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16 and Proposed Class Counsel
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18 **IN THE UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 CYNTHIA E. SPANN, on Behalf
21 of Herself and All Others
22 Similarly Situated,

23 Plaintiff,

24 v.

25 J.C. PENNEY CORPORATION,
26 INC., a Delaware Corporation,

27 Defendant.

Case No. SACV12-0215 FMO (RNBx)

CLASS ACTION

**FOURTH AMENDED COMPLAINT
FOR:**

1. **Unfair Business Practices in Violation of California Business & Professions Code Sections 17200, et seq.**
2. **Fraudulent Business Practices in Violation of California Business & Professions Code Sections 17200, et seq.**
3. **Unlawful Business Practices in Violation of California Business & Professions Code Sections 17200, et seq.**
4. **False Advertising in Violation of California Business & Professions Code Sections 17500, et seq.**
5. **Violations of California Consumer Legal Remedies Act**

JURY TRIAL DEMANDED

JUDGE: Honorable Fernando M. Olguin
CTRM: F – 9th Floor

28

1 Plaintiff, Cynthia E. Spann, (“Plaintiff”) by and through her attorneys, brings
2 this class action against Defendant J.C. Penney Corporation, Inc. (“J.C. Penney” or
3 “Defendant”), on her own behalf and on behalf of all others similarly situated, and
4 alleges as follows based upon personal knowledge, information and belief, and the
5 investigation of her counsel:

6 **NATURE OF THE ACTION**

7 1. This is a class action against J.C. Penney for falsely advertising
8 “original” prices, “sale” prices and corresponding price discounts for its private
9 branded and exclusive branded apparel and accessories. During the Class Period
10 (defined below), J.C. Penney advertised false former prices and false price
11 discounts for its private branded and exclusive branded apparel and accessories.

12 2. During the Class Period, J.C. Penney misrepresented the existence,
13 nature and amount of price discounts by purporting to offer specific dollar discounts
14 from expressly referenced former retail prices, which were misrepresented as
15 “original” or “regular” retail prices. These purported discounts were false,
16 however, because the referenced former retail prices were fabricated and did not
17 represent J.C. Penney’s true “original” retail prices for its private branded and
18 exclusive branded apparel and accessories. Furthermore, the advertised “original”
19 prices for J.C. Penney’s private branded and exclusive branded apparel and
20 accessories were not the prevailing market retail prices within three months next
21 immediately preceding the publication of the advertised former prices, as required
22 by California law.

23 3. The Federal Trade Commission (“FTC”) describes false former
24 pricing schemes, similar to J.C. Penney’s in all material respects, as deceptive:

25 One of the most commonly used forms of bargain advertising is to
26 offer a reduction from the advertiser’s own former price for an article.
27 If the former price is the actual, bona fide price at which the article
28 was offered to the public on a regular basis for a reasonably substantial

1 period of time, it provides a legitimate basis for the advertising of a
2 price comparison. Where the former price is genuine, the bargain
3 being advertised is a true one. If, on the other hand, the former price
4 being advertised is not bona fide but fictitious – for example, where an
5 artificial price, inflated price was established for the purpose of
6 enabling the subsequent offer of a large reduction – the “bargain”
7 being advertised is a false one; the purchaser is not receiving the
8 unusual value he expects.

9 16 C.F.R. § 233.1(a).

10 4. California statutory and regulatory law expressly prohibits false
11 former pricing schemes. Cal. Bus. & Prof. Code § 17501, entitled “*Value*
12 *determinations; Former price advertisements,*” states:

13 For the purpose of this article the worth or value of any thing
14 advertised is the prevailing market price, wholesale if the offer is at
15 wholesale, retail if the offer is at retail, at the time of publication of
16 such advertisement in the locality wherein the advertisement is
17 published.

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

24 5. Upon information and belief, J.C. Penney’s false price advertising
25 scheme, disseminated to California consumers via its in-store display advertising,
26 print advertising and Internet Web site (www.jcpenney.com), was rampant
27 throughout California as part of a massive, years-long, pervasive campaign and was
28 consistent across all of J.C. Penney’s private branded and exclusive branded apparel

1 and accessories until February 1, 2012. For example, J.C. Penney's in-store pricing
2 scheme was prominently displayed directly above the private branded and exclusive
3 branded apparel and accessories, with express references to former "*original*" or
4 "regular" retail prices that never existed and/or did not constitute the prevailing
5 market retail prices for such products within the three months next immediately
6 preceding the publication of the advertisement. Furthermore, upon check-out, J.C.
7 Penney provided California consumers, including Plaintiff, with sales receipts
8 continuing the misrepresentations regarding false price reductions. For example,
9 the stated discount from the false former price was listed for each item purchased.
10 Below the total amount purchased at the bottom of the sales receipt, J.C. Penney
11 misrepresented to consumers the total amount purportedly saved on the entire
12 purchase transaction with the words "*Your Total Savings Today.*"¹

13 6. Upon information and belief, J.C. Penney temporarily stopped using
14 price comparisons in or about February, 2012. At that time, it began a new pricing
15 strategy known as "fair and square," by which it purported to offer products at
16 everyday low prices. Thereafter, it was widely reported in the press that the results
17 of this new pricing strategy were disastrous for J.C. Penney and that the Company
18 suffered significant reductions in its revenues and profits. The widely reported
19 failure of J.C. Penney's switch to "fair and square" pricing demonstrates that J.C.
20 Penney's false and deceptive comparative pricing scheme was highly effective and
21 enabled J.C. Penney to receive profits and revenues from consumers that J.C.
22 Penney would not otherwise have received absent the false price comparisons.

23 7. Upon information and belief, J.C. Penney largely abandoned its "fair
24 and square" pricing strategy in early 2013. Since then, it has experimented with a
25 variety of pricing practices, including a return to false comparative price
26 advertising. Specifically, J.C. Penney has marked up (and continues to mark up) the

27 _____
28 ¹ See true and correct copy of Plaintiff's sales receipt, dated March 5, 2011,
attached hereto as Exhibit A.

1 prices of many of its private and exclusive branded apparel and accessories, well
2 above the former “fair and square” prices and well above the prevailing market
3 price for such items, without any good faith intention of selling such items (or any
4 substantial quantity of such items) at those higher prices. Rather, the price mark
5 ups were (and are) made solely so that J.C. Penney could (and can) immediately (or
6 almost immediately) thereafter sell those products at purported reduced “sale”
7 prices that are, in fact, illusory because the products never sold (at least not in any
8 meaningful quantities) at the higher price.

9 8. Upon information and belief, hundreds of thousands of California
10 consumers were victims of J.C. Penney’s deceptive, misleading and unlawful
11 pricing scheme prior to February 1, 2012, hundreds or thousands more have been
12 victimized as a result of J.C. Penney’s recent return to such practices, and hundreds
13 or thousands more will be deceived if J.C. Penney’s practices continue.

14 9. J.C. Penney knew (and knows) that its comparative price advertising
15 was (and is again) false, deceptive, misleading and unlawful under California law.

16 10. J.C. Penney fraudulently concealed from and intentionally failed to
17 disclose to Plaintiff and others similarly situated the truth about its advertised price
18 discounts and former prices.

19 11. At all relevant times, J.C. Penney has been under a duty to Plaintiff
20 and others similarly situated to disclose the truth about its “regular” and “original”
21 prices.

22 12. The facts which J.C. Penney misrepresented and/or failed to disclose
23 (and which J.C. Penney continues to misrepresent and/or fail to disclose) are
24 material facts that a reasonable person would consider material, i.e., facts which
25 would contribute to a reasonable person’s decision to purchase apparel and
26 accessories. J.C. Penney’s false representations of “regular” and “original” prices
27 and false representations of purported savings, discounts and bargains are
28 objectively material to the reasonable consumer, and therefore reliance upon such

1 representations may be presumed as a matter of law.

2 13. Plaintiff relied upon such false representations of “original” prices and
3 discounts when purchasing private branded and exclusive branded apparel and
4 accessories at J.C. Penney. Plaintiff would not have made such purchases but for
5 J.C. Penney’s false representations of “original” prices and price discounts.

6 14. Plaintiff reasonably and justifiably acted and relied to her detriment
7 on J.C. Penney’s false “original” price representations and failure to disclose, and
8 concealment of, the truth about J.C. Penney’s false price-comparison advertising
9 scheme in purchasing private branded and exclusive branded apparel and
10 accessories at J.C. Penney.

11 15. J.C. Penney intentionally concealed and failed to disclose the truth
12 about its misrepresentations and false former price advertising scheme for the
13 purpose of inducing Plaintiff and others similarly situated to purchase private
14 branded and exclusive branded apparel and accessories at J.C. Penney.

15 16. Through its false and deceptive marketing, advertising and pricing
16 scheme, J.C. Penney violated (and continues to violate) California law prohibiting
17 advertising goods for sale as discounted from former prices which are false, and
18 prohibiting misleading statements about the existence and amount of price
19 reductions. Specifically, J.C. Penney violated (and continues to violate)
20 California’s Business & Professions Code §§ 17200, *et seq.* (the “UCL”),
21 California’s Business & Professions Code §§ 17500, *et seq.* (the “FAL”), the
22 California Consumers’ Legal Remedies Act, California Civil Code §§ 1750, *et seq.*
23 (the “CLRA”); and the Federal Trade Commission Act (“FTCA”), which prohibits
24 “unfair or deceptive acts or practices in or affecting commerce” (15 U.S.C.
25 § 45(a)(1)) and specifically prohibits false advertisements. 15 U.S.C. § 52(a)).

26 17. Plaintiff, individually and on behalf of all others similarly situated,
27 seeks restitution and other equitable remedies, including an injunction under the
28 UCL and FAL; and restitution, damages and an injunction under the CLRA.

1 **PARTIES**

2 18. Plaintiff Cynthia E. Spann is a competent adult who resides in the
3 County of Los Angeles County who, in reliance on Defendants’ false and deceptive
4 advertising, marketing and pricing schemes, purchased over \$200.00 in private
5 branded and exclusive branded apparel and accessories at J.C. Penney’s Brea,
6 California location on March 5, 2011, and was damaged thereby.

7 19. Defendant J.C. Penney Corporation, Inc. is a publicly traded Delaware
8 Corporation (NYSE: JCP) with its principal executive offices in Plano, Texas.
9 According to its Form 10-K for the fiscal year ending January 28, 2012, J.C.
10 Penney “sell[s] family apparel and footwear, accessories, fine and fashion jewelry,
11 beauty products through Sephora inside jcpenny and home furnishings.” J.C.
12 Penney sells national brands, as well as private and exclusive branded products that
13 it promotes as being available “only at” J.C. Penney.

14 20. Plaintiff is informed and believes that each co-defendant, by and
15 through its officers, directors or managing agents ratified, authorized and approved,
16 expressly or implicitly, all of the conduct alleged herein.

17 21. When in this Complaint reference is made to any act of “J.C. Penney”
18 or “Defendant,” such shall be deemed to mean that officers, directors, agents,
19 employees, or representatives of the Defendant named in this lawsuit committed or
20 authorized such acts, or failed and omitted to adequately supervise or properly
21 control or direct their employees while engaged in the management, direction,
22 operation or control of the affairs of the Defendant and did so while acting within
23 the scope of their employment or agency.

24 **JURISDICTION AND VENUE**

25 22. Plaintiff realleges by reference, as if fully set forth herein, all of the
26 above Paragraphs.

27 23. The Court has original jurisdiction over this Action under the Class
28 Action Fairness Act, 28 U.S.C. § 1332(d), because this is a class action in which:

1 (1) at least some members of the proposed Class have a different citizenship from
2 Defendant; and (2) the claims of the proposed Class members exceed \$5,000,000.00
3 (Five Million U.S. Dollars) in the aggregate.

4 24. The Central District of California has personal jurisdiction over the
5 Defendant named in this action because Defendant is a corporation or other
6 business entity authorized to do business in the State of California and registered
7 with the California Secretary of State to do sufficient business with sufficient
8 minimum contacts in California, and/or otherwise intentionally avails itself of the
9 California market through the ownership and operation of approximately 80 retail
10 stores within the State of California, to render the exercise of jurisdiction by the
11 California courts consistent with traditional notions of fair play and substantial
12 justice.

13 25. Venue is proper in this District pursuant to 28 U.S.C. § 1391, because
14 the Defendant named in this action resides, transacts business, or is found within
15 this District, and a substantial part of the events giving rise to Plaintiff's claims
16 arose here. Plaintiff's claims arise out of her purchase of consumer products in the
17 city of Brea, State of California.

18 **FACTUAL ALLEGATIONS**

19 **Plaintiff and Other Class Members Were Victimized by J.C. Penney's**
20 **Deceptive Price Comparisons**

21 26. On March 5, 2011, Plaintiff entered the J.C. Penney store at the Brea
22 Mall in Brea, California. She observed that J.C. Penney advertised price
23 comparisons on plastic placards above or below each product offered for sale. One
24 column showed what was represented to be the "original" price for each product.
25 The next column showed the "sale" price of each item. Believing she was able to
26 pay significantly less than what certain products were worth and normally sell for in
27 the retail marketplace, Plaintiff was induced to purchase ten different items, all of
28 which were offered at prices significantly lower than their stated original prices.

1 Plaintiff purchased private branded apparel (manufactured by J.C. Penney) and
2 exclusively branded accessories (manufactured by others solely for sale at J.C.
3 Penney) after relying on J.C. Penney's false discounts and false "original" former
4 prices for such products.

5 27. Specifically, relying upon J.C. Penney's misrepresentations and false
6 and deceptive advertising, Plaintiff purchased three East Fifth blouses, a private
7 brand of J.C. Penney. All three blouses contained labels representing them to have
8 original prices of \$30.00 and discounts of \$12.01, leaving a purchase price or "deal"
9 at \$17.99. Plaintiff believed and relied on the fact that she was obtaining these
10 shirts at 40% off the original price and that they regularly sell in the retail
11 marketplace for \$30.00. Upon information and belief, these purported "original"
12 prices and corresponding price reductions and savings were false and deceptive, as
13 the prevailing retail price for the East Fifth blouses during the three months
14 immediately prior to Plaintiff's purchase of such item was no more than \$17.99, and
15 not the \$30.00 "original" price represented by J.C. Penney. Plaintiff would not
16 have purchased the blouses in the absence of J.C. Penney's misrepresentations. As
17 a result, Plaintiff has been personally victimized by and suffered economic injury as
18 a direct result of Defendant's unlawful, unfair and fraudulent conduct.

19 28. Furthermore, upon check-out on March 5, 2011, J.C. Penney provided
20 Plaintiff with a sales receipt containing the same misrepresentations regarding false
21 original prices and price reductions on the East Fifth blouses. The false "original"
22 price is set forth on each line item following the quantity count. Below each
23 original price is a line with large, bold print stating "Total Discounts," followed by
24 the promised savings of \$12.01.²

25 29. Also relying upon J.C. Penney's misrepresentations and false and
26 deceptive advertising, Plaintiff purchased five Worthington blouses, another private
27

28 ² See Exhibit A to this Complaint.

1 brand of J.C. Penney. J.C. Penney advertised in the store that all five blouses had
2 “original” prices of \$30.00 and discounts of \$15.01, leaving purchase prices or
3 “deals” at \$14.99. Plaintiff believed that she was obtaining these shirts at 50% off
4 the original price and that they regularly sell in the retail marketplace for \$30.00.
5 Upon information and belief, these purported price reductions and savings were
6 false and deceptive, as the prevailing retail price for the Worthington blouses during
7 the three months immediately prior to Plaintiff’s purchase of such item was no more
8 than \$14.99, and not the \$30.00 “original” price represented by J.C. Penney.
9 Plaintiff would not have purchased the blouses in the absence of J.C. Penney’s
10 misrepresentations. As a result, Plaintiff has been personally victimized by and
11 suffered economic injury as a result of Defendant’s unlawful, unfair and fraudulent
12 conduct.

13 30. Furthermore, upon check-out on March 5, 2011, J.C. Penney provided
14 Plaintiff with a sales receipt containing the same misrepresentations regarding false
15 original prices and price reductions on the Worthington blouses. The false
16 “original” price is set forth on each line item following the quantity count. Below
17 each original price is a line with large, bold print stating “Total Discounts,”
18 followed by the promised savings of \$15.01.

19 31. Also relying upon J.C. Penney’s misrepresentations and false and
20 deceptive advertising, Plaintiff purchased a Liz Claiborne purse, which is an
21 exclusive brand at J.C. Penney. The purse was advertised as having an “original”
22 price of \$60.00 and a discount of \$20.01, leaving a purchase price of \$39.99.
23 Plaintiff believed that she was obtaining at least a \$20.00 discount and purchasing a
24 purse that regularly sells in the retail marketplace for at least \$60.00. Upon
25 information and belief, this purported price reduction and savings was false and
26 deceptive, as the prevailing retail price for the Liz Claiborne brand purse during the
27 three months immediately prior to Plaintiff’s purchase of such item was materially
28 lower than the \$60.00 “original” price represented by J.C. Penney. Plaintiff would

1 not have purchased the purse in the absence of J.C. Penney's misrepresentations.
2 As a result, Plaintiff has been personally victimized by and suffered economic
3 injury as a result of Defendant's unlawful, unfair and fraudulent conduct.

4 32. Furthermore, upon check-out on March 5, 2011, J.C. Penney provided
5 Plaintiff with a sales receipt containing the same misrepresentation regarding the
6 false original price and price reduction on the purse. The false "original" price is
7 set forth on the line item following the quantity count. Below the original price is a
8 line with large, bold print stating "Total Discounts," followed by the promised
9 savings of \$20.01.

10 33. Also relying upon J.C. Penney's misrepresentations and false and
11 deceptive advertising, Plaintiff purchased a Liz Claiborne clutch. The clutch was
12 advertised and labeled to represent an original price of \$30.00 and a discount of
13 \$10.01, leaving a purchase price or "deal" at \$19.99. Plaintiff believed that she was
14 purchasing a clutch that regularly sells in the retail marketplace for \$30.00. Upon
15 information and belief, this purported price reduction and savings was false and
16 deceptive, as the prevailing retail price of the clutch during the three months
17 immediately prior to Plaintiff's purchase of such item was no more than \$19.99, and
18 not the \$30.00 "original" price represented by J.C. Penney. Plaintiff would not
19 have purchased the clutch in the absence of J.C. Penney's misrepresentations. As a
20 result, Plaintiff has been personally victimized and suffered economic injury as a
21 result of Defendant's unlawful, unfair and fraudulent conduct.

22 34. Furthermore, upon check-out on March 5, 2011, J.C. Penney provided
23 Plaintiff with a sales receipt containing the same misrepresentations regarding the
24 false original price and price reduction on the Liz Claiborne clutch. The false
25 "original" price is set forth on the line item following the quantity count. Below the
26 original price is a line with large, bold print stating "Total Discounts," followed by
27 the promised savings of \$10.01.

28 35. Plaintiff and class member reliance upon Defendant's false price

1 comparison advertising was not only reasonable, but entirely intended by J.C.
2 Penney. Empirical marketing studies have provided an incentive for retailers to
3 engage in this false and fraudulent behavior:

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

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

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

18 *Id.* at 55, 56.

19 37. In January, 2012, J.C. Penney's then-new (but recently departed)
20 CEO, Ron Johnson, admitted that, for years, J.C. Penney abused this phenomenon
21 of consumer behavior by engaging in a systematic program of false price
22 comparisons in which the regular retail prices had "no integrity":

23 . . . [I]t's been a decade of price increases. And so what happens is
24 you lose track of the fact that we're slowly and slowly increasing
25 prices at a rate that there's no integrity.

26 * * *

27 And this is another last bit of data I want to share with you. This
28 shows the last year for an entire year the average – the percentage of

1 goods bought at the various discount rates. So you'll see here nothing
2 was bought at regular price, fewer than one out of 500 units. One was
3 bought at 20% off. Eight were bought at 30[% off] . . .

4 * * *

5 In fact, if you look at the total, 72% of the revenue, three – quarters of
6 everything sold in the store was at a 50% off or greater discount.
7 Now, that's got to be surprising. That was surprising to me because I
8 knew when I was at Mervyns when I started we had rules. You could
9 only [offer] sales one week out of the month because there was honor
10 to the regular retail [price]. . .

11 January 25, 2012/2:00PM, JCP – jcpenny Analyst Meeting Day 1, as reported in
12 Thomson Reuters Streetevents | www.streetevents.com.

13 **J.C. Penney Temporarily Stopped Using Price-Comparison Advertising**

14 38. Thereafter, Mr. Johnson led J.C. Penney down the path of a new
15 pricing strategy known as “fair and square” pricing. Under this pricing strategy,
16 J.C. Penney used three levels of pricing: everyday low prices (regular prices), best
17 prices (clearance items), and month-long values (where certain themed items were
18 discounted for a month). At the same time, J.C. Penney stopped using comparative
19 sale prices by which a purported sale price was compared to an inflated regular or
20 original price.

21 39. In the Spring of 2012, while J.C. Penney was still using its “fair and
22 square” pricing, Plaintiff shopped at J.C. Penney again and purchased at least one item.

23 **Injunctive Relief is Necessary and Appropriate Because J.C. Penney Has**
24 **Returned To Using Illegal Price Comparisons**

25 40. It has widely been reported that the results of “fair and square” pricing
26 were disastrous for J.C. Penney, as the company's earnings and revenues
27 plummeted. Consequently, much blame was placed on the Company's then-new
28 CEO, Ron Johnson, for abandoning its comparative pricing scheme.

1 41. Upon information and belief, Mr. Johnson was removed as the
2 Company's CEO, and J.C. Penney has since returned to its pre-February 2012
3 practice of using comparative prices and fake "sales" with respect to at least some
4 of its private and exclusive branded products. As it did prior to February 1, 2012,
5 J.C. Penney has once again marked up the ticketed prices of those items just so that
6 it can immediately turn around and sell them at a discount in order to create the
7 illusion of a "sale." In fact, many of the new and purported discounted "sale" prices
8 are *higher* than the "regular" prices that were in place for the same items during J.C.
9 Penney's "fair and square" pricing. J.C. Penney has no intention of selling such
10 products (or at least any significant quantity of those products) at the new marked-
11 up prices, as it has either failed to offer the products at those higher prices at all or,
12 if it did offer them at the higher prices, it did so for an unreasonably short period of
13 time and/or in connection with other discounts, such as "Buy One Get One at 50%
14 Off" promotions. J.C. Penney intends to sell, and has sold, most, if not all of those
15 products at the lower and supposedly discounted prices, thereby making the higher
16 prices false and misleading. In other words, for at least some private and exclusive
17 branded products, J.C. Penney is now using the exact same (or at least materially
18 indistinguishable) false, misleading and illegal comparative pricing practices that it
19 used prior to February 1, 2012.

20 42. For example, on every day between May 28, 2013 and August 31,
21 2013, J.C. Penney advertised its Worthington Ruched-Neck Blouse, a private or
22 exclusive branded item of apparel, as having an "original" price of \$20.00 and a
23 discounted "sale" price of either \$14.99 or \$11.99. Thus, for over ninety
24 consecutive days the item was offered only at a deeply discounted sale price and *not*
25 at the \$20 "original" price, thereby making it impossible for the "original" price to
26 equal the prevailing market price during the preceding ninety days. Upon
27 information and belief, during that same ninety-day time period, thousands of
28 California consumers were exposed to comparative price advertisements for the

1 Worthington Ruched-Neck Blouse, and numerous quantities of that product were
2 purchased by California consumers at the discounted sale prices, while none were
3 sold at the higher “original” price. Accordingly, the advertised “original” price did
4 not equal, and could not have equaled, the prevailing market price during at least
5 some, if not all of the previous ninety days. Upon information and belief, J.C.
6 Penney had no bona fide intention of selling a reasonable quantity of the product at
7 the advertised “original” price during that same ninety-day period.

8 43. Similarly, on every day between May 28, 2013 and August 31, 2013,
9 J.C. Penney advertised its a.n.a. Denim 5 Pocket Shorts, a private or exclusive
10 branded item of apparel, as having an “original” price of \$24.00 and a discounted
11 “sale” price of either \$14.99 or \$11.99. Thus, for over ninety consecutive days the
12 item was offered only at a deeply discounted sale price and *not* at the \$24 “original”
13 price. Upon information and belief, during that same ninety-day time period,
14 thousands of California consumers were exposed to comparative price
15 advertisements for the a.n.a. Denim 5 Pocket Shorts, and numerous quantities of
16 that product were purchased by California consumers at the discounted sale prices,
17 while none were sold at the higher “original” price. Accordingly, the advertised
18 “original” price did not equal, and could not have equaled, the prevailing market
19 price during at least some, if not all of the previous ninety days. Upon information
20 and belief, J.C. Penney had no bona fide intention of selling a reasonable quantity
21 of that product at the advertised “original” price during that ninety-day period.

22 44. J.C. Penney’s current price-comparison practices are the exact same
23 as (or at least materially indistinguishable from) its false, misleading and illegal
24 practices that were utilized prior to February 1, 2012 and which violated the law
25 and resulted in Plaintiff’s injuries as alleged herein.

26 45. Upon information and belief, since January, 2013, J.C. Penney has
27 used identical false and deceptive price-comparison tactics with respect to dozens,
28 if not hundreds of other private and exclusive branded items of apparel and

1 accessories and, upon information and belief, hundreds, if not thousands of
2 California consumers have been exposed to such advertisements, purchased such
3 products and, therefore, been victimized by J.C. Penney's return to false price
4 comparison advertisements.

5 46. Plaintiff would like to shop at J.C. Penney again, but cannot trust J.C.
6 Penney's current price-comparison advertisements. Without tracking J.C. Penney's
7 advertisements on a daily basis for each and every item, Plaintiff and all other
8 California consumers have no realistic way to know which of J.C. Penney's current
9 or future price comparisons are false or deceptive. In fact, J.C. Penney has
10 publically admitted that consumers, like Plaintiff, are likely to be confused by its
11 numerous pricing policy changes. If the Court were to issue an injunction ordering
12 J.C. Penney to comply with California's comparative price advertising laws, and
13 prohibiting J.C. Penney's use of the deceptive practices discussed herein, Plaintiff
14 would likely shop at J.C. Penney again in the near future.

15 **CLASS ALLEGATIONS**

16 47. Plaintiff realleges by reference, as if fully set forth herein, all of the
17 above Paragraphs.

18 48. Plaintiff brings this action on her own behalf and on behalf of all other
19 persons similarly situated. The class Plaintiff seeks to represent is defined as:

20 All persons who, while in the State of California and between
21 November 5, 2010 and January 31, 2012 (the "Class Period"),
22 purchased from JCP one or more private or exclusive branded items of
23 apparel or accessories at a discount of at least 30% off of the stated
24 "original" or "regular" price, and who have not received a refund or
25 credit for their purchase(s).

26 Excluded from the Class are Defendant, as well as its officers, employees, agents or
27 affiliates, and any judge who presides over this action, as well as all past and
28 present employees, officers and directors of J.C. Penney. Plaintiff reserves the right

1 to expand, limit, modify, or amend this class definition, including the addition of
2 one or more subclasses, in connection with her motion for class certification, or at
3 any other time, based upon, *inter alia*, changing circumstances and/or new facts
4 obtained during discovery.

5 49. *Numerosity*: Upon information and belief, the Class is composed of
6 hundreds of thousands of individuals, whose joinder of this action would be
7 impracticable. The disposition of their claims through this class action will benefit
8 Class members, the parties, and the courts.

9 50. *Existence and Predominance of Common Questions of Fact and Law*:
10 There is a well-defined community of interest in questions of law and fact affecting
11 the Class. These questions of law and fact predominate over individual questions
12 affecting individual Class members, including, but not limited to, the following:

13 (a) Whether, during the Class Period, J.C. Penney used false
14 “regular” or “original” price labels and falsely advertised price discounts on its
15 private branded or exclusive branded apparel or accessories;

16 (b) Whether, during the Class Period, the “original” prices
17 advertised by J.C. Penney were the prevailing market prices for the respective
18 private branded or exclusive branded apparel or accessories sold by J.C. Penney
19 during the three month periods preceding the dissemination and/or publication of
20 the advertised former prices;

21 (c) Whether J.C. Penney’s use of false or deceptive price
22 advertising constituted false advertising under California law;

23 (d) Whether J.C. Penney engaged in unfair, unlawful and/or
24 fraudulent business practices under California law;

25 (e) Whether J.C. Penney misrepresented and/or failed to disclose
26 material facts about its product pricing and discounts;

27 (f) Whether J.C. Penney has made false or misleading statements
28 of fact concerning the reasons for, existence of, or amounts of price reductions;

1 (g) Whether J.C. Penney's conduct, as alleged herein, was
2 intentional and knowing;

3 (h) Whether Class members are entitled to damages and/or
4 restitution; and, if so, what is the amount of revenues and/or profits J.C. Penney
5 received and/or was lost by Class members as a result of the conduct alleged herein;

6 (i) Whether J.C. Penney is likely to return, or has returned, to
7 using false, misleading or illegal price comparisons such that an injunction is
8 necessary; and

9 (j) Whether Plaintiff and Class members are entitled to an award of
10 reasonable attorneys' fees, pre-judgment interest and costs of suit.

11 51. *Typicality*: Plaintiff's claims are typical of, and are not antagonistic to,
12 the claims of all Class members. Plaintiff and the Class she seeks to represent have
13 all been deceived (or were likely to be deceived) by J.C. Penney's false former
14 price advertising scheme, as alleged herein.

15 52. *Adequacy*: Plaintiff is an adequate representative of the Class because
16 she is a member of the class and her interests do not conflict with the interests of the
17 Class members she seeks to represent. Plaintiff will fairly and adequately represent
18 and protect the interest of the Class because she is not antagonistic to the Class.
19 Plaintiff has retained counsel who are competent and experienced in the prosecution
20 of consumer fraud and class action litigation.

21 53. *Superiority*: A class action is superior to other available means for the
22 fair and efficient adjudication of Plaintiff's and Class members' claims. Because of
23 the relatively modest size of individual Class members' claims, few, if any, Class
24 members could afford to seek legal redress of the wrongs complained of herein on
25 an individual basis. Absent the class action, Class members and the general public
26 would not likely recover, or would not likely have the chance to recover, damages
27 or restitution, and J.C. Penney will be permitted to retain the proceeds of its
28 misdeeds.

1 54. All Class members, including Plaintiff, were exposed to one or more
2 of J.C. Penney's misrepresentations or omissions of material fact claiming that
3 former "original" advertised prices were in existence. Due to the scope and extent
4 of J.C. Penney's consistent false price advertising scheme, disseminated in a
5 massive, years-long campaign to California consumers via in-store display
6 advertising, Internet advertising and print advertising, it can be reasonably inferred
7 that such misrepresentations or omissions of material fact were uniformly made to
8 all members of the Class. In addition, it can be reasonably presumed that all Class
9 members, including Plaintiff, affirmatively acted in response to the representations
10 contained in J.C. Penney's false advertising scheme when purchasing private
11 branded and exclusive branded apparel and accessories by J.C. Penney.

12 55. J.C. Penney keeps extensive computerized records of its customers
13 through, inter alia, customer loyalty programs, co-branded credit cards and general
14 marketing programs. J.C. Penney has one or more databases through which a
15 significant majority of Class members may be identified and ascertained, and it
16 maintains contact information, including email and home mailing addresses,
17 through which notice of this action could be disseminated in accordance with due
18 process requirements.

19 **CAUSES OF ACTION**

20 **FIRST CAUSE OF ACTION**

21 **(Violation of the "Unfair" Prong of the UCL)**

22 56. Plaintiff realleges by reference, as if fully set forth herein, all of the
23 above Paragraphs.

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

27 58. A business act or practice is "unfair" under the UCL if the reasons,
28 justifications and motives of the alleged wrongdoer are outweighed by the gravity

1 of the harm to the alleged victims.

2 59. J.C. Penney has violated the “unfair” prong of the UCL by
3 representing a false “original” price and corresponding price discount for its private
4 branded and exclusive branded apparel and accessories where J.C. Penney, in fact,
5 inflated the purported “original” prices for such products such that the promised
6 discount was false, misleading and deceptive.

7 60. These acts and practices were unfair because they caused Plaintiff,
8 and were likely to cause consumers, to falsely believe that J.C. Penney is offering
9 value, discounts or bargains from the prevailing market value or worth of the
10 products sold that did not, in fact, exist. As a result, purchasers, including Plaintiff,
11 reasonably perceived that they were receiving products that regularly sold in the
12 retail marketplace at substantially higher prices (and were, therefore, worth more)
13 than what they paid. This perception has induced reasonable purchasers, including
14 Plaintiff, to buy such products, which they otherwise would not have purchased.

15 61. The gravity of the harm to members of the Class resulting from these
16 unfair acts and practices outweighed any conceivable reasons, justifications and/or
17 motives of J.C. Penney for engaging in such deceptive acts and practices. By
18 committing the acts and practices alleged above, J.C. Penney engaged in unfair
19 business practices within the meaning of California Business & Professions Code
20 §§ 17200, *et seq.*

21 62. Through its unfair acts and practices, J.C. Penney has improperly
22 obtained money from Plaintiff and the Class. As such, Plaintiff requests that this
23 Court cause J.C. Penney to restore this money to Plaintiff and all Class members,
24 and to enjoin J.C. Penney from continuing to violate the UCL as discussed herein
25 and/or from violating the UCL in the future. Otherwise, Plaintiff, the Class and
26 members of the general public may be irreparably harmed and/or denied an
27 effective and complete remedy if such an order is not granted.

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SECOND CAUSE OF ACTION

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

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63. Plaintiff realleges by reference, as if fully set forth herein, all of the above Paragraphs.

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

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

66. J.C. Penney’s marketing and advertising materials concerning false “original” former prices, including, but not limited to, its in-store advertising displays, print advertising, and internet website advertising were “fraudulent” within the meaning of the UCL because they deceived Plaintiff, and were likely to deceive members of the class, into believing that J.C. Penney was offering value, discounts or bargains from the prevailing market value or worth of the products sold that did not, in fact, exist. As a result, purchasers, including Plaintiff, reasonably perceived that they were receiving products that regularly sold in the retail marketplace at substantially higher prices (and were, therefore, worth more) than what they paid. This perception induced reasonable purchasers, including Plaintiff, to buy such products from J.C. Penney, which they otherwise would not have purchased.

67. J.C. Penney’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 private branded and exclusive branded apparel and accessories at J.C. Penney, Plaintiff relied on J.C. Penney’s misleading and deceptive representations regarding its “original,” and “sale” prices. 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 J.C. Penney’s

1 misrepresentations. Accordingly, Plaintiff suffered monetary loss as a direct result
2 of J.C. Penney's practices described herein.

3 68. As a result of the conduct described above, J.C. Penney has been
4 unjustly enriched at the expense of Plaintiff and members of the proposed Class.
5 Specifically, J.C. Penney has been unjustly enriched by obtaining revenues and
6 profits that it would not otherwise have obtained absent its false, misleading and
7 deceptive conduct.

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

15 **THIRD CAUSE OF ACTION**

16 **(Violation of the "Unlawful" Prong of the UCL)**

17 70. Plaintiff realleges by reference, as if fully set forth herein, all of the
18 above Paragraphs.

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

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

24 73. The FTCA prohibits "unfair or deceptive acts or practices in or
25 affecting commerce" (15 U.S.C. § 45(a)(1)) and specifically prohibits false
26 advertisements. 15 U.S.C. § 52(a)). The FTC has established Guidelines that
27 describe false former pricing schemes, similar to J.C. Penney's in all material
28 respects, as deceptive practices that would violate the FTCA:

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

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

21 16 C.F.R. § 233.1.

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

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

1 published.

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

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

13 76. J.C. Penney's use of and reference to a materially false "original"
14 price, or purported discounts of "__% off," in connection with its marketing and
15 advertisements concerning its private branded and exclusive branded apparel and
16 accessories violated and continues to violate the FTCA, 15 U.S.C. § 45(a)(1) and 15
17 U.S.C. § 52(a), as well as FTC Guidelines published at Title 16, Code of Federal
18 Regulations, Section 233. It also violated and continues to violate Cal. Bus. & Prof.
19 Code § 17501, and Cal. Civ. Code § 1770, sections (a)(9) and (a)(13) by advertising
20 false discounts from purported former prices that were, in fact, not the prevailing
21 market prices within three months next preceding the publication and dissemination
22 of advertisements containing the false former prices.

23 77. As a result of the conduct described above, J.C. Penney has been
24 unjustly enriched at the expense of Plaintiff and members of the proposed Class.
25 Specifically, J.C. Penney has been unjustly enriched by obtaining revenues and
26 profits that it would not otherwise have obtained absent its false, misleading and
27 deceptive conduct.

28 78. Through its unfair acts and practices, J.C. Penney has improperly

1 obtained money from Plaintiff and the Class. As such, Plaintiff requests that this
2 Court cause J.C. Penney to restore this money to Plaintiff and all Class members,
3 and to enjoin J.C. Penney from continuing to violate the UCL, and/or from violating
4 the UCL in the future. Otherwise, Plaintiff, the Class and members of the general
5 public may be irreparably harmed and/or denied an effective and complete remedy
6 if such an order is not granted.

7 **FOURTH CAUSE OF ACTION**

8 **(Violation of the California False Advertising Law,**
9 **California Business & Professions Code Sections 17500, et seq.)**

10 79. Plaintiff realleges by reference, as if fully set forth herein, all of the
11 above Paragraphs.

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

15 81. J.C. Penney's practice of advertising "original" sales prices associated
16 with private branded and exclusive branded apparel and accessories, which were
17 materially greater than the true prevailing prices of those products was an unfair,
18 deceptive and misleading advertising practice because it gave the false impression
19 that the products sold by J.C. Penney regularly sold in the retail marketplace at
20 substantially higher prices (and were, therefore, worth more) than they actually
21 were. In fact, the private branded and exclusive branded apparel and accessories
22 sold at J.C. Penney did not have a prevailing market price anywhere close to the
23 "original" price advertised.

24 82. Through its unfair acts and practices, J.C. Penney has improperly
25 obtained money from Plaintiff and the Class. As such, Plaintiff requests that this
26 Court cause J.C. Penney to restore this money to Plaintiff and all Class members,
27 and to enjoin J.C. Penney from continuing to violate the False Advertising Law as
28 discussed herein and/or from violating the UCL in the future. Otherwise, Plaintiff,

1 the Class and members of the general public may be irreparably harmed and/or
2 denied an effective and complete remedy if such an order is not granted.

3 **FIFTH CAUSE OF ACTION**

4 **(Violation of the Consumers Legal Remedies Act,**
5 **California Civil Code Sections 1750, et seq.: Injunctive Relief)**

6 83. Plaintiff realleges by reference, as if fully set forth herein, all of the
7 above Paragraphs.

8 84. This cause of action is brought pursuant to the CLRA.

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

11 86. J.C. Penney’s sale of private branded and exclusive branded apparel
12 and accessories to Plaintiff and the Class were “transactions” within the meaning of
13 California Civil Code § 1761(e). The products purchased by Plaintiff and the Class
14 are “goods” within the meaning of California Civil Code § 1761(a).

15 87. As described herein, J.C. Penney violated the CLRA by falsely
16 representing the nature, existence and amount of price discounts from referenced
17 “original” sales prices of its private branded and exclusive branded apparel and
18 accessories where J.C. Penney inflated the purported “original” prices such that the
19 promised discount, value and bargain were false, in violation of Cal. Civ. Code
20 § 1770, subsection (a)(9) (“[a]dvertising goods or services with intent not to sell
21 them as advertised”) and subsection (a)(13) (“[m]aking false or misleading
22 statements of fact concerning reasons for, existence of, or amounts of price
23 reductions”).

24 88. Plaintiff relied on J.C. Penney’s false representations in deciding to
25 purchase private branded and exclusive branded apparel and accessories from J.C.
26 Penney. Plaintiff would not have purchased such items absent J.C. Penney’s
27 unlawful conduct. As a result of these acts and practices, Plaintiff suffered damage
28 in that she spent money at J.C. Penney that she would not have otherwise spent

1 absent J.C. Penney's unlawful and misleading acts and practices.

2 89. Pursuant to Section 1782(a) of the CLRA, on February 7, 2012,
3 Plaintiff's counsel, on behalf of Plaintiff Spann, served Defendant by United States
4 certified mail, return receipt requested, with notice of Defendant's particular
5 violations of the CLRA and requested that Defendant identify victims, notify
6 victims and remedy its illegal conduct within 30 days.

7 90. More than 30 days have passed, and Defendant has failed to respond
8 to, or comply with, Plaintiff's demand. Accordingly, on behalf of herself and the
9 Class, Plaintiff seeks damages and/or restitution from Defendant. Plaintiff also
10 requests that this Court enjoin J.C. Penney from continuing to violate the CLRA as
11 discussed herein and/or from violating the UCL in the future. Otherwise, Plaintiff,
12 the Class and members of the general public may be irreparably harmed and/or
13 denied an effective and complete remedy if such an order is not granted.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff, on behalf of herself and on behalf of the other
16 members of the Class, requests that this Court award relief as follows:

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

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

25 C. Pursuant to Plaintiff's fifth cause of action, damages and/or
26 restitution;

27 D. An order enjoining Defendant from continuing to violate the UCL,
28 False Advertising Law and CLRA as described herein, and/or an order enjoining

1 Defendant from violating the UCL, False Advertising Law and CLRA in the future;
2 E. A judgment awarding Plaintiff her costs of suit; including reasonable
3 attorneys' fees pursuant to California Civil Code § 1780(d), Code of Civil
4 Procedure § 1021.5 and as otherwise permitted by statute; and pre and post-
5 judgment interest; and

6 F. Such other and further relief as may be deemed necessary or
7 appropriate.

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands a trial by jury for all claims so triable.

10 DATED: March 5, 2014

STANLEY LAW GROUP
MATTHEW J. ZEVIN

11
12
13 /s/ Matthew J. Zevin

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25 Attorneys for Plaintiff Cynthia E. Spann and
26 Proposed Class Counsel
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Attorneys for Plaintiff Cynthia E. Spann

PROOF OF SERVICE

Spann v. J.C. Penney, et al.

CASE NO: SACV12 0215 FMO (RNBx)

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to this action. I am employed in the County of San Diego, State of California. My business address is: 225 Broadway, Suite 1350, San Diego, CA 92101.

That on March 5, 2014, I served the following document(s) entitled: **FOURTH AMENDED COMPLAINT FOR: 1. Unfair Business Practices in Violation of California Business & Professions Code Sections 17200, et seq.; 2. Fraudulent Business Practices in Violation of California Business & Professions Code Sections 17200, et seq.; 3. Unlawful Business Practices in Violation of California Business & Professions Code Sections 17200, et seq.; 4. False Advertising in Violation of California Business & Professions Code Sections 17500, et seq.; 5. Violations of California Consumer Legal Remedies Act on ALL INTERESTED PARTIES** in this action:

BY MAIL: By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence, pleadings, and other matters for mailing with the United States Postal Service. The correspondence, pleadings and other matters are deposited with the United States Postal Service with postage thereon fully prepaid in San Diego, California, on the same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY CM/ECF Electronic Service: I caused such document to be served via the Court's (NEF) electronic filing system on all registered parties.

I declare under penalty of perjury under the laws of the United States of America and State of California that the foregoing is true and correct. Executed on March 5, 2014, at San Diego, California.

/s/ Matthew J. Zevin
MATTHEW J. ZEVIN

EXHIBIT A

