

1 SCOTT+SCOTT, ATTORNEYS AT LAW, LLP
John T. Jasnoch (281605)
2 707 Broadway, Suite 1000
San Diego, CA 92101
3 Telephone: (619) 233-4565
Facsimile: (619) 233-0508
4 Email: jjasnoch@scott-scott.com

5 *Attorneys for Plaintiff*

6 [Additional Counsel on Signature Page.]

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8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11
12 SAEID AZIMPOUR, on Behalf of
Himself and All Others Similarly
13 Situated,

14
15 Plaintiff,

16 vs.

17
18 SEARS, ROEBUCK & COMPANY,

19
20 Defendant.
21

Case No. '15CV2798 JLS WVG

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Saeid Azimpour brings this action on behalf of himself and all others
2 similarly situated against Defendant Sears, Roebuck & Company (“Sears” or
3 “Defendant”), and states:

4 **I. NATURE OF ACTION**

5 1. This is a class action regarding Defendant’s false and misleading
6 advertisement of “original” prices, “sale” prices, and corresponding phantom
7 “markdowns” on merchandise sold in its retail stores. During the Class Period (defined
8 below), Defendant advertised false former prices and false price discounts for
9 merchandise sold throughout its retail stores.

10 2. During the Class Period, Defendant continually misled consumers by
11 advertising merchandise at discounted “sale” prices. Defendant would compare the “sale”
12 prices to false former retail prices, which were misrepresented as “original” or “regular”
13 retail prices. The advertised discounts overstated and did not represent a *bona fide* price
14 at which Defendant formerly sold the merchandise and were nothing more than mere
15 phantom markdowns, because the represented former prices were artificially inflated and
16 were never the original prices for merchandise sold at Defendant’s retail stores. In
17 addition, the represented “original” prices were not the prevailing market retail prices
18 within the three months immediately preceding the publication of the advertised former
19 prices, as required by California law.

20 3. Defendant conveys its deceptive pricing scheme to consumers through the
21 use of various media platforms including, but not limited to, online promotional materials,
22 in-store displays, and print advertisements. The pricing scheme is prominently displayed
23 with each “discounted” price listed adjacent to the “regular” prices, which never existed
24 and/or did not constitute the prevailing market retail prices for such products within the
25 three months immediately preceding the publication of the advertisement. In addition,
26 upon check-out, Defendant provides consumers, including Plaintiff, with sales receipts
27 continuing the misrepresentations regarding false price discounts.

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

11 5. Plaintiff brings this action on behalf of himself and other similarly situated
12 consumers who have purchased one or more items at Defendant’s retail stores that were
13 deceptively represented as discounted from false former prices in order to halt the
14 dissemination of this false, misleading, and deceptive price scheme, correct the false and
15 misleading perception it has created in the minds of consumers, and obtain redress for
16 those who have purchased merchandise tainted by this scheme. Plaintiff seeks to
17 permanently enjoin Defendant from using false and misleading claims regarding retail
18 price comparisons in its packaging, labeling, and advertising. Further, Plaintiff seeks to
19 obtain restitution and other appropriate relief in the amount by which Defendant was
20 unjustly enriched as a result of its sales of merchandise offered at a false discount.
21 Finally, Plaintiff seeks reasonable attorneys’ fees pursuant to Cal. Code Civ. Proc.
22 §1021.5 as this lawsuit seeks the enforcement of an important right affecting the public
23 interest and satisfies the statutory requirements for an award of attorneys’ fees.

24 **II. JURISDICTION AND VENUE**

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

1 7. The Southern District of California has personal jurisdiction over Defendant
2 because Defendant is a corporation or other business entity authorized to conduct and
3 does conduct business in the State of California. Defendant is registered with the
4 California Secretary of State to do sufficient business with sufficient minimum contacts in
5 California, and/or otherwise intentionally avails itself of the California market through the
6 ownership and operation of over 200 retail stores within the State of California.

7 8. Venue is proper under 18 U.S.C. §1965(a) because Defendant transacts
8 substantial business in this District. A substantial part of the events giving rise to
9 Plaintiff's claims arose here.

10 **III. PARTIES**

11 **Plaintiff**

12 9. Plaintiff Saeid Azimpour resides in San Diego County, California.
13 Azimpour, in reliance on Defendant's false and deceptive advertising, marketing, and
14 "discount" pricing schemes, purchased merchandise from Defendant and was damaged
15 thereby.

16 **Defendant**

17 10. Plaintiff alleges upon information and belief that Defendant Sears, Roebuck
18 & Company is a New York corporation with its principal executive offices in Hoffman
19 Estates, Illinois. It is a subsidiary of the publicly traded Delaware corporation, Sears
20 Holdings Corporation (NYSE: SHLD). Defendant advertises, markets, distributes, and/or
21 sells products to hundreds of thousands of consumers in California and throughout the
22 United States.

23 **IV. FACTUAL BACKGROUND**

24 **A. Sears Regularly Engages in Deceptive Pricing**

25 11. Consumers' Checkbook/Center for the Study of Services ("CSS") is an
26 independent, nonprofit consumer organization based in Washington, D.C. Its stated
27 purpose is "to provide consumers information to help them get high quality services and
28 products at the best possible prices."

1 12. Beginning in June 2014, and continuing through March 2015, CSS conducted
2 a survey of seven national retail chains and Amazon.com, tracking prices weekly for six
3 to ten big-ticket items from each retailer.¹ Most price checks were made online with spot
4 checking of in-store prices.

5 13. The CSS survey discovered that for some of the stores, including Sears,
6 “some of the products for almost all of the weeks we checked were offered at sale prices.”

7 14. Specifically, the CSS report made the following findings regarding Sears’
8 price discounting scheme:

9 Of the seven chains we tracked, *Sears had the most egregious always-on-*
10 *sale pricing practices*: For the nine items we checked at Sears, almost all
11 were almost always offered at a sale price. Two of the items were offered at
12 sale prices for 44 out of 44 weeks, one was offered at a sale price for 43 out
13 of 44 weeks, and one was offered at a sale price for 40 out of 44 weeks.
14 Except for one item, all the items we tracked at Sears were always or almost
15 always listed at sale prices. During the rare times Sears sold items at their
16 regular prices, they were still listed as being “on sale.” During these times,
17 Sears simply omitted the item’s regular price.

18 Sears’ sale prices are also shown as more steeply discounted from its regular
19 prices than the sale prices of the other chains we checked. Most items are
20 shown as being on sale for 40% or more off their regular prices, leading
21 customers to believe the “current” sale offers them fantastic deals. The
22 opposite is usually the case: Many items sold by Sears can be purchased for
23 lower prices elsewhere.

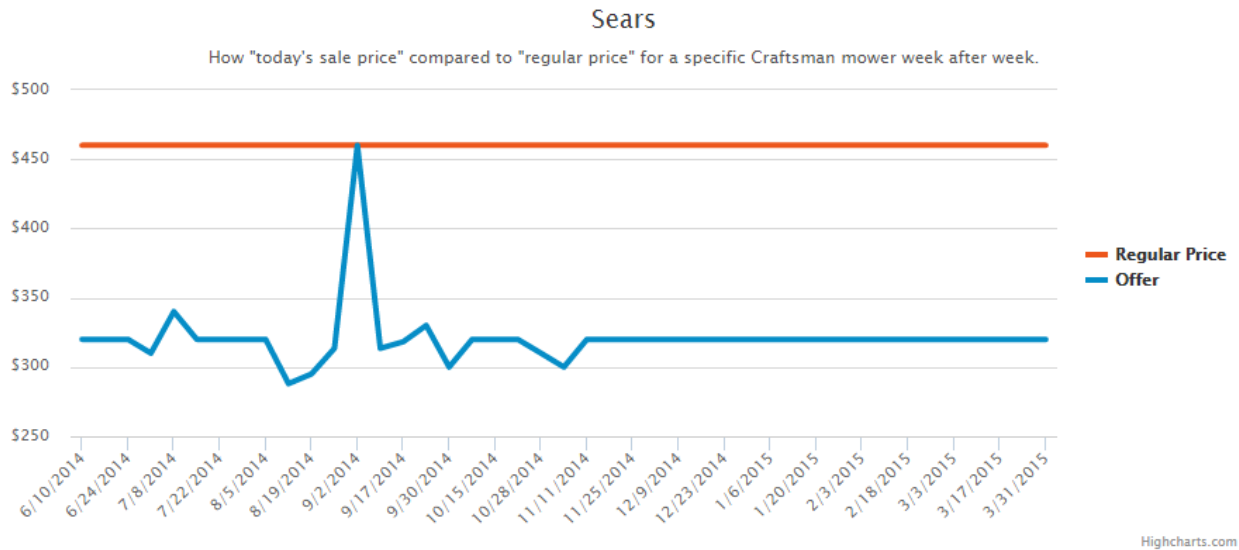
24 * * *

25 [F]or most of the items we tracked, Sears always or almost always listed
26 them as being on sale. For a few of the items, Sears charged its “regular”
27 prices for only a few weeks. And Sears seemed to list items at regular prices
28 only during weeks that are historically low-traffic weeks (for example, at the
end of summer for the mower we priced). *Checkbook.org believes Sears’
pricing practices are deceptive and misleading.*

[Emphasis added.]

¹ The report of the CSS survey “Sale Fail” can be found at <http://www.checkbook.org/salefail/> (last accessed December 10, 2015).

1
2 15. One representative item offered by Sears and tracked by CSS was offered at
3 the “regular” price only once in the course of the study:



14 16. As the CSS report put it, at Sears, *“the sales often never end.”*
15 [Emphasis added.]

16 **B. Plaintiff’s Purchase of Purported Discounted Merchandise**

17 17. On July 19, 2015, Plaintiff entered Defendant’s retail store located within the
18 Westfield UTC shopping mall in San Diego, California. He observed merchandise for
19 which “regular” prices were listed alongside “discounted” prices in larger, bold fonts.
20 Believing he was able to pay significantly less than what certain products were worth and
21 typically sell for in the retail marketplace and/or from Defendant, Plaintiff was induced to
22 purchase merchandise which was offered at a price considerably lower than the stated
23 regular price.

24 18. Specifically, relying upon Defendant’s misrepresentations and false and
25 deceptive advertising, Plaintiff purchased a Cannon firm density standard pillow. The
26 pricing information indicated that the regular price was \$19.99, but was being offered at a
27 “sale” price of \$9.99, providing Plaintiff with a \$10.00 “savings,” or a 50% “discount.”
28 Upon information and belief, this purported original price and corresponding price
discount and savings were false and misleading, as Defendant’s actual regular price and

1 the prevailing retail price for the Cannon firm density standard pillow during the three
2 months immediately prior to Plaintiff's purchase was not the \$19.99 "regular" price
3 advertised by Sears. The item remains advertised at the same or similar purported
4 discount on Defendant's Internet website as of the filing of this complaint. See
5 <http://www.sears.com/home-bed-bath-bedding-basics-mattress-pads-pillows-bed->
6 [pillows/b-1348744802](http://www.sears.com/home-bed-bath-bedding-basics-mattress-pads-pillows-bed-pillows/b-1348744802) (last accessed December 10, 2015).

7 19. Plaintiff would not have purchased the merchandise without the
8 misrepresentations made by Sears. As a result, Plaintiff has been personally victimized by
9 and suffered economic injury as a direct result of Defendant's unlawful, unfair, and
10 fraudulent conduct.

11 20. Furthermore, upon check-out on July 19, 2015, Sears provided Plaintiff with
12 a sales receipt containing misleading information regarding false regular prices and
13 discounts Plaintiff supposedly received on the merchandise he purchased. Specifically,
14 the receipt states "SALE" in large, bold, all-caps lettering directly above the item
15 purchased and the amount paid for the item purportedly on sale.

16 21. Defendant knows that its comparative price advertising is false, deceptive,
17 misleading, and unlawful under California, federal, and other state law.

18 22. Defendant fraudulently concealed from and intentionally failed to disclose to
19 Plaintiff and other members of the Classes the truth about its advertised price and former
20 prices.

21 23. At all relevant times, Defendant has been under a duty to Plaintiff and the
22 Classes to disclose the truth about its "regular" and former prices.

23 24. Plaintiff relied upon Defendant's artificially inflated "regular" prices and
24 false discounts when purchasing merchandise from Defendant. Plaintiff would not have
25 made such purchases but for Defendant's representations of fabricated "original" prices
26 and false discounts.

27 25. Plaintiff and the Classes reasonably and justifiably acted and relied on the
28 substantial price differences that Defendant advertised, and made purchases believing that

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

4 26. Defendant intentionally concealed and failed to disclose material facts
5 regarding the truth about false former price advertising in order to provoke Plaintiff and
6 the Classes to purchase merchandise in its retail stores.

7 **V. CLASS ALLEGATIONS**

8 27. Plaintiff brings this action on behalf of himself and all other similarly
9 situated Class members pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of
10 Civil Procedure and seeks certification of the following Class against Defendant (the
11 “Nationwide Class”):

12 All persons who purchased one or more items from Defendant offered at a
13 purported discount from an “original” or “regular” price any time between
14 December 11, 2011 to the date of certification (the “Class Period”).

15 28. Plaintiff also brings this action individually and as a Class action pursuant to
16 Federal Rule of Civil Procedure 23 on behalf of all persons located within the state of
17 California (the “California Class”):

18 All individuals residing in the State of California who purchased one or more items
19 from Defendant offered at a purported discount from an “original” or “regular”
20 price any time between December 11, 2011 to the date of certification.

21 29. Plaintiff also brings this action on behalf of all persons located within states
22 with similar consumer protection laws (collectively with the Nationwide and California
23 Classes, the “Classes”).

24 30. Excluded from the Classes is Defendant, as well as its officers, employees,
25 agents, or affiliates, and any judge who presides over this action, as well as all past and
26 present employees, officers, and directors of Sears.

27 31. Plaintiff reserves the right to expand, limit, modify, or amend this class
28 definition, including the addition of one or more subclasses, in connection with his motion

1 for class certification, or at any other time, based upon, *inter alia*, changing circumstances
2 and/or new facts obtained during discovery.

3 32. This action is brought and may properly be maintained as a class action
4 pursuant to Federal Rule of Civil Procedure 23. This action satisfies the numerosity,
5 typicality, adequacy, predominance, and superiority requirements of those provisions.

6 33. **Numerosity:** The Class members are so numerous that joinder of all members
7 is impracticable. Plaintiff is informed and believes that the proposed Classes contain
8 hundreds of thousands of individuals who have been damaged by Defendant's conduct as
9 alleged herein. The precise number of Class members is unknown to Plaintiff.

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

- 14 a. whether, during the Class Period, Sears used false "regular" or "original"
15 price labels and falsely advertised price discounts on merchandise it sold in
16 its retail stores;
- 17 b. whether, during the Class Period, the "original" prices advertised by Sears
18 were the prevailing market prices for the respective merchandise during the
19 three months period preceding the dissemination and/or publication of the
20 advertised former prices;
- 21 c. whether Sears' alleged conduct constitutes violations of the laws asserted;
- 22 d. whether Sears engaged in unfair, unlawful, and/or fraudulent business
23 practices under the laws asserted;
- 24 e. whether Sears engaged in false or misleading advertising;
- 25 f. whether Plaintiff and the Classes are entitled to damages and/or restitution
26 and the proper measure of that loss; and
- 27 g. whether an injunction is necessary to prevent Sears from continuing to use
28 false, misleading, or illegal price comparison.

1 35. **Typicality:** Plaintiff’s claims are typical of the claims of the members of the
2 Classes because, *inter alia*, all Class members have been deceived (or were likely to be
3 deceived) by Sears’ false and deceptive price advertising scheme, as alleged herein.
4 Plaintiff is advancing the same claims and legal theories on behalf of himself and all
5 members of the Classes.

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

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

21 38. All Class members, including Plaintiff, were exposed to one or more of
22 Sears’ misrepresentations or omissions of material fact claiming that former “original”
23 advertised prices were in existence. Due to the scope and extend of Sears’ consistent false
24 “discount” price advertising scheme, disseminated in a years-long campaign to consumers
25 via a number of different platforms – in-store displays, media advertisements, print
26 advertisements, etc. – it can be reasonably inferred that such misrepresentations or
27 omissions of material fact were uniformly made to all members of the Classes. In
28 addition, it can be reasonably presumed that all Class members, including Plaintiff,

1 affirmatively acted in response to the representations contained in Sears’ false advertising
2 scheme when purchasing merchandise from Sears.

3 39. Sears keeps extensive computerized records of its customers through, *inter*
4 *alia*, customer loyalty programs, co-branded credit cards, and general marketing
5 programs. Sears has one or more databases through which a significant majority of Class
6 members may be identified and ascertained, and it maintains contact information,
7 including email and home addresses, through which notice of this action could be
8 disseminated in accordance with due process requirements.

9 **CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **Violation of Unfair Competition Law – Fraudulent Acts**
12 **Business and Professions Code §17200, *et seq.***
on Behalf of the California Class

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

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

18 42. The UCL imposes strict liability. Plaintiff need not prove that Defendant
19 intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices –
20 only that such practices occurred.

21 43. The harm to Plaintiff and California Class members outweighs the utility of
22 Defendant’s practices. There were reasonably available alternatives to further
23 Defendant’s legitimate business interests, other than the misleading and deceptive conduct
24 described herein.

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

27 45. Defendant’s acts and practices alleged above have deceived Plaintiff and are
28 highly likely to deceive members of the consuming public. Plaintiff relied on Defendant’s

1 fraudulent and deceptive representations regarding its “regular” and “discount” prices.
2 These misrepresentations played a substantial role in Plaintiff’s decision to purchase
3 Defendant’s merchandise, and Plaintiff would not have purchased that merchandise
4 without Defendant’s misrepresentations.

5 46. Defendant’s violations of the UCL through its fraudulent business practices
6 are ongoing and present a continuing threat that members of the public will be deceived
7 into purchasing products based on price comparisons of arbitrary and inflated “regular”
8 prices to “discount prices” that created phantom markdowns and led to financial damage
9 for consumers, like Plaintiff and the California Class.

10 47. In accordance with California Business and Professions Code §17203,
11 Plaintiff seeks an order: (1) enjoining Defendant from continuing to conduct business
12 through its fraudulent conduct; and (2) requiring Defendant to conduct a corrective
13 advertising campaign.

14 48. As a result of Defendant’s conduct, Plaintiff seeks injunctive and
15 restitutionary relief under California Business and Professions Code §17203.

16
17 **SECOND CAUSE OF ACTION**
18 **Violation of Unfair Competition Law – Unlawful Acts**
19 **Business and Professions Code §17200, *et seq.***
20 **on Behalf of the California Class**

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

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

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

28 52. The FTCA prohibits “unfair or deceptive acts or practices in or affecting
commerce” (15 U.S.C. §45(a)(1)) and prohibits the dissemination of any false

1 advertisements. (15 U.S.C. §52(a)). Under the FTCA, false former pricing schemes
2 similar to the ones implemented by Sears are described as deceptive practices that would
3 violate the FTCA:

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

12 (b) A former price is not necessarily fictitious merely because no sales at
13 the advertised price were made. The advertiser should be especially careful,
14 however, in such a case, that the price is one at which the product was openly
15 and actively offered for sale, for a reasonably substantial period of time, in
16 the recent, regular course of his 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.

17 16 C.F.R. §233.1.

18 53. California law also expressly prohibits false former pricing schemes. Cal.
19 Bus. & Prof. Code §17501, entitled “*Worth or value; statements as to former price,*”
20 states:

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

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

1 [Emphasis added.]

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

6 55. Defendant’s practices, as set forth above, have misled Plaintiff, the proposed
7 class, and the general public in the past and will continue to mislead in the future.
8 Consequently, Defendant’s practices constitute an unlawful business practice within the
9 meaning of the UCL.

10 56. Defendant’s violations of the UCL through its unlawful business practices
11 are ongoing and present a continuing threat that members of the public will be deceived
12 into purchasing products based on price comparisons of arbitrary and inflated “regular”
13 prices to “discount prices” that created phantom markdowns and lead to financial damage
14 for consumers, like Plaintiff and the California Class.

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

20
21 **THIRD CAUSE OF ACTION**
22 **Violation of Unfair Competition Law – Unfair Acts**
23 **Business and Professions Code §17200, *et seq.***
24 **on Behalf of the California Class**

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

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

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

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

12 62. Defendant engaged, and continues to engage, in conduct that violates the
13 legislatively declared policies of: (1) California Civil Code §§1572, 1573, 1709, 1710,
14 and 1711 against committing fraud and deceit; (2) California Civil Code §1770 against
15 committing acts and practices intended to deceive consumers regarding the representation
16 of goods in certain particulars; (3) 15 U.S.C. §§45(a)(1) and 52(a) against unfair or
17 deceptive practices and false advertising; and (4) California Business and Professions
18 Code §17500 against false advertising. Defendant gains an unfair advantage over its
19 competitors, whose labeling, advertising, and marketing for other similar products must
20 comply with these laws.

21 63. Defendant’s conduct, including misrepresenting the pricing of its
22 merchandise, is substantially injurious to consumers. Such conduct has caused, and
23 continues to cause, substantial injury to consumers because consumers would not have
24 purchased its merchandise at all but for Defendant’s false promotion of its merchandise
25 as, among other things, being offered at a significant discount. Consumers have, thus,
26 overpaid for Sears merchandise. Such injury is not outweighed by any countervailing
27 benefits to consumers or competition. Indeed, no benefit to consumers or competition
28 results from Defendant’s conduct. Since consumers reasonably rely on Defendant’s

1 representations of its merchandise and injury results from ordinary use of its merchandise,
2 consumers could not have reasonably avoided such injury. *Davis v. Ford Motor Credit*
3 *Co.*, 179 Cal. App. 4th 581, 597-98 (2009); *see also Drum v. San Fernando Valley Bar*
4 *Ass'n*, 182 Cal. App. 4th 247, 257 (2010) (outlining the third test based on the definition
5 of “unfair” in Section 5 of the FTCA).

6 64. By committing the acts alleged above, Defendant has engaged in unfair
7 business acts and practices which constitute unfair competition within the meaning of
8 California Business and Professions Code §17200.

9 65. Plaintiff purchased Sears merchandise in reliance on Defendant’s
10 representations that its merchandise is, among other things, being offered at a significant
11 discount. Plaintiff would not have purchased its merchandise at all but for Defendant’s
12 false promotion that its merchandise is, among other things, being offered at a significant
13 discount. Plaintiff and the California Class have all paid money for Sears merchandise.
14 However, Plaintiff and the California Class did not obtain the full value of the advertised
15 product due to Defendant’s misrepresentations regarding the nature of said products.
16 Accordingly, Plaintiff and the California Class have suffered injury in fact and lost money
17 or property as a direct result of Defendant’s misrepresentations and material omissions.

18 66. In accordance with California Business and Professions Code §17203,
19 Plaintiff seeks an order enjoining Defendant from continuing to conduct business through
20 its fraudulent conduct and further seeks an order requiring Defendant to conduct a
21 corrective advertising campaign.

22 67. As a result of Defendant’s conduct, Plaintiff seeks injunctive and
23 restitutionary relief under California Business and Professions Code §17203.

24 **FOURTH CAUSE OF ACTION**
25 **Violation of the California False Advertising Law,**
26 **California Business and Professions Code §17500, *et seq.***
27 **on Behalf of the California Class**

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

1 69. Cal. Bus. & Prof. Code §17500 provides that:

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

8 [Emphasis added.]

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

12 71. Similarly, this section provides, “[n]o price shall be advertised as a former
13 price of any advertised thing, unless the alleged former price was the prevailing market
14 price . . . within three months next immediately preceding the publication of the
15 advertisement or unless the date when the alleged former price did prevail is clearly,
16 exactly and conspicuously stated in the advertisement.” Cal Bus. & Prof. Code §17501.

17 72. Defendant’s routine of advertising “regular” sales prices associated with its
18 merchandise, which were never the true prevailing prices of those products and were
19 materially greater than the true prevailing prices was an unfair, untrue, and misleading
20 practice. This deceptive marketing practice gave consumers the false impression that the
21 products were regularly sold on the market for a substantially higher price than they
22 actually were. Therefore, leading to the false impression that the merchandise was worth
23 more than it actually was.

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

26 74. As a direct and proximate result of Defendant’s misleading and false
27 advertisements Plaintiff and California Class members have suffered injury in fact and
28

1 have lost money. As such, Plaintiff requests that this Court order Defendant to restore this
2 money to Plaintiff and all California Class members, and to enjoin Defendant from
3 continuing these unfair practices in violation of the UCL in the future. Otherwise,
4 Plaintiff, California Class members, and the broader general public will be irreparably
5 harmed and/or denied an effective and complete remedy.

6 **FIFTH CAUSE OF ACTION**
7 **Violation of the Consumers Legal Remedies Act (“CLRA”),**
8 **California Civil Code §1750, *et seq.***
9 **on Behalf of the California Class**

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

12 76. This cause of action is brought pursuant to the Consumers Legal Remedies
13 Act (“CLRA”), California Civil Code §1750, *et seq.*, and similar laws in other states.
14 Plaintiff and each member of the proposed class are “consumers” as defined by California
15 Civil Code §1761(d). Defendant’s sale of merchandise to Plaintiff and the California
16 Class were “transactions” within the meaning of California Civil Code §1761(e). The
17 products purchased by Plaintiff and the California Class are “goods” within the meaning
18 of California Civil Code §1761(a).

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

- 23 a. representing that its merchandise has characteristics, uses, and/or
24 benefits, which it does not;
- 25 b. advertising goods or services with intent not to sell them as advertised;
- 26 c. making false or misleading statements of fact concerning reasons for,
27 existence of, or amounts of price reductions.

28 78. Pursuant to §1782(a) of the CLRA, on December 10, 2015, Plaintiff’s
counsel notified Defendant in writing by certified mail of the particular violations of

1 §1770 of the CLRA and demanded that it rectify the problems associated with the actions
2 detailed above and give notice to all affected consumers of Defendant's intent to act.

3 79. Plaintiff and the California Class suffered injuries caused by Defendant's
4 misrepresentations because: (a) they were induced to purchase a product they would not
5 have otherwise purchased if they had known that Sears merchandise was not, among other
6 things, being offered at a significant discount; and/or (b) they paid a price premium due to
7 the false and misleading pricing, advertising, and marketing of Sears merchandise.

8 80. Plaintiff and the California Class are entitled to, pursuant to California Civil
9 Code §1780, an order enjoining the above-described wrongful acts and practices of
10 Defendant, the payment of costs and attorneys' fees, and any other relief deemed
11 appropriate and proper by the Court under California Civil Code §1780.

12
13 **SIXTH CAUSE OF ACTION**
14 **Unjust Enrichment on Behalf of the Classes,**
15 **or in the Alternative, on Behalf of the California Class**

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

18 82. Plaintiff brings this claim individually, as well as on behalf of members of
19 the Classes, under California law. Although there are numerous permutations of the
20 elements of the unjust enrichment cause of action in the various states, there are few real
21 differences. In all states, the focus of an unjust enrichment claim is whether the defendant
22 was unjustly enriched. At the core of each state's law are two fundamental elements – the
23 defendant received a benefit from the plaintiff and it would be inequitable for the
24 defendant to retain that benefit without compensating the plaintiff. The focus of the
25 inquiry is the same in each state. Since there is no material conflict relating to the
26 elements of unjust enrichment between the different jurisdictions from which Class
27 members will be drawn, California law applies to the claims of the Classes.

28 83. In the alternative, Plaintiff brings this claim individually as well as on behalf
of the California Class.

1 84. At all times relevant hereto, Defendant deceptively priced, marketed,
2 advertised, and sold merchandise to Plaintiff and the Classes.

3 85. Plaintiff and members of the Classes conferred upon Defendant non-
4 gratuitous payments for merchandise that they would not have if not for Defendant's
5 deceptive pricing, advertising, and marketing. Defendant accepted or retained the non-
6 gratuitous benefits conferred by Plaintiff and members of the Classes, with full knowledge
7 and awareness that, as a result of Defendant's deception, Plaintiff and members of the
8 Classes were not receiving a product of the quality, nature, fitness, or value that had been
9 represented by Defendant and reasonable consumers would have expected.

10 86. Defendant has been unjustly enriched in retaining the revenues derived from
11 purchases of merchandise by Plaintiff and members of the Classes, which retention under
12 these circumstances is unjust and inequitable because Defendant misrepresented, among
13 other things, that its merchandise was being offered at a significant discount, which
14 caused injuries to Plaintiff and members of the Classes because they paid for, and/or paid
15 a price premium due to the misleading pricing and advertising.

16 87. Retaining the non-gratuitous benefits conferred upon Defendant by Plaintiff
17 and members of the Classes under these circumstances made Defendant's retention of the
18 non-gratuitous benefits unjust and inequitable. Thus, Defendant must pay restitution to
19 Plaintiff and members of the Classes for unjust enrichment, as ordered by the Court.

20
21 **SEVENTH CAUSE OF ACTION**
22 **Violations of the Consumer Protection Laws on Behalf**
23 **of Classes in the States with Similar Laws**

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

26 89. Plaintiff brings this Count individually under the laws of California and on
27 behalf of all other persons who purchased merchandise in states having similar laws
28 regarding consumer fraud and deceptive trade practices.

1 90. Plaintiff and each of the other members of the Classes are consumers,
2 purchasers, or other persons entitled to the protection of the consumer protection laws of
3 the state in which they purchased merchandise from Sears.

4 91. The consumer protection laws of the state in which Plaintiff and the other
5 members of the Classes purchased Sears merchandise declare that unfair or deceptive acts
6 or practices, in the conduct of trade or commerce, are unlawful.

7 92. Forty states and the District of Columbia have enacted statutes designed to
8 protect consumers against unfair, deceptive, fraudulent, and unconscionable trade and
9 business practices and false advertising that allow consumers to bring private and/or class
10 actions. These statutes are found at:

- 11 a. Alabama Deceptive Trade Practices Act, Ala. Code §8-19-1, *et seq.*;
- 12 b. Alaska Unfair Trade Practices and Consumer Protection Act, Alaska
13 Code §45.50.471 *et seq.*;
- 14 c. Arkansas Deceptive Trade Practices Act, Ark. Code Ann. §4-88-101,
15 *et seq.*;
- 16 d. California Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et*
17 *seq.*, and California's Unfair Competition Law, Cal. Bus. & Prof. Code
18 §17200 *et seq.*;
- 19 e. Colorado Consumer Protection Act, Colo. Rev. Stat. §6-1-101, *et seq.*;
- 20 f. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. §42-110a, *et*
21 *seq.*;
- 22 g. Delaware Deceptive Trade Practices Act, Del. Code tit. 6§2511, *et*
23 *seq.*;
- 24 h. District of Columbia Consumer Protection Procedures Act, D.C. Code
25 §28 3901, *et seq.*;
- 26 i. Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann.
27 §501.201, *et seq.*;
- 28

- 1 j. Georgia Fair Business Practices Act, Ga. Code Ann. §10-1-390, *et*
2 *seq.*;
- 3 k. Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statutes
4 §480-1, *et seq.*, and Hawaii Uniform Deceptive Trade Practices Act,
5 Haw. Rev. Stat. §481A-1, *et seq.*;
- 6 l. Idaho Consumer Protection Act, Idaho Code Ann. §48-601, *et seq.*;
- 7 m. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill.
8 Comp. Stat. Ann. 505/1, *et seq.*;
- 9 n. Kansas Consumer Protection Act, Kan. Stat. Ann §50 626, *et seq.*;
- 10 o. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §367.110, *et*
11 *seq.*, and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann
12 §365.020, *et seq.*;
- 13 p. Louisiana Unfair Trade Practices and Consumer Protection Law, La.
14 Rev. Stat. Ann. §51:1401, *et seq.*;
- 15 q. Maine Unfair Trade Practices Act, Me. Rev. Stat. tit. 5 §205A, *et seq.*,
16 and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat.
17 Ann. tit. 10, §1211, *et seq.*;
- 18 r. Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws
19 ch. 93A;
- 20 s. Michigan Consumer Protection Act, Mich. Comp. Laws §445.901, *et*
21 *seq.*;
- 22 t. Minnesota Prevention of Consumer Fraud Act, Minn. Stat.
23 Ann. §325F.68 *et seq.*, and Minnesota Uniform Deceptive Trade
24 Practices Act, Minn. Stat. §325D.43, *et seq.*;
- 25 u. Mississippi Consumer Protection Act, Miss. Code Ann. §§75-24-1, *et*
26 *seq.*;
- 27 v. Missouri Merchandising Practices Act, Mo. Rev. Stat. §407.010, *et*
28 *seq.*;

- 1 w. Montana Unfair Trade Practices and Consumer Protection Act, Mont.
2 Code Ann. §30-14-101, *et seq.*;
- 3 x. Nebraska Consumer Protection Act, Neb. Rev. Stat. §59-1601, *et seq.*,
4 and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev.
5 Stat. §87-301, *et seq.*;
- 6 y. Nevada Trade Regulation and Practices Act, Nev. Rev. Stat.
7 §598.0903, *et seq.*;
- 8 z. New Hampshire Consumer Protection Act, N.H. Rev. Stat. §358-A:1,
9 *et seq.*;
- 10 aa. New Jersey Consumer Fraud Act, N.J. Stat. Ann. §56:8 1, *et seq.*;
- 11 bb. New Mexico Unfair Practices Act, N.M. Stat. Ann. §57 12 1, *et seq.*;
- 12 cc. New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law
13 §349, *et seq.*;
- 14 dd. North Dakota Consumer Fraud Act, N.D. Cent. Code §51 15 01, *et*
15 *seq.*;
- 16 ee. Ohio Consumer Sales Practices Act, Ohio Rev. Code Ann. §1345.02
17 and 1345.03; Ohio Admin. Code §109:4-3-02, 109:4-3-03, and 109:4-
18 3-10;
- 19 ff. Oklahoma Consumer Protection Act, Okla. Stat. tit. 15 §751, *et seq.*;
- 20 gg. Oregon Unfair Trade Practices Act, Ore. Rev. Stat §646.608(e) & (g);
- 21 hh. Rhode Island Unfair Trade Practices And Consumer Protection Act,
22 R.I. Gen. Laws §6-13.1-1, *et seq.*;
- 23 ii. South Carolina Unfair Trade Practices Act, S.C. Code Ann. §39-5-10,
24 *et seq.*;
- 25 jj. South Dakota's Deceptive Trade Practices and Consumer Protection
26 Law, S.D. Codified Laws §§37 24 1, *et seq.*;
- 27 kk. Tennessee Consumer Protection Act, Tenn. Code Ann. §47-18-101, *et*
28 *seq.*;

- 1 ll. Vermont Consumer Fraud Act, Vt. Stat. Ann. tit. 9, §2451 *et seq.*;
- 2 mm. Washington Consumer Fraud Act, Wash. Rev. Code §19.86.010, *et*
- 3 *seq.*;
- 4 nn. West Virginia Consumer Credit and Protection Act, West Virginia
- 5 Code §46A-6-101, *et seq.*; and
- 6 oo. Wisconsin Deceptive Trade Practices Act, Wis. Stat. §100.18, *et seq.*

7 93. Defendant's merchandise constitutes products to which these consumer
8 protection laws apply.

9 94. In the conduct of trade or commerce regarding the pricing, advertising,
10 marketing, and sale of its merchandise, Defendant engaged in one or more unfair or
11 deceptive acts or practices, including, but not limited to, uniformly representing to
12 Plaintiff and each member of the Classes by means of the pricing and advertising of its
13 merchandise that it was, among other things, being offered at a discount, as described
14 herein.

15 95. Defendant's representations and omissions were false, untrue, misleading,
16 deceptive, and/or likely to deceive.

17 96. Defendant knew, or should have known, that its representations and
18 omissions were false, untrue, misleading, deceptive, and/or likely to deceive.

19 97. Defendant used or employed such deceptive and unlawful acts or practices
20 with the intent that Plaintiff and members of the Classes rely thereon.

21 98. Plaintiff and the other members of the Classes did so rely.

22 99. Plaintiff and the other members of the Classes purchased merchandise sold
23 by Defendant which misrepresented the magnitude of the price discounts offered for the
24 merchandise.

25 100. Plaintiff and the other members of the Classes would not have purchased
26 such merchandise but for Defendant's deceptive and unlawful acts.

27 101. As a result of Defendant's conduct, Plaintiff and the other members of the
28 Classes sustained damages in amounts to be proven at trial.

1 102. Defendant's conduct showed complete indifference to, or conscious
2 disregard for, the rights and safety of others such that an award of punitive and/or
3 statutory damages is appropriate under the consumer protection laws of those states that
4 permit such damages to be sought and recovered.

5 **VI. PRAYER FOR RELIEF**

6 Wherefore, Plaintiff, on behalf of himself and on behalf of the other members of the
7 Classes, requests that this Court award relief against Sears as follows:

8 A. An order certifying the Classes and designating Plaintiff as the Class
9 Representative and his counsel as Class Counsel;

10 B. Awarding Plaintiff and the proposed Class members damages;

11 C. Awarding restitution and disgorgement of all profits and unjust enrichment
12 that Defendant obtained from Plaintiff and the Class members as a result of its unlawful,
13 unfair, and fraudulent business practices described herein;

14 D. Awarding declaratory and injunctive relief as permitted by law or equity,
15 including: enjoining Defendant from continuing the unlawful practices as set forth herein,
16 and directing Defendant to identify, with Court supervision, victims of its misconduct and
17 pay them all money they are required to pay;

18 E. Order Defendant to engage in a corrective advertising campaign;

19 F. Awarding attorneys' fees and costs; and

20 G. For such other and further relief as the Court may deem necessary or
21 appropriate.

1 **VIII. DEMAND FOR JURY TRIAL**

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

3 Dated: December 11, 2015

SCOTT+SCOTT, ATTORNEYS AT LAW, LLP
s/ John T. Jasnoch

4 John T. Jasnoch (281605)

5 jjasnoch@scott-scott.com

6 Joseph Pettigrew (236933)

7 jpettigrew@scott-scott.com

8 707 Broadway, Suite 1000

San Diego, CA 92101

Telephone: 619-233-4565

9 Facsimile: 619-233-0508

10 SCOTT+SCOTT, ATTORNEYS AT LAW, LLP

11 Joseph P. Guglielmo

12 jguglielmo@scott-scott.com

13 The Chrysler Building

405 Lexington Avenue, 40th Floor

14 New York, NY 10174

15 Telephone: 212-223-6444

16 Facsimile: 212-223-6334

1 SCOTT+SCOTT, ATTORNEYS AT LAW, LLP
2 Erin G. Comite
3 ecomite@scott-scott.com
4 156 South Main Street
5 P.O. Box 192
6 Colchester, CT 06415
7 Telephone: 860-537-5537
8 Facsimile: 860-537-4432

9 CARPENTER LAW GROUP
10 Todd D. Carpenter (234464)
11 todd@carpenterlawyers.com
12 402 West Broadway, 29th Floor
13 San Diego, CA 92101
14 Telephone: 619-756-6994
15 Facsimile: 619-756-6991

16 CARLSON LYNCH SWEET & KILPELA, LLP
17 Gary F. Lynch
18 1133 Penn Avenue, 5th Floor
19 Pittsburgh, PA 15222
20 Telephone: 412-253-6307

21 WOOD LAW FIRM, LLC
22 E. Kirk Wood
23 ekirkwood1@bellsouth.net
24 P. O. Box 382434
25 Birmingham, AL 35238-2434
26 Telephone: 205-908-4906
27 Facsimile: 866-747-3905

28 *Attorneys for Plaintiff*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Saeid Azimpour

(b) County of Residence of First Listed Plaintiff San Diego County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

John T. Jasnoch, SCOTT+SCOTT, ATTORNEYS AT LAW, LLP 707 Broadway, Suite 1000, San Diego, CA 92101

DEFENDANTS

Sears, Roebuck & Company

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'15CV2798 JLS WVG

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

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question, 4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §1332. Brief description of cause: Violations of Unfair Competition Law, Cal. False Advertising Law, and California Bus. & Prof. Code

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 12/11/2015 SIGNATURE OF ATTORNEY OF RECORD s/ John T. Jasnoch

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.