

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
**PEGGY CABRERA, individually and on behalf
of all others similarly situated,**

Plaintiff,

-against-

KENNETH COLE PRODUCTIONS, INC.,

Defendant.
-----X

Civil Action No.:

**CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

Plaintiff, PEGGY CABRERA (“Plaintiff”), on behalf of herself and all others similarly situated, alleges the following based upon personal knowledge as to allegations regarding Plaintiff and on information and belief as to other allegations:

INTRODUCTION

1. This is a civil class action seeking monetary damages, restitution, injunctive and declaratory relief from Defendant, Kenneth Cole Productions, Inc. (“Kenneth Cole”), arising from its deceptive and misleading labeling and marketing of merchandise it sells at its company-owned Kenneth Cole Outlet stores (“Kenneth Cole Outlets”).

2. During the Class Period (defined below), Kenneth Cole misrepresented the existence, nature and amount of price discounts on products manufactured exclusively for Kenneth Cole Outlets (“Kenneth Cole Outlet Products”) by purporting to offer steep discounts off of fabricated, arbitrary, and false former prices.

3. Specifically, Kenneth Cole represented—on the price tags of its Kenneth Cole Outlet Products—Manufacturer’s Suggested Retail Prices (“MSRP”) that were artificial, arbitrary and did not represent a bona fide price at which Kenneth Cole formerly sold Kenneth

Cole Outlet Products. Nor were the advertised MSRP's prevailing market retail prices within three months immediately preceding the publication of the advertised former prices, as required by California law.

4. Having touted a false MSRP, Kenneth Cole then offered, on the same price tags, to sell Kenneth Cole Outlet Products for a price termed "OUR PRICE," which supposedly represented a deep discount off of the false MSRP.

5. But the MSRP's used by Kenneth Cole, which represented to consumers the purported former price of Kenneth Cole Outlet Products, were a sham. In fact, Kenneth Cole manufactures certain goods for *exclusive sale* at its Kenneth Cole Outlets, which means that such items were never sold—or even intended to be sold—at the "MSRP" listed on its labels. Kenneth Cole Outlet Products were never offered for sale in Kenneth Cole's non-outlet stores in California, or any other state, or in non-outlet retailers carrying Kenneth Cole products.

6. The MSRP's listed on Kenneth Cole Outlet Products did not represent a former price at all—much less a former price in the preceding three months. They are fictional creations designed to enable phantom markdowns.

7. The Federal Trade Commission ("FTC") explicitly describes the fictitious pricing scheme employed at Kenneth Cole Outlets as deceptive:

- (a) Many members of the purchasing public believe that a manufacturer's list price, or suggested retail price, is the price at which an article is generally sold. Therefore, if a reduction from this price is advertised, many people will believe that they are being offered a genuine bargain. To the extent that list or suggested retail prices do not in fact correspond to prices at which a substantial number of sales of the article in question are made, the advertisement of a reduction may mislead the consumer. A former price is not necessarily fictitious merely because no sales at the advertised price were made. The advertiser should be especially careful, however, in such a case, that the price is one at which the product was openly and actively offered for sale, for a reasonably substantial period of time, in the recent, regular course of her business, honestly and in good faith – and, of course,

not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based.

- (i) It bears repeating that the manufacturer, distributor or retailer must in every case act honestly and in good faith in advertising a list price, and not with the intention of establishing a basis, or creating an instrumentality, for a deceptive comparison in any local or other trade area. For instance, a manufacturer may not affix price tickets containing inflated prices as an accommodation to particular retailers who intend to use such prices as the basis for advertising fictitious price reductions.

16 C.F.R. § 233.3.

8. Similarly, California statutory and regulatory law expressly prohibits false pricing schemes. *Business & Professions Code* § 17501, entitled “*Value determinations; Former price advertisements,*” states:

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

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

(emphasis added).

9. The Kenneth Cole Outlet pricing scheme was prominently displayed on all products available for sale at Kenneth Cole Outlets in California. To illustrate, one of the merchandise price tags that Plaintiff relied on is pictured below:



10. Upon information and belief, thousands of California consumers were victims of Kenneth Cole's deceptive, misleading and unlawful false pricing scheme and thousands more, including Plaintiff, will be deceived if the practices continue.

11. Kenneth Cole fraudulently concealed from, and intentionally failed to disclose to, Plaintiff and others similarly situated, the truth about its MSRP's and advertised price discounts from those supposedly former prices.

12. Kenneth Cole's false representations of MSRP's and false representations of purported savings, discounts and bargains are objectively material to a reasonable consumer.

13. Plaintiff relied upon such false representations of MSRP's and discounts when purchasing apparel from a Kenneth Cole Outlet in California. Plaintiff would not have made such purchase, or would not have paid the amount she did, but for Kenneth Cole's false representations of the former price or MSRP of the items she purchased, as compared with the supposedly discounted "OUR PRICE" at which Kenneth Cole offered the items for sale.

14. Plaintiff, in short, believed the truth of the price tags attached to the products she purchased at a Kenneth Cole Outlet, which expressly told her that she was getting a terrific bargain on her purchase. In fact, she was not getting a bargain at all.

15. Through its false and deceptive marketing, advertising and pricing scheme, Kenneth Cole violated (and continues to violate) California law prohibiting advertising goods for sale as discounted from former prices which are false, and prohibiting misleading statements about the existence and amount of price reductions. Specifically, Kenneth Cole violated (and continues to violate) California's *Business & Professions Code* § 17200, *et seq.* (the "UCL"), California's *Business and Professions Code* § 17500, *et seq.* (the "FAL"), the California Consumers' Legal Remedies Act, *Civil Code* § 1750, *et seq.* (the "CLRA"), and the Federal

Trade Commission Act (“FTCA”), which prohibits “unfair or deceptive acts or practices in or affecting commerce” and specifically prohibits false advertisements. 15 U.S.C. §§ 52(a) and 15 U.S.C. § 45(a)(1).

16. Plaintiff, individually and on behalf of all others similarly situated, seeks restitution and other equitable remedies, including an injunction under the UCL, FAL and CLRA.

PARTIES

17. Plaintiff, Peggy Cabrera is an individual who is a citizen of the City of Lomita, County of Los Angeles, California. In reliance on Defendant’s false and deceptive advertising, marketing and pricing schemes, Ms. Cabrera purchased two Kenneth Cole Outlet Products from the Kenneth Cole Outlet located in Camarillo, California on April 11, 2015, and as detailed herein, was damaged as a result thereof.

18. Defendant Kenneth Cole is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place at 603 West 50th Street, New York, NY, 10019. Defendant operates 12 Kenneth Cole Outlets in California.

JURISDICTION AND VENUE

19. This Court has original jurisdiction of this action under the Class Action Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has original jurisdiction because the aggregate claims of the members of the putative Class exceed \$5 million, exclusive of costs, and at least one of the members of the proposed Class is a citizen of a different state than Kenneth Cole.

20. The Southern District of New York has personal jurisdiction over Kenneth Cole because Kenneth Cole is a corporation or other business entity with its principal place of business at 603 West 50th Street, New York, NY, 10019.

21. Venue is proper in this District pursuant to 28 U.S.C. § 1391, because Kenneth Cole's principal place of business is found within this District, and a substantial part of the events giving rise to Plaintiff's claims arose here, including the creation of the scheme alleged in this Complaint.

FACTUAL ALLEGATIONS

22. Traditionally, retail outlet stores were located in remote areas and typically maintained an inventory of defective and excess merchandise. Customers often flocked to these outlets in hopes of finding steep discounts and bargains. *See <http://www.forbes.com/sites/investopedia/2012/12/29/7-tips-for-outlet-mall-shopping/>* (last visited July 11, 2014).

23. However, in an effort to increase profits, major retailers such as Kenneth Cole have, without notice to consumers, begun using company-owned "outlet" stores to sell made-for-outlet goods that are never intended to be sold at non-outlet stores.

24. In California, such "outlet" stores are located in purpose-built malls touted as "outlets," or "premium outlets." For example, Plaintiff purchased her Kenneth Cole Outlet Products at the premium outlets in Camarillo. The very term "outlet" conveys to reasonable consumers that at least some products are comprised of merchandise formerly offered for sale at full-price retail locations. The location of Kenneth Cole Outlets in "outlet" malls deceives reasonable consumers into believing they are receiving true "outlet" merchandise, when they are not.

25. Instead, retailers like Kenneth Cole create the illusion of traditional outlet discounts and bargains by offering the made-for-outlet goods at prices reduced from fabricated, arbitrary, and false prices. In short, outlet stores such as Kenneth Cole Outlets are using false and fraudulent price comparison tactics. See <http://www.buzzfeed.com/sapna/customers-finally-aware-that-most-outlet-merchandise-is-now> (last visited June 26, 2015).

26. The intentional use of false and fraudulent price comparison tactics is increasingly deceiving consumers in the market. To illustrate, on January 30, 2014, four Members of Congress demanded an FTC investigation of misleading marketing practices by outlet stores across the United States. The four Members of Congress described a pricing scheme similar to the one implemented at Kenneth Cole Outlets and stated, “[i]t is a common practice at outlet stores to advertise a retail price alongside the outlet store price—even on made-for-outlet merchandise that does not sell at regular retail locations. Since the item was never sold in the regular retail store or at the retail price, the retail price is impossible to substantiate. We believe this practice may be a violation of the FTC’s Guides Against Deceptive Pricing (16 CFR 233).” See <http://www.whitehouse.senate.gov/news/release/sens-and-rep-to-ftc-outlet-stores-may-be-misleading-consumers> (last visited June 26, 2015).

27. This is precisely the practice used by Kenneth Cole in its Kenneth Cole Outlets.

Plaintiff’s Purchases

28. On April 11, 2015, Plaintiff entered the Kenneth Cole Outlet located in Camarillo, California. She observed that merchandise was advertised with price tags that represented an “MSRP” next to a significantly reduced “OUR PRICE.” She also observed that other items in the store did not make these price-reduction representations on i price tags. Ms. Cabrera understood that the items with the “MSRP” tags represented a true bargain, while the items with

plain price tags do not. Enticed by the idea of paying significantly less than the MSRP charged outside of Kenneth Cole Outlets, and by receiving a true bargain, Plaintiff was induced to purchase one Maribeth Sweater bearing Style Number OW4KISS18 with an “MSRP” of \$128.00 and an “OUR PRICE” of \$99.99. She was also induced to purchase one Sati Top bearing Style Number WMS52KT08 with an OUR PRICE of \$49.99 and an MSRP of \$68.00.

29. By purchasing the Maribeth Sweater for the “OUR PRICE” of \$99.99 instead of the “MSRP” of \$128.00, Plaintiff was led to believe that she saved on her purchase. In reality, Kenneth Cole never intended, nor did it ever, sell the item at the represented “MSRP”. Thus, Plaintiff was deceived by the false price comparison into making a full retail purchase with no discount. Likewise, by purchasing the Sati Top for the “OUR PRICE” of \$49.99 instead of the “MSRP” of \$68.00, Plaintiff was led to believe that she saved on her purchase. In reality, Kenneth Cole never intended, nor did it ever, sell the item at the represented “MSRP”. Thus, Plaintiff was deceived by the false price comparison into making a full retail purchase with no discount.

30. Plaintiff would not have purchased the products, or would not have paid the price she did, if she had known she was not truly receiving a discount off a true former price, as specified.

31. Plaintiff’s and class members’ reliance on Defendant’s false price comparison advertising was reasonable. In fact, empirical marketing studies provide an incentive for retailers to engage in this false and fraudulent behavior:

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

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

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

Id. at 55, 56.

32. Despite the "MSRP/OUR PRICE" scheme used at Kenneth Cole Outlets, Plaintiff would purchase Kenneth Cole Outlet Products in the future from Kenneth Cole Outlet stores and/or other retail establishments, if product labels accurately reflect "former" prices and discounts. If the Court were to issue an injunction ordering Kenneth Cole to comply with California's comparative price advertising laws, and prohibiting Kenneth Cole's use of the deceptive practices discussed herein, Plaintiff would likely shop for Kenneth Cole Outlet Products again in the near future at Kenneth Cole Outlets.

CLASS ALLEGATIONS

33. Plaintiff incorporates and realleges by reference each and every allegation contained in the preceding paragraphs as if set forth herein in full.

34. Plaintiff brings this action on behalf of herself and the members of the proposed Class. The proposed Class consists of:

All individuals in the State of California who, within the applicable statute of limitations preceding the filing of this action, purchased a Kenneth Cole Outlet Product from a Kenneth Cole Outlet.

35. Excluded from the Class are Kenneth Cole, its parents, subsidiaries, affiliates, officers and directors, any entity in which Kenneth Cole has a controlling interest, all customers who make a timely election to be excluded, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

36. The members of the Class are so numerous that joinder is impractical. The Class consists of thousands of members, the precise number which is within the knowledge of and can be ascertained only by resort to Kenneth Cole's records.

37. There are numerous questions of law and fact common to the Class which predominate over any questions affecting only individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) Whether, during the Class Period, Kenneth Cole used false price representations and falsely advertised price discounts on its merchandise sold at Kenneth Cole Outlets;
- (b) Whether, during the Class Period, the MSRP's advertised by Kenneth Cole were the prevailing market prices for the respective merchandise sold at Kenneth Cole Outlets during the three month periods preceding the dissemination and/or publication of the advertised former prices;
- (c) Whether Kenneth Cole's use of false or deceptive price advertising constituted false advertising under California Law;
- (d) Whether Kenneth Cole engaged in unfair, unlawful and/or fraudulent business practices under California law;
- (e) Whether Kenneth Cole misrepresented and/or failed to disclose material facts about its product pricing and discounts.
- (f) Whether Kenneth Cole has made false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;
- (g) Whether Kenneth Cole's conduct, as alleged herein, was intentional and knowing;

- (h) Whether Class members are entitled to damages and/or restitution, and in what amount;
- (i) Whether Kenneth Cole is likely to continue using false, misleading or illegal price comparisons such that an injunction is necessary; and
- (j) Whether Plaintiff and Class members are entitled to an award of reasonable attorneys' fees, pre-judgment interest and costs of suit.

38. Plaintiff's claims are typical of the claims of the members of the Class and, like all members of the Class, purchased goods from a Kenneth Cole Outlet that falsely conveyed an "MSRP" representation and a fictitious discount. Accordingly, Plaintiff has no interests antagonistic to the interests of any other member of the Class.

39. Plaintiff is a representative who will fully and adequately assert and protect the interests of the Class, and has retained counsel who is experienced in prosecuting class actions. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

40. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all members of the Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are in the millions of dollars, the individual damages incurred by each member of the Class resulting from Kenneth Cole's wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual Class members prosecuting their own separate claims is remote, and, even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

41. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Kenneth Cole. For example, one court might enjoin Kenneth Cole from performing the challenged acts, whereas another might not. Additionally, individual actions may be dispositive of the interests of the Class, although certain class members are not parties to such actions.

42. The conduct of Kenneth Cole is generally applicable to the Class as a whole and Plaintiff seeks, *inter alia*, equitable remedies with respect to the Class as a whole. As such, the systematic policies and practices of Kenneth Cole make declaratory relief with respect to the Kenneth Cole California Subclass as a whole appropriate.

COUNT I
(Violation of the “Unfair” Prong of the UCL)

43. Plaintiff incorporates and realleges by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

44. 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. & Pro. Code § 17200.

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

46. Kenneth Cole has violated the “unfair” prong of the UCL by representing a false “MSRP” and corresponding “OUR PRICE” representation for goods exclusively manufactured for sale at Kenneth Cole Outlets. As a result, the inflated “MSRP” and corresponding “OUR PRICE” was nothing more than a false, misleading and deceptive illusion of a discount.

47. These acts and practices are unfair because they caused Plaintiff, and are likely to cause consumers, to falsely believe that Kenneth Cole Outlet is offering value, discounts or bargains from the prevailing market worth of the products sold that did not, in fact, exist. As a result, purchasers, including Plaintiff, reasonable perceived that they were receiving products that regularly sold in the non-outlet retail marketplace at substantially higher prices (and were, therefore, worth more) than what they paid. This perception has induced reasonable purchasers, including Plaintiff, to buy such products, which they otherwise would not have purchased.

48. The gravity of the harm to members of the Class resulting from these unfair acts and practices outweighed any conceivable reasons, justifications and/or motives of Kenneth Cole for engaging in such deceptive acts and practices. By committing the acts and practices alleged above, Kenneth Cole engages in unfair business practices within the meaning of California Business & Professions Code § 17200, *et seq.*

49. Through its unfair acts and practices, Kenneth Cole has improperly obtained money from Plaintiff and the Class. As such, Plaintiff requests that this court cause Kenneth Cole to restore this money to Plaintiff and all Class members, and to enjoin Kenneth Cole 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.

COUNT II
(Violation of the “Fraudulent” Prong of the UCL)

50. Plaintiff incorporates and realleges by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

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

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

53. Kenneth Cole’s labels and advertising materials concerning false former 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 Kenneth Cole was offering value, discounts or bargains at Kenneth Cole Outlets from the prevailing market value or worth of the products sold that did not, in fact, exist.

54. Kenneth Cole deceived consumers into believing that it was offering value, discounts or bargains at Kenneth Cole Outlets from the prevailing market value or worth of the products sold that did not, in fact, exist.

55. As a result, purchasers, including Plaintiff, reasonably perceived that they were receiving products that regularly sold in the non-outlet 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 Kenneth Cole Outlets, which they otherwise would not have purchased.

56. Kenneth Cole’s acts and practices as described herein have deceived Plaintiff and were highly likely to deceive members of the consuming public. Specifically, in deciding to purchase merchandise from a Kenneth Cole Outlet store, Plaintiff relied on Kenneth Cole’s misleading and deceptive representations regarding its “MSRP” and “OUR PRICE” price tags. Each of these factors played a substantial role in Plaintiff’s decision to purchase those products,

and Plaintiff would not have purchased those items in the absence of Kenneth Cole's misrepresentations. Accordingly, Plaintiff suffered monetary loss as a direct result of Kenneth Cole's pricing practices described herein.

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

58. Through its unfair acts and practices, Kenneth Cole has improperly obtained money from Plaintiff and the Class. As such, Plaintiff requests that this court cause Kenneth Cole to restore this money to Plaintiff and all Class members, and to enjoin Kenneth Cole 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.

COUNT III
(Violation of the "Unlawful" Prong of the UCL)

59. Plaintiff incorporates and realleges by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

60. 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. & Pro. Code § 17200.

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

62. California statutory and regulatory law also expressly prohibits false former pricing schemes. *Business & Professions Code* § 17501, entitled “*Value determinations; Former price advertisements,*” states:

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

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

Id.

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

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

65. The FTCA prohibits “unfair or deceptive acts or practices in or affecting commerce” and specifically prohibits false advertisements. (15 U.S.C. § 45(a)(1) and 15 U.S.C. § 52(a)). The FTC has established Guidelines which prohibit false pricing schemes, similar to Kenneth Cole’s MSRP/OUR PRICE Scheme in material respects, as deceptive practices that would violate the FTCA:

- (a) Many members of the purchasing public believe that a manufacturer's list price, or suggested retail price, is the price at which an article is generally sold. Therefore, if a reduction from this price is advertised, many people will believe that they are being offered a genuine bargain. To the extent that list or suggested retail prices do not in fact correspond to prices at which a substantial number of sales of the article in question are made, the advertisement of a reduction may mislead the consumer. A former price is not necessarily fictitious merely because no sales at the advertised price were made. The advertiser should be especially careful, however, in such a case, that the price is one at which the product was openly and actively offered for sale, for a reasonably substantial period of time, in the recent, regular course of her business, honestly and in good faith – and, of course, not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based.
- (i) It bears repeating that the manufacturer, distributor or retailer must in every case act honestly and in good faith in advertising a list price, and not with the intention of establishing a basis, or creating an instrumentality, for a deceptive comparison in any local or other trade area. For instance, a manufacturer may not affix price tickets containing inflated prices as an accommodation to particular retailers who intend to use such prices as the basis for advertising fictitious price reductions.

16 C.F.R. § 233.3.

66. Kenneth Cole's use of and reference to a materially false "MSRP" in connection with its marketing and advertisements concerning the merchandise sold at Kenneth Cole Outlets violated and continues to violate the FTCA, 15 U.S.C. § 45(a)(1) and 15 U.S.C. § 52(a), as well as FTC Guidelines published at 16 C.F.R. § 233.

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

68. Through its unlawful acts and practices, Kenneth Cole has improperly obtained money from Plaintiff and the Class. As such, Plaintiff requests that this court cause Kenneth Cole to restore this money to Plaintiff and all Class members, and to enjoin Kenneth Cole 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.

COUNT IV
**(Violation of the California False Advertising Law,
California Business & Professions Code Section 17500, et seq.)**

69. Plaintiff incorporates and realleges by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

70. California's *Business and Professions Code* § 17500, *et seq.* prohibits unfair, deceptive, untrue, or misleading advertising, including, but not limited to, false statements as to worth, value and former price.

71. Kenneth Cole's practice of advertising "MSRP's" on exclusive, made for Kenneth Cole Outlets merchandise, which were materially greater than the actual prices of those products was an unfair, deceptive and misleading advertising practice because it gave the false impression that the products sold at Kenneth Cole Outlets were regularly sold in the non-outlet retail marketplace at substantially higher prices (and were, therefore, worth more) than they actually were. In fact, the exclusive, made for Kenneth Cole Outlet merchandise did not have a prevailing market price anywhere close to the "MSRP" advertised because the merchandise was always sold for, or discounted further from, the OUR PRICE representation on the price tag when placed on sale at the Kenneth Cole Outlets.

72. Through its unfair acts and practices, Kenneth Cole has improperly obtained money from Plaintiff and the Class. As such, Plaintiff requests that this court cause Kenneth Cole to restore this money to Plaintiff and all Class members, and to enjoin Kenneth Cole from continuing to violate the FAL as discussed herein and/or from violating the FAL 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.

COUNT V
**(Violation of the Consumers Legal Remedies Act,
California Civil Code Section 1750, et seq.: Injunctive Relief)**

73. Plaintiff incorporates and realleges by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

74. This cause of action is brought pursuant to the CLRA.

75. Plaintiff and each member of the proposed class are “consumers” within the meaning of California Civil Code § 1761(d).

76. Kenneth Cole’s selling of goods manufactured exclusively for sale at Kenneth Cole Outlets to Plaintiff and the Class were “transactions” within the meaning of California *Civil Code* § 1761(e). The products purchased by Plaintiff and the Class are “goods” within the meaning of California Civil Code §1761(a).

77. As described herein, Kenneth Cole violated the CLRA by falsely representing the nature, existence and amount of price discounts by fabricating inflated “MSRP’s” on price tags. Such a pricing scheme is in violation of Cal. Civ. Code § 1770, subsection (a)(9) (“[a]dvertising goods or services with intent not to sell them as advertised”) and subsection (a)(13) (“[m]aking false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions”).

78. Plaintiff relied on Kenneth Cole’s false representations in deciding to purchase goods at a Kenneth Cole Outlet. Plaintiff would not have purchased such items absent Kenneth Cole’s unlawful conduct.

79. Plaintiff requests this Court enjoin Kenneth Cole from continuing to violate the CLRA as discussed herein and/or from violating the UCL in the future. Otherwise, Plaintiff, the Class and members of the general public may be irreparably harmed and/or denied effective and complete remedy if such an order is not granted.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the members of the Class demand a jury trial on all claims so triable and judgment against Defendant Kenneth Cole as follows:

A. An order certifying that this action may be maintained as a class action, that Plaintiff be appointed Class Representative and Plaintiff's counsel be appointed Class Counsel;

B. Pursuant to Plaintiff's first four causes of action, a judgment awarding Plaintiff and all members of the Class restitution and/or other equitable relief, including, without limitation, restitutionary disgorgement of all profits and unjust enrichment that Defendant obtained from Plaintiff and the Class as a result of its unlawful, unfair and fraudulent business practices described herein;

C. An order enjoining Defendant from continuing to violate the UCL, False Advertising Law and CLRA as described herein.

D. A judgment awarding Plaintiff her costs of suit; including reasonable attorneys' fees pursuant to California Civil Code § 1780(d), Code of Civil Procedure § 1021.5 and as otherwise permitted by statute; and pre and post-judgment interest; and

E. Such other and further relief as may be deemed necessary or appropriate.

Dated: June 30, 2015

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JURY TRIAL DEMANDED

PLAINTIFF demands a jury trial on all triable issues.

Dated: June 30, 2015

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