Indeed, most, if not all U.S. Polo Outlet
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1 Products sold in the U.S. Polo Outlet Stores are subject to the same fraudulent pricing scheme
2 complained of herein.

3 15. Upon information and belief, thousands of Defendant's consumers in California,
4 including Plaintiff, were victims of Defendant's deceptive, misleading, and unlawful false pricing
5 scheme. This deception will continue if Defendant is not enjoined from continuing their pricing
6 scheme.

7 16. Defendant knows or should reasonably know that its reference price advertising is
8 false, deceptive, misleading and unlawful under California law.

9 17. Defendant fraudulently concealed from, and intentionally failed to disclose to,
10 Plaintiff and other members of the Class, the fact that Reference Prices displayed on the U.S. Polo
11 Outlet Products do not reflect a former, regular, or original price.

12 18. At all relevant times, Defendant has been under a duty to Plaintiff and the Class to
13 disclose the truth about its Reference Prices and false discounts.

14 19. The facts which Defendant misrepresented or failed to disclose are material facts that
15 a reasonable person would have considered material, *i.e.*, facts which would contribute to a
16 reasonable person's decision to purchase Defendant's merchandise. Defendant's false
17 representations of Reference Prices and false representations of purported savings, discounts and
18 bargains are objectively material to the reasonable consumer, including Plaintiff, and therefore
19 reliance upon such representations may be presumed as a matter of law.

20 20. Plaintiff relied upon Defendant's false representations of Reference Prices and
21 discounts when purchasing U.S. Polo Outlet Products from a U.S. Polo Outlet Store in California.
22 Plaintiff would not have made such purchases, but for Defendant's false representations and
23 fraudulent omissions of the Reference Prices of the items she purchased, as compared with the
24 supposedly discounted prices at which the U.S. Polo Outlet Store offered the items for sale.

25 21. Plaintiff reasonably believed the truth of the represented prices attached to the price
26 tags, or in advertisements or on signage regarding, the U.S. Polo Outlet Products purchased at the
27 U.S. Polo Outlet Store, which expressly represented that Plaintiff was getting a substantial whole-
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1 price reduction or percentage discount off the Reference Prices. Plaintiff reasonably understood the
 2 Reference Price representation to indicate a true former price of the identical item. Indeed, one
 3 cannot truly “save” off anything other than a true former price on the identical product. Otherwise,
 4 one is not “saving,” one is simply buying a different product than the one that bears a higher price.

5 22. Plaintiff and the Class reasonably and justifiably acted and relied on the substantial
 6 price differences that Defendant advertised, and made purchases believing that they were receiving
 7 a substantial discount on an item of greater value than it actually was. Plaintiff and the Class
 8 reasonably understood the Reference Prices on the price tags to be a valid representation of a true
 9 former price on the identical product. Plaintiff and the Class did not understand the Reference Prices
 10 to indicate a comparison to a non-identical product. However, the prices listed on the price tags did
 11 not represent a true former price or the prevailing market retail price in the preceding three months
 12 for the U.S. Polo Outlet Products. Plaintiff, like other Class members, was lured in, relied on, and
 13 was damaged by these pricing schemes that Defendant carried out.

14 23. Defendant intentionally concealed and failed to disclose material facts regarding the
 15 truth about its misrepresentations and false former price advertising scheme for the purpose of
 16 inducing Plaintiff and Class members to purchase U.S. Polo Outlet Products in its U.S. Polo Outlet
 17 Stores.

18 24. Through its false and deceptive marketing, advertising and pricing scheme,
 19 Defendant has violated, and continues to violate California law prohibiting advertising goods for
 20 sale as discounted from purported former prices which are false, and prohibiting misleading
 21 statements about the existence and amount of price reductions. Specifically, Defendant has
 22 violated, and continues to violate, California’s Business & Professions Code §§ 17200, *et seq.* (the
 23 “UCL”), California’s Business & Professions Code §§ 17500, *et seq.* (the “FAL”), and the
 24 California Consumers’ Legal Remedies Act, California Civil Code §§1750, *et seq.* (the “CLRA”),
 25 and the Federal Trade Commission Act (“FTCA”), which prohibits “unfair or deceptive acts or
 26 practices in or affecting commerce” (15 U.S.C. § 45(a)(1)) and false advertisements. 15 U.S.C. §
 27 52(a).
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25. Plaintiff brings this action on behalf of herself and other similarly situated consumers who have purchased one or more U.S. Polo Outlet Products at U.S. Polo Outlet Stores in California that were deceptively represented as discounted from false former prices in order to halt the dissemination of this false, misleading, and deceptive pricing scheme, to correct the false and misleading perception it has created in the minds of consumers, and to obtain redress for those who have purchased such products. Plaintiff seeks restitution and other appropriate equitable remedies, including an injunction under the UCL and FAL; and an injunction under the CLRA.

JURISDICTION AND VENUE

26. This Court has subject matter jurisdiction over the causes of action asserted herein pursuant to California Code of Civil Procedure § 410.10 and Article VI, § 10 of the California Constitution. In the aggregate, the damages caused to the members of the Class as defined below exceed the jurisdictional minimum of this Court, but neither the Plaintiff nor any member of the Class individually has suffered damages of, at least, \$75,000.

27. This Court has personal jurisdiction over the Defendant named herein because Defendant does sufficient business in California, has sufficient minimum contacts with California and/or otherwise intentionally avails itself of the markets within California through the ownership and operation of U.S. Polo Outlet Stores in California where Defendant employed, and continues 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.

28. Venue is proper in this Court because California Code of Civil Procedure §§395 and 395.5, and case law interpreting those sections, provide that if a foreign business entity fails to designate with the office of the California Secretary of State a principal place of business in California, it is subject to being sued in any county in the State that plaintiff desires. On information and belief, Defendant United States Polo Association is a foreign business entity, and has failed to

1 designate a principal place of business in California with the office of the Secretary of State as of
2 the date this Complaint was filed.

3 4 THE PARTIES

5 A. Plaintiff

6 29. Plaintiff Irina Zhuravleva ("Zhuravleva") is, and at all times relevant hereto has been
7 a resident of the State of California. It is alleged that on December 16, 2018, in reliance on
8 Defendant's false and deceptive advertising, marketing and pricing schemes, Plaintiff purchased
9 over \$78.00 in U.S. Polo Outlet Products from the U.S. Polo Outlet Store located at the Citadel
10 Outlets in Commerce, California, and was damaged thereby.

11 B. Defendant

12 30. Defendant United States Polo Association is an Illinois corporation which is licensed
13 to do, and is doing, business throughout the United States, with its principal place of business located
14 at 9011 Lake Worth Road, Lake Worth, Florida. Defendant owns and operates U.S. Polo Outlet
15 Stores located in California, and throughout the United States, and designs, markets, advertises,
16 distributes, and/or sells apparel for men, women and children, as well as accessories and footwear.

17 31. The only stores that are the subject of this Complaint are the U.S. Polo Outlet Stores
18 in California. The Complaint expressly excludes any U.S. Polo Outlet Products sold at U.S. Polo
19 Outlet Stores that advertised a Reference Price that was a prevailing market retail price within the
20 three months preceding.

21 C. Doe Defendants

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

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

7 D. Agency/Aiding And Abetting

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

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

21 36. Whenever reference is made in this Complaint to any act of "U.S. Polo" or
22 "Defendant," such shall be deemed to mean that officers, directors, agents, employees, or
23 representatives of the Defendant named in this lawsuit committed or authorized such acts, or failed
24 and omitted to adequately supervise or properly control or direct their employees while engaged in
25 the management, direction, operation or control of the affairs of the Defendant and did so while
26 acting within the scope of their employment or agency.

CONDUCT GIVING RISE TO THE VIOLATIONS OF THE LAW

A. Plaintiff's Purchase

37. On December 16, 2018, Plaintiff went shopping at the U.S. Polo Outlet Store which is located at the Citadel Outlets in Commerce, California to purchase clothing.

38. Upon entering the store, Plaintiff observed prominent signage on top of or alongside almost each rack of merchandise, advertising a "discounted whole-price," or a "discounted % off" reduction for each item offered for sale. Believing she was able to pay significantly less than the Reference Prices for the identical products normally charged in the retail marketplace, Plaintiff was induced to purchase four different items which were offered at a price significantly lower than their stated "Reference Prices." Plaintiff purchased the U.S. Polo Outlet Products after relying on Defendant's false discounts and false Reference Prices for such products.

39. Specifically, relying upon Defendant's misrepresentations and false and deceptive advertising, Plaintiff was induced to purchase the following items: (1) a Vest, Style 015108N5, SKU Number 8337931517 bearing a higher "original" price of \$68.00 and a lower "current" price of \$59.99 on the price tag; (2) a Plaid Tuxedo Long Sleeve Shirt, Style 21473089VD5, SKU Number 8666515678, bearing a higher "original" price of \$48.00 and a lower "current" price of \$34.99 on the price tag; (3) a Polo Shirt, Style 213590ZH, SKU Number 8666748877 bearing a higher "original" price of \$38.00 and a lower "current" price of \$24.99 on the price tag; and (4) Mid Rise Skinny Pants, Style 214519RFVJM, SKU Number 8666790240, bearing a higher "original" price of \$48.00 and a lower "current" price of \$34.99 on the price tag. *See* true and correct copies of price tags attached to each of the four items which Plaintiff purchased on December 16, 2018, attached hereto as Exhibits "E through "H."

40. Plaintiff observed signage above the subject items that advertised a whole-price reduction or percentage discount, clearly indicating that the items were being sold at a significant discount off the Reference Prices. Specifically, there was signage which represented that the (1) Vest was now \$19.99; (2) Plaid Tuxedo Long Sleeve Shirt was now \$19.99; (3) Polo Shirt was now \$16.99; and (4) Mid Rise Skinny Pants was now "60% OFF."

1 41. Relying on Defendant's misrepresentations and false and deceptive advertising and
2 believing that she was receiving a significant discount from the Reference Prices listed on the price
3 tags by purchasing the items, Plaintiff decided to purchase the items and proceeded to the cash
4 register where she did in fact purchase the items. Plaintiff also believed she was purchasing
5 merchandise that was of the same like, kind and quality of that sold in the regular company-operated
6 U.S. Polo retail stores. The purported Reference Prices and corresponding price reductions and
7 savings were false and deceptive, as the prevailing market retail prices for the subject items during
8 the three months immediately prior to Plaintiff's purchase of the items were never at the represented
9 former Reference Prices. Plaintiff would not have purchased the items in the absence of Defendant's
10 misrepresentations. Instead, Defendant *continuously* offered the subject items, like the vast majority
11 of U.S. Polo Outlet Products offered for sale at U.S. Polo Outlet Stores at discounted prices. As a
12 result, Plaintiff has been personally victimized by and suffered economic injury as a direct result of
13 Defendant's unlawful, unfair and fraudulent conduct. Plaintiff is susceptible to this reoccurring
14 harm because she cannot be certain that Defendant has corrected this deceptive pricing scheme and
15 she desires to shop at U.S. Polo Outlet Stores in the future. Plaintiff does not have the resources on
16 her own to determine whether Defendant is complying with California and Federal law with respect
17 to its retail pricing practices.

18 42. Furthermore, upon check-out on December 16, 2018, Defendant provided Plaintiff
19 with a sales receipt containing the same misrepresentations regarding false price reductions off the
20 Reference Prices on the subject items. The sales receipt clearly sets forth the false Reference Prices
21 (the purported lower "current" prices listed on the price tags) for each item purchased, and that
22 Plaintiff was receiving the benefit of discounts off the stated Reference Prices for the items
23 purchased and listed the discounts or savings amount for the items, and then the "New Price" amount
24 after the purported discounts. Additionally, below the total amount purchased at the bottom of the
25 sales receipt, Defendant misrepresented to Plaintiff the total amount purportedly saved on the entire
26 purchase transaction with the words "*You Saved \$83.99.*" See true and correct copy of Plaintiff's
27 sales receipt, dated December 16, 2018, attached hereto as Exhibit "I."

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1 B. Defendant Engages In Deceptive Advertising

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

19 44. By failing to price U.S. Polo Outlet Products at their actual regular price for a
20 substantial period of time, Defendant artificially inflated the market price or value of the U.S. Polo
21 Outlet Products it sells, including the items purchased by Plaintiff. Moreover, by failing to price its
22 U.S. Polo Outlet Products, including the items purchased by Plaintiff at their regular price for a
23 substantial period of time, and in compliance with California law, Defendant interfered with market
24 forces, driving the selling price of its products higher than they would be if Defendant had complied
25 with the law.

26 45. Defendant's false discounting practice, as described herein, has the effect of setting
27 an artificially high market value for their "on sale" U.S. Polo Outlet Products. Customers, like
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1 Plaintiff, purchase U.S. Polo Outlet Products from Defendant believing they are receiving a
 2 substantial discount on their purchases, when in fact they are not. They are instead purchasing an
 3 item they would not otherwise buy and paying a higher price than they would otherwise pay were
 4 the products subject to fair market competition and pricing.

5 46. Plaintiff's and Class members' reliance upon Defendant's false price comparison
 6 advertising was not only reasonable, but entirely intended by Defendant. In fact, empirical
 7 marketing studies demonstrate that false reference pricing actually creates an impression of higher
 8 value and an incentive for retailers to engage in this false and fraudulent behavior:

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

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

16 Furthermore:

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

22 *Id.* at 55, 56.

23 47. A retailer's "reference price," the stated price presented alongside the retailer's "on
 24 sale" price, provides consumers a reference point with which to evaluate the prospective purchase.
 25 The reference price is often described with terms such as "Regular Price," "Original Price," and/or
 26 "Former Price."
 27
 28

1 48. A retailer's reference price impacts the consumer's behavior in the marketplace. As
2 the reference price increases, so does the consumer's perception of the value of the transaction, the
3 consumer's willingness to make the purchase, and the amount of money the consumer is willing to
4 pay for the product.

5 49. When the reference price is bona fide and truthful, it helps consumers make informed
6 purchasing decisions. In contrast, consumers are harmed when merchants advertise their products
7 alongside falsely-inflated former prices, *i.e.*, "false reference prices," as consumers are provided a
8 false sense of value. In this context, the reference price is no longer informative but deceptive
9 because consumers are deprived of a full and fair opportunity to accurately evaluate the specific
10 sales offer in its relevant market. As the Ninth Circuit recognizes, "[m]isinformation about a
11 product's "normal" price is . . . significant to many consumers in the same way as a false product
12 label would be." *See Hinojos v. Kohl's Inc.* 718 F.3d at 1106.

13 50. Moreover, the hidden nature of false discounting makes it effective. Consumers, like
14 Plaintiff, unaware of the practices at issue, instead complete their purchases believing that they "got
15 a good deal." Retailers, like Defendant, make falsely-discounted sales without suspicion because
16 consumers do not have access to the comprehensive historical pricing information necessary to
17 reveal the deception.

18 51. The full extent of Defendant's false and deceptive pricing scheme can only be
19 revealed through a full examination of records exclusively in the possession of Defendant.

20 52. Despite the Reference Price scheme used at U.S. Polo Outlet Stores, Plaintiff would
21 purchase Defendant's products in the future from U.S. Polo Outlet Stores, if price tags accurately
22 reflect "former" prices and discounts. Currently, however, Plaintiff and other consumers have no
23 realistic way to know which – if any – of Defendant's price tags and sale prices are not false or
24 deceptive. If the Court were to issue an injunction ordering Defendant to comply with California's
25 comparative price advertising laws, and prohibiting Defendant's use of the deceptive practices
26 discussed herein, Plaintiff would be able to make informed purchase decisions for Defendant's U.S.
27 Polo Outlet Products at U.S. Polo Outlet Stores.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

53. Plaintiff brings this action as a class action on behalf of herself, and all others similarly situated. The proposed Class that Plaintiff seeks to represent is defined as follows:

All persons who, while in the State of California, during the four (4) year period preceding the filing of the original Complaint through the date of final judgment in this action (the "Class Period"), purchased one or more U.S. Polo Outlet Products at a purported discount off of the stated Reference Prices on the price tags at any U.S. Polo Outlet Stores in the State of California, and who have not received a refund or credit for their purchase(s).

54. Excluded from the Class is Defendant; its corporate parents, subsidiaries, affiliates, and any entity in which Defendant has a controlling interest; any of its officers, directors, employees, or agents; the legal representatives, successors or assigns of any such excluded persons or entities; and the judicial officers to whom this matter is assigned as well as their court staff. Plaintiff reserves the right to expand, limit, modify, or amend this class definition, including the addition of one or more subclasses, in connection with his motion for class certification, or at any other time, based upon, *inter alia*, changing circumstances and/or new facts obtained during discovery.

55. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time, Plaintiff estimates that the Class consists of thousands of members. Moreover, Plaintiff alleges that the precise number of Class members, their identities, and their locations can be ascertained through appropriate discovery and records of Defendant and its agents. Defendant keeps extensive computerized records of its customers through, *inter alia*, customer email programs and general marketing programs. Defendant has one or more databases through which a significant majority of Class members may be identified and ascertained, and they maintain contact information, including email and home mailing addresses, through which notice of this action could be disseminated to potential Class members in accordance with due process requirements.

1 56. There are numerous questions of law and fact common to the Class which
2 predominate over any questions affecting only individual members of the Class.

3 57. Among the questions of law and fact common to the Class are, *inter alia*:

4 a. Whether, during the Class Period, Defendant used false price representations and
5 falsely advertised price discounts on U.S. Polo Outlet Products it sold in its U.S. Polo Outlet Stores
6 in California;

7 b. Whether Defendant intended its Reference Prices to be synonymous with the item's
8 former, regular, or original price;

9 c. Whether, during the Class Period, the Reference Prices advertised by Defendant were
10 the prevailing market prices for the associated U.S. Polo Outlet Products sold by Defendant during
11 the three month period preceding the dissemination and/or publication of the advertised Reference
12 Prices;

13 d. Whether Defendant's use of false or deceptive price advertising constituted false
14 advertising under California law;

15 e. Whether Defendant engaged in unfair, unlawful and/or fraudulent business practices
16 under California law;

17 f. Whether Defendant misrepresented and/or failed to disclose material facts about its
18 product pricing and discounts;

19 g. Whether Defendant has made false or misleading statements of fact concerning the
20 reasons for, existence of, or amounts of price reductions;

21 h. Whether Defendant's conduct, as alleged herein, was intentional and knowing;

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

25 j. Whether an injunction is necessary to prevent Defendant from continuing to use
26 false, misleading or illegal price comparisons; and

27 k. Whether Plaintiff and Class members are entitled to an award of reasonable
28

1 attorneys' fees, pre-judgment interest and costs of suit.

2 58. Plaintiff's claims are typical of the claims of the members of the Class and, like all
3 members of the Class, purchased U.S. Polo Outlet Products from a U.S. Polo Outlet Store that
4 conveyed false Reference Prices and fictitious discounts. Plaintiff and the Class she seeks to
5 represent have all been deceived (or were likely to be deceived) by Defendant's false former price
6 advertising scheme, as alleged herein. Plaintiff is advancing the same claims and legal theories on
7 behalf of herself and all members of the Class. Accordingly, Plaintiff has no interests antagonistic
8 to the interests of any other member of the Class.

9 59. Plaintiff is an adequate representative of the Class because she is a member of the
10 Class and her interests do not conflict with the interests of the Class members she seeks to represent.
11 Plaintiff will fairly and adequately represent and protect the interest of the Class because she is not
12 antagonistic to the Class. Plaintiff has retained counsel who are competent and experienced in the
13 prosecution of consumer fraud and class action litigation.

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

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

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

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

25 d. Proof of a common factual pattern that Plaintiff experienced is representative of that
26 experienced by the Class and will establish the right of each member of the Class to recover on the
27 cause of action alleged; and
28

1 e. Individual actions would create a risk of inconsistent results and would be
2 unnecessary and duplicative of this litigation.

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

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

17 63. Defendant has acted or refused to act on grounds generally applicable to the Class as
18 a whole and Plaintiff seeks, *inter alia*, equitable remedies with respect to the Class as a whole. As
19 such, the systematic policies and procedures of Defendant make final injunctive relief or declaratory
20 relief with respect to the Class as a whole appropriate.

21 **FIRST CAUSE OF ACTION**

22 Violation Of The "Unfair" Prong Of The UCL
23 (By Plaintiff and the Class Against Defendant)

24 64. Plaintiff re-alleges and incorporates by reference the allegations contained in the
25 preceding paragraphs as though fully set forth herein.

26 65. The UCL defines unfair business competition to include any "unlawful, unfair or
27 fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading" advertising. Cal.
28

1 Bus. & Prof. Code § 17200.

2 66. The UCL imposes strict liability. Plaintiff need not prove that Defendant
3 intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices – only that
4 such practices occurred.

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

7 68. Defendant has violated and continues to violate the “unfair” prong of the UCL by
8 representing false Reference Prices and corresponding price discounts for its U.S. Polo Outlet
9 Products sold at U.S. Polo Outlet Stores in California. As a result, the inflated Reference Prices
10 were nothing more than false, misleading and deceptive prices included to create the illusion of
11 discounts.

12 69. Defendant’s acts and practices are unfair because they caused Plaintiff, and
13 reasonable consumers like her, to falsely believe that U.S. Polo Outlet Stores are offering value,
14 discounts or bargains from the prevailing market worth of the U.S. Polo Outlet Products sold that
15 did not, in fact, exist. Defendant intended and intend for Plaintiff and Class members to equate the
16 Reference Prices with a higher original or current/regular price. As a result, purchasers, including
17 Plaintiff, reasonably perceived that they were receiving products that regularly sold in the retail
18 marketplace at substantially higher prices (and are, therefore, worth more) than what they paid. This
19 perception has induced reasonable purchasers, including Plaintiff, to buy U.S. Polo Outlet Products,
20 which they otherwise would not have purchased.

21 70. The gravity of the harm to members of the Class resulting from these unfair acts and
22 practices outweighed any conceivable reasons, justifications and/or motives of Defendant for
23 engaging in such deceptive acts and practices. By committing the acts and practices alleged above,
24 Defendant engaged in unfair business practices within the meaning of California Business &
25 Professions Code §§ 17200, *et seq.*

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

Violation Of The “Fraudulent” Prong Of The UCL (By Plaintiff and the Class Against Defendant)

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

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

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

76. The price tags on the U.S. Polo Outlet Products and advertising materials containing false Reference Prices were “fraudulent” within the meaning of the UCL because they deceived Plaintiff, and were likely to deceive members of the Class, into believing that Defendant was offering value, discounts or bargains at U.S. Polo Outlet Stores from the prevailing market value or worth of the U.S. Polo Outlet Products sold that did not, in fact, exist. As a result, purchasers, including Plaintiff, reasonably perceived that they were receiving U.S. Polo Outlet Products that regularly sold in the retail marketplace at substantially higher prices (and were, therefore, worth more) than what they paid. This perception induced reasonable purchasers, including Plaintiff, to buy such products from Defendant, which they otherwise would not have purchased.

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

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

22 Violations Of The “Unlawful” Prong Of The UCL
(By Plaintiff and the Class Against Defendant)

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

1 83. A business act or practice is “unlawful” under the UCL if it violates any other law or
2 regulation.

3 84. The FTCA prohibits “unfair or deceptive acts or practices in or affecting commerce”
4 (15 U.S.C. § 45(a)(1)) and specifically prohibits false advertisements. 15 U.S.C. § 52(a)). The FTC
5 has established Guidelines that describe false former pricing schemes, similar to Defendant’s in all
6 material respects, as deceptive practices that would violate the FTCA:

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

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

25 16 C.F.R. § 233.1.

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1 85. California statutory and regulatory law also expressly prohibits false former pricing
2 schemes. Cal. Bus. & Prof. Code § 17501, entitled "*Value determinations; Former price*
3 *advertisements*," states:

4 For the purpose of this article the worth or value of anything advertised is the
5 prevailing market price, wholesale if the offer is at wholesale, retail if the offer is at
6 retail, at the time of publication of such advertisement in the locality wherein the
7 advertisement is published.

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

13 86. As detailed in Plaintiff's Fifth Cause of Action below, Cal. Civ. Code § 1770,
14 subsection (a)(9), prohibits a business from "[a]dvertising goods or services with intent not to sell
15 them as advertised," and subsection (a)(13) prohibits a business from "[m]aking false or misleading
16 statements of fact concerning reasons for, existence of, or amounts of price reductions."

17 87. Defendant also violated and continues to violate Business & Professions Code §
18 17501, and Civil Code § 1770, sections (a)(9) and (a)(13) by advertising false discounts from
19 purported former prices that were, in fact, not the prevailing market prices within three months next
20 preceding the publication and dissemination of advertisements containing the false former prices.

21 88. Defendant's use of and reference to a materially false Reference Prices, and
22 purported whole-price reductions or percentage discounts in connection with its marketing and
23 advertisements concerning the U.S. Polo Outlet Products sold at U.S. Polo Outlet Stores violated
24 and continues to violate the FTCA, 15 U.S.C. § 45(a)(1) and 15 U.S.C. § 52(a), as well as FTC
25 Guidelines published at Title 16, Code of Federal Regulations, Section 233.

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

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

FOURTH CAUSE OF ACTION

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

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

19 93. The California False Advertising Law prohibits unfair, deceptive, untrue, or
20 misleading advertising, including, but not limited to, false statements as to worth, value and former
21 price.

94. Cal. Bus. & Prof. Code § 17500 provides that:
[i]t is unlawful for any . . . corporation . . . with intent . . . to dispose of . . . personal property . . . to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated . . . from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever,

1 including over the Internet, any statement . . . which is *untrue* or *misleading*, and
2 which is known, or which by the exercise of reasonable care should be known, to be
3 untrue or misleading . . . [Emphasis added.].

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

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

11 97. Defendant’s routine practice of including false Reference Prices on the price tags for
12 U.S. Polo Outlet Products sold at U.S. Polo Outlet Stores, which were never the true prevailing prices
13 of those products was an unfair, deceptive and misleading advertising practice. This deceptive
14 marketing practice gave consumers the false impression that the U.S. Polo Outlet Products sold at
15 U.S. Polo Outlet Stores were regularly sold in the retail marketplace at substantially higher prices
16 than they actually were. Therefore, leading to the false impression that the merchandise was worth
17 more than it actually was. In fact, U.S. Polo Outlet Products that were made predominately, if not
18 exclusively, for sale in the U.S. Polo Outlet Stores were never sold at the Reference Prices under
19 any circumstances.

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

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

25 100. Through its unfair acts and practices, Defendant has improperly obtained money
26 from Plaintiff and the Class. As such, Plaintiff requests that this Court cause Defendant to restore
27 this money to Plaintiff and all Class members, and to enjoin Defendant from continuing to violate
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1 the False Advertising Law as discussed herein in the future. Otherwise, Plaintiff and the Class may
 2 be irreparably harmed and/or denied an effective and complete remedy if such an order is not
 3 granted.

4 **FIFTH CAUSE OF ACTION**

5 For Violation Of The Consumer Legal Remedies Act
 6 California Civil Code Sections 1750, *et. seq.*
 (By Plaintiff and the Class Against Defendant)

7 101. Plaintiff re-alleges and incorporates by reference the allegations contained in the
 8 preceding paragraphs as though fully set forth herein.

9 102. This cause of action is brought pursuant to the CLRA.

10 103. Plaintiff and each member of the proposed Class are “consumers” within the meaning
 11 of California Civil Code § 1761(d).

12 104. Defendant’s sale of U.S. Polo Outlet Products at U.S. Polo Outlet Stores to Plaintiff
 13 and the Class were “transactions” within the meaning of California Civil Code § 1761(e). The U.S.
 14 Polo Outlet Products purchased by Plaintiff and the Class are “goods” within the meaning of
 15 California Civil Code § 1761(a).

16 105. As described herein, Defendant violated, and continues to violate, the CLRA by
 17 falsely representing the nature, existence and amount of price discounts by fabricating inflated
 18 Reference Prices and including the Reference Prices on the price tags for U.S. Polo Outlet Products.
 19 Such a pricing scheme is in violation of Cal. Civ. Code § 1770, subsection (a)(9) (“[a]dvertising
 20 goods or services with intent not to sell them as advertised”) and subsection (a)(13) (“[m]aking false
 21 or misleading statements of fact concerning reasons for, existence of, or amounts of price
 22 reductions”).

23 106. Plaintiff relied on Defendant’s false representations in deciding to purchase U.S.
 24 Polo Outlet Products from Defendant. Plaintiff would not have purchased such merchandise absent
 25 Defendant’s unlawful conduct. As a result of these acts and practices, Plaintiff suffered damage in
 26 that she spent money at the U.S. Polo Outlet Store that she would not have otherwise spent absent
 27 Defendant’s unlawful and misleading acts and practices.
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12

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14 WHEREFORE, Plaintiff, on behalf of herself and members of the Class, prays for relief and
15 judgment against Defendant as follows:

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1 7. For prejudgment interest at the legal rate; and


2 8. For such other and further relief as the Court may deem proper.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiff hereby demands a trial by jury for Plaintiff and the Class as to all issues so triable.

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7 Dated: July 12, 2019

**LAW OFFICES OF ZEV B. ZYSMAN
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